Federal Register

12–21–05 Wednesday
Vol. 70 No. 244 Dec. 21, 2005

Pages 75711–75928

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Proclamation 7969 of December 16, 2005

Wright Brothers Day, 2005

By the President of the United States of America

A Proclamation

On December 17, 1903, a wooden aircraft lifted from the sands of Kitty Hawk, North Carolina, remaining airborne for 12 seconds and covering a distance of 40 yards. That first powered flight was a heroic moment in our Nation's history and in the story of mankind. On Wright Brothers Day, we celebrate the journey that began at Kitty Hawk and commemorate the imagination, ingenuity, and determination of Orville and Wilbur Wright.

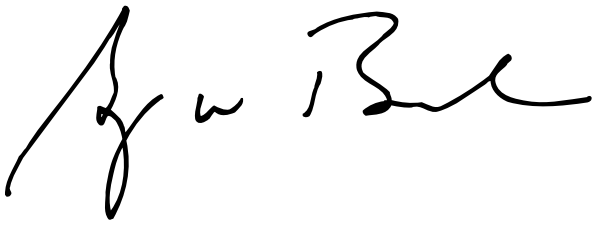
The American experience in air and space is an epic of endurance and discovery. The past 102 years have brought supersonic flight, space travel, and the exploration of the Moon and Mars. Charles Lindbergh's solo, nonstop passage across the Atlantic Ocean and the record-breaking flights of Amelia Earhart captured the public's imagination and encouraged the growth of aviation. Americans such as Chuck Yeager, the first man to break the sound barrier, and Alan Shepard, the first American in space, and Neil Armstrong and Buzz Aldrin, the first men on the Moon, led our Nation on a voyage of discovery. These pioneers explored the unknown and brought the bold dream of the Wright Brothers into the future. Their dedication and skill and that of countless others reflect the finest values of our country and have helped ensure that the United States continues to lead the world in flight.

Americans will always be risk-takers for the sake of exploration. As we remember the achievements of the Wright Brothers, we look forward to challenging the frontiers of knowledge in a new century.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 143) as amended, has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 17, 2005, as Wright Brothers Day.

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



[FR Doc. 05–24384
Filed 12–20–05; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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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 2005–29]

Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission is amending its rules defining ''electioneering communication'' under the Federal Election Campaign Act of 1971, as amended (''FECA'' or the ''Act''). The changes modify the definition of ''publicly distributed'' and the exemptions to the definition of ''electioneering communication'' consistent with the ruling of the U.S. District Court for the District of Columbia in *Shays* v. *FEC,* portions of which were affirmed by the U.S. Court of Appeals for the District of Columbia Circuit. Specifically, the changes eliminate the exemption from the electioneering communication provisions for certain tax-exempt organizations and revise the definition of ''publicly distributed,'' a term used in the regulatory definition of ''electioneering communication.'' The Commission is not adopting any other regulatory exemptions considered in this rulemaking. The Commission is also deferring further consideration of a proposed exemption for advertisements promoting films, books and plays until after completing the rulemakings that respond to *Shays* v. *FEC.* Further information is provided in the supplementary information that follows.

DATES: The rules at 11 CFR 100.29 will become effective on January 20, 2006.

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

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (2002), amended FECA by adding a new category of communications, ''electioneering communications,'' to those already regulated by the Act. *See* 2 U.S.C. 434(f)(3). Electioneering communications are television and radio communications that refer to a clearly identified candidate for Federal office, are publicly distributed within 60 days before a general election or 30 days before a primary election, and are targeted to the relevant electorate. *See* 2 U.S.C. 434(f)(3)(A)(i); 11 CFR 100.29(a)(1) through (3). Electioneering communications carry certain reporting obligations and funding restrictions. *See* 2 U.S.C. 434(f)(1) and (2), and 441b(a) and (b)(2).

BCRA exempts certain communications from the definition of ''electioneering communication,'' 2 U.S.C. 434(f)(3)(B)(i) to (iii), and specifically authorizes the Commission to promulgate regulations exempting other communications as long as the exempted communications do not promote, support, attack or oppose (''PASO'') a candidate. 2 U.S.C. 434(f)(3)(B)(iv), *citing* 2 U.S.C. 431(20)(A)(iii).

On October 23, 2002, the Commission promulgated regulations to implement BCRA's electioneering communications provisions. *Final Rules and Explanation and Justification on Electioneering Communications,* 67 FR 65190 (Oct. 23, 2002) (''*EC E&J*''). In those regulations, the Commission defined electioneering communications as limited to communications that are publicly distributed ''for a fee.'' Former 11 CFR 100.29(b)(3)(i). The Commission also exempted from the electioneering communication provisions any communication that is paid for by any organization operating under section 501(c)(3) of the Internal Revenue Code of 1986 (''IRC''). Former 11 CFR 100.29(c)(6).

These two rules were invalidated in *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004) (''*Shays District*''), *aff'd,* 414 F.3d 76 (D.C. Cir. 2005), *reh'g en banc denied,* No. 04–5352 (DC Cir. Oct. 21, 2005) (''*Shays Appeal*''). In *Shays District,* the court held that the regulation limiting electioneering communications to communications publicly distributed for a fee did not satisfy the requirements set out in *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984) (''*Chevron*''). The court further held that the explanation supporting the section 501(c)(3) exemption did not satisfy the Administrative Procedure Act, 5 U.S.C. 706(2) (''APA''). *Shays District* at 124–29. The District Court remanded the case for further action consistent with its decision. The Commission appealed the District Court's decision regarding the limitation to communications publicly distributed ''for a fee,'' but did not appeal the decision regarding the exemption for section 501(c)(3) organizations. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court, holding again that the ''for a fee'' regulation did not satisfy *Chevron. Shays Appeal* at 108.

In response to the District Court's decision, the Commission published a Notice of Proposed Rulemaking on August 24, 2005. *See Notice of Proposed Rulemaking on Electioneering Communications,* 70 FR 49508 (Aug. 24, 2005) (''*NPRM*''). The NPRM raised a range of options for a number of regulatory exemptions to the definition of ''electioneering communication.'' The comment period closed on September 30, 2005. The Commission received 47 comments from 113 commenters with regard to the various issues raised in the NPRM. The Commission held a public hearing on October 20, 2005, at which seven witnesses testified. The comments and a transcript of the public hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml* under ''Electioneering Communications 2005.'' For purposes of this document, the terms ''comment'' and ''commenter'' apply to both written comments and oral testimony at the public hearing.

Under the APA, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on December 15, 2005.

Explanation and Justification

Former 11 CFR 100.29(c)(6)—Exemption for Section 501(c)(3) Organizations

BCRA provides three exemptions from the ''electioneering communication'' definition. 2 U.S.C. 434(f)(3)(B)(i) through (iii). In addition, BCRA permits, but does not require, the Commission to promulgate regulations exempting other communications ''to ensure the appropriate implementation'' of the electioneering communication provisions. 2 U.S.C. 434(f)(3)(B)(iv). BCRA limits this exemption authority to communications that do not PASO any clearly identified candidate for Federal office. *Id.*

Pursuant to this authority, the Commission exempted from the ''electioneering communication'' definition any communication that is paid for by any organization operating under section 501(c)(3) of the IRC. *See* 26 U.S.C. 501(c)(3); former 11 CFR 100.29(c)(6). The Commission explained that it believed ''the purpose of BCRA is not served by discouraging such charitable organizations from participating in what the public considers highly desirable and beneficial activity, simply to foreclose a theoretical threat from organizations that has not been manifested, and which such organizations, by their very nature, do not do.'' *EC E&J,* 67 FR at 65200. Under the IRC, organizations described in IRC section 501(c)(3) may not ''participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.'' *See* 26 U.S.C. 501(c)(3).

In considering a challenge to the exemption for section 501(c)(3) organizations, the District Court held that the Explanation and Justification for 11 CFR 100.29(c)(6) did not provide a sufficient analysis under the APA. *See Shays District* at 128. The District Court remanded this regulation to the Commission for further action consistent with its order. *Id.* at 130. Instead of appealing this aspect of the District Court decision, the Commission chose to initiate this rulemaking to determine whether the Commission should retain the exemption for section 501(c)(3) organizations.

In these Final Rules, the Commission is eliminating the exemption for section 501(c)(3) organizations from the definition of ''electioneering communications'' by removing paragraph (c)(6) from 11 CFR 100.29. In BCRA, Congress defined ''electioneering communication'' in terms that are easily understood and objectively determinable. 2 U.S.C. 434(f)(3). The U.S. Supreme Court upheld all of BCRA's electioneering communication provisions, and rejected a challenge based on unconstitutional overbreadth. *See McConnell* v. *FEC,* 540 U.S. 93, 189–211 (2003).

Many commenters addressed the overlap between the IRC section 501(c)(3) prohibition on political activity and BCRA's requirement that any exemption for section 501(c)(3) organizations not permit PASO communications. There was no consensus among the commenters on this issue. Some supported retaining the exemption and argued that as a matter of law this prohibition in the IRC prevents section 501(c)(3) organizations from engaging in communications that PASO Federal candidates. Some urged the Commission to distinguish between communications that PASO individuals in their capacities as candidates, and communications that PASO individuals in their capacities as legislators or public officials. The commenters asserted that the IRS recognizes this distinction.

Other commenters urged the Commission to eliminate the exemption for section 501(c)(3) organizations. Some argued that section 501(c)(3) organizations are permitted under the IRC to engage in PASO communications, and that some section 501(c)(3) organizations do, in fact, make PASO communications. Some asserted that the boundaries of the IRC prohibition on campaign participation or intervention are not clear.

In written comments submitted in this rulemaking, the IRS stated that the tax laws and regulations do not allow section 501(c)(3) organizations to promote or oppose candidates for Federal office, but do permit grass roots lobbying. The IRS explained that all the facts and circumstances must be considered to determine whether a communication by a section 501(c)(3) organization constitutes prohibited campaign intervention or permissible lobbying. The IRS comments referred to Revenue Ruling 2004–6, 2004–6 I.R.B. 328, that identifies a non-exhaustive list of 11 factors that ''tend to show'' whether a communication would be permissible for a section 501(c)(3) organization. The IRS comments also make clear that its use of the phrase ''promote or oppose candidates for Federal office'' was in the context of tax law, and not campaign finance law, and that its use of this phrase was not necessarily synonymous with PASO.

The comments submitted in this rulemaking suggest, but do not establish, that the IRC prohibition on political activity by section 501(c)(3) organizations and BCRA's requirement that no exemption permit PASO communications are not perfectly compatible. Rescinding the blanket exemption for section 501(c)(3) organizations does not represent a conclusion that the IRC prohibition on political activity and the BCRA prohibition on exempting PASO communications are incompatible as a matter of law or administrative practice, only that no such compatibility was demonstrated to a reasonable certainty in this rulemaking.

Some commenters argued that an exemption for section 501(c)(3) organizations is needed so that these organizations may produce or cooperate in the production of public service announcements (''PSAs''). The Commission understands that in many instances Federal candidates and officeholders participate in PSAs motivated by a desire to support the charitable or other public service endeavor discussed in the PSA. However, as the Court of Appeals noted, ''such broadcasts could 'associate a Federal candidate with a public-spirited endeavor in an effort to promote or support that candidate.' '' *See Shays Appeal* at 109.

The Commission's experience in the last election cycle suggests that section 501(c)(3) organizations do not engage in many electioneering communications, which calls into question the present need for the exemption. Many commenters agreed that section 501(c)(3) organizations rarely refer to Federal candidates in television and radio advertisements. In fact, none of the commenters provided an example of a broadcast, cable or satellite communication by a section 501(c)(3) organization that was publicly distributed after BCRA's effective date and that referred to a Federal candidate during the 30-day and 60-day electioneering communication time frames.

The comments persuade the Commission that the best course, at this time, is to rescind the exemption and apply the same general electioneering communication rules to section 501(c)(3) organizations as were upheld in *McConnell.* Removing the regulatory exemption for section 501(c)(3) organizations will mean that communications by these organizations will be subject to BCRA's electioneering communications provisions, including any other statutory or regulatory exemptions that may apply.

11 CFR 100.29(b)(3)(i)—''For a Fee''

BCRA defines ''electioneering communication,'' in part, as a communication ''*made* within (aa) 60 days before a general or runoff election * * * or (bb) 30 days before a primary or preference election.'' 2 U.S.C. 434(f)(3)(A)(i)(II) (emphasis added). In implementing this provision, the Commission's rules interpret ''made'' as ''publicly distributed'' so that an electioneering communication is, in part, a communication that is ''*publicly distributed* within 60 days before a general election * * * or within 30 days before a primary or preference election.'' 11 CFR 100.29(a)(2) (emphasis added); *see also EC E&J,* 67 FR at 65191.

The former rules further defined ''publicly distributed'' as ''aired, broadcast, cablecast or otherwise disseminated *for a fee* through the facilities of a television station, radio station, cable television system, or satellite system.'' Former 11 CFR 100.29(b)(3)(i) (emphasis added). The Commission included the ''for a fee'' requirement because ''[m]uch of the legislative history and virtually all of the studies cited in legislative history and presented to the Commission in the course of [the 2002] rulemaking focused on paid advertisements in considering what should be included within electioneering communications.'' *EC E&J,* 67 FR at 65192 (citations to studies omitted). Both the District Court and the Court of Appeals held that the ''for a fee'' provision created an additional element in the electioneering communication test, and accordingly did not satisfy *Chevron* step one.[1] *Shays District* at 128–129; *Shays Appeal* at 109.

To address the courts' concerns, the NPRM proposed eliminating the phrase ''for a fee'' from the definition of ''publicly distributed'' in 11 CFR 100.29(b)(3)(i). *See* 70 FR at 49509. Some commenters supported the removal of the ''for a fee'' language. One commenter supported exempting unpaid communications that do not PASO any Federal candidate because this approach would be preferable to eliminating the ''for a fee'' concept entirely.

The Commission is adopting the proposed rule removing the ''for a fee'' language from the definition of ''publicly distributed'' in 11 CFR 100.29(b)(3)(i). As noted above, the underlying electioneering communication provision in BCRA provides a bright-line test that was upheld against constitutional challenges in *McConnell* v. *FEC,* 540 U.S. 93 (2003). Revised section 100.29(b)(3)(i) will make all unpaid communications subject to BCRA's electioneering communications provisions and any statutory or regulatory exemptions that may apply.[2]

Some commenters noted that section 501(c)(3) organizations that create and distribute PSAs often retain little or no control over when their PSAs will be broadcast. As a result, these commenters are concerned that a broadcast, cable, satellite system or radio station operator (collectively ''broadcaster'') will publicly distribute a PSA that refers to a Federal candidate within the electioneering communications timeframes, without the knowledge of the section 501(c)(3) organization. Additionally, one commenter suggested that broadcasters may not always be able to review the content of PSAs to determine whether they constitute electioneering communications. The commenter was concerned that broadcasters would be held responsible in these circumstances for making electioneering communications.

The Web site of the Advertising Council, Inc. (''Ad Council''), presents information that is useful in analyzing section 501(c)(3) organizations' and broadcasters' liability.[3] The Web site lists expiration dates for thousands of PSAs and explains that ''[o]ur PSAs should never be run past their expiration dates.'' The site also ''encourage[s] all PSA Directors [of broadcasters] to check their inventories for expired materials.'' *See* ''PSA Expiration Dates'' at *http://psacentral.adcouncil.org* (visited Dec. 2, 2005).

The Commission encourages section 501(c)(3) organizations to provide broadcasters with either an expiration date or some indication that the PSA should not be run in the applicable 30- or 60-day electioneering communication periods, if the PSA features a Federal candidate. In these circumstances, the Commission would not hold the section 501(c)(3) organization liable for making an electioneering communication if the broadcaster publicly distributes the PSA contrary to those instructions. Additionally, if a section 501(c)(3) organization produces a PSA that features an individual who becomes a Federal candidate after the PSA has been provided to broadcasters, then the section 501(c)(3) organization will not be responsible for making an electioneering communication if the PSA is publicly distributed as an electioneering communication.

If an incorporated broadcaster provides free airtime for a PSA that satisfies the definition of ''electioneering communication,'' then the broadcaster may be responsible for making an electioneering communication. *See* 2 U.S.C. 434(f)(3) and 2 U.S.C. 441b(b)(2). The Ad Council's Web site indicates that many broadcasters have PSA directors who review PSAs and who are encouraged to check for expiration dates. It will not be burdensome for these PSA directors to review PSAs that refer to clearly identified Federal candidates and ensure that the PSAs are not publicly distributed as electioneering communications.

BCRA's definition of ''electioneering communication'' also includes an exemption for ''a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate.'' 2 U.S.C. 434(f)(3)(B)(i) and 11 CFR 100.29(c)(2). The Commission has recognized that, under certain circumstances, a broadcaster's public distribution of a communication made by another person will qualify for the press exemption from the definitions of ''contribution'' and ''expenditure.'' *See* AOs 1982–44 and 1987–8 (applying 2 U.S.C. 431(9)(B)(i) and the corresponding regulations). Similarly, the Commission has recognized that the provision of free airtime to candidates or appearances on interview shows can fall within the press exemption at 2 U.S.C. 431(9)(B)(i). *See* AOs 1998–17 and 1996–16, respectively. An unpaid communication that is indistinguishable in all its material aspects from AOs 1998–17, 1996–16, 1987–8 or 1982–44 is also entitled to the press exemption from the ''electioneering communication'' definition.

[1] The first step of the *Chevron* analysis, which courts use to review an agency's regulations, asks whether Congress has directly spoken to the precise questions at issue. The second step considers whether the agency's resolution of an issue not addressed in the statute is based on a permissible construction of the statute. See Shays District at 51–52 (citing Chevron).

[2] To the extent that Advisory Opinions (''AO'') 2004–7 and 2004–14 relied on the ''for a fee'' provision in 11 CFR 100.29(b)(3)(i) to determine that a communication was not an electioneering communication, those portions of the AOs are superseded.

[3] The Advertising Council, Inc., is a private, non-profit organization that describes itself as ''the leading producer of PSAs since 1942.'' It uses donated funds and services to produce, distribute, and promote ''thousands'' of PSAs on behalf of non-profit organizations and government agencies. *See About the Ad Council, http://www.adcouncil.org/about* (visited Dec. 2, 2005).

11 CFR 100.29(c)(5)—Exemption for State and Local Candidates

In 2002, the Commission promulgated a limited exemption from the electioneering communication rules for State and local candidates, consistent with the authority Congress granted to the Commission to create exemptions. *See* 2 U.S.C. 434(f)(3)(B)(iv); 11 CFR 100.29(c)(5), *EC E&J,* 67 FR at 65199. In this NPRM, the Commission proposed to either clarify the exemption in 11 CFR 100.29(c)(5), or to repeal it as part of a proposal to rely on only the statutory exemptions. *See* 70 FR at 49513.

Of the commenters that addressed this exemption, one took no position. The others described the exemption as ''a proper exercise of the Commission's clause (iv) authority,'' and called its repeal permissible, but not necessary. Those commenters who addressed the proposed clarifications to the exemption did not object to the changes.

The Commission has decided that it will retain the exemption for State and local candidates. In the time since this exemption took effect, the Commission is not aware of any instances in which this exemption enabled State or local candidates to circumvent BCRA. Section 100.29(c)(5), however, is being amended to incorporate certain clarifications proposed in the NPRM. These changes remove a reference to a statutory provision and rearrange portions of the rule to improve readability without substantively changing the rule. *See* final 11 CFR 100.29(c)(5).

As an additional clarification to this exemption, the Commission is adding a cross reference to 11 CFR 300.71 for communications paid for by State or local candidates that PASO a Federal candidate. In 2002, the Commission determined that such communications are governed by Title I of BCRA, and not by the electioneering communication provisions in subtitle A of Title II of BCRA. *See EC E&J,*\ 67 FR at 65199. The new cross reference refers readers to the Title I regulation that addresses PASO communications by a State or local candidate.

Exemption for All Communications That Do Not PASO a Federal Candidate

The NPRM sought comment on exempting all communications that do not PASO a Federal candidate. *See* 70 FR at 49513. Unlike exemptions that focus on the maker of the communication, this proposal would have focused on the communication's content and treated all speakers equally.

Several comments addressed this proposal. These commenters opposed this proposal, either on the grounds that it would be inconsistent with Congressional intent or that it would not be useful without a definition of PASO.

The Commission is not adopting such an exemption. To do so, the Commission would replace entirely Congress's preferred bright-line definition of ''electioneering communication'' with the standard that Congress relegated to the back-up definition. Such an across-the-board replacement of Congress's standard with its second choice standard would impermissibly contravene Congressional intent.

Petition for Rulemaking To Exempt Advertisements Promoting Films, Books and Plays

The Commission received a Petition for Rulemaking requesting the creation of an exception to the electioneering communications regulations for the promotion and advertising of ''political documentary films, books, plays and similar means of expression.'' The Commission published a Notice of Availability seeking comment on the petition. *See Notice of Availability of Rulemaking Petition: Exception for the Promotion of Political Documentary Films from ''Electioneering Communications,''* 69 FR 52461 (Aug. 26, 2004). The comments received were summarized in the NPRM. At that time, the Commission proposed 11 CFR 100.29(c)(7) to exempt communications promoting films, books or plays, provided the communications are run within the ordinary course of business of the persons paying for such communications, and provided the communications do not PASO a Federal candidate. *See* 70 FR at 49514. The proposed exemption would have applied beyond ''political'' works to include advertising for any film, book or play. *See NPRM*, 70 FR at 49514.

Several commenters supported the proposed rule and no commenters objected to it. All of the commenters who addressed this proposal suggested revisions to the proposed rule to either expand or limit the scope of the exemption.

The Commission has decided to defer any final decision regarding the proposed exemption for advertisements promoting films, books and plays until after the Commission has completed all rulemakings required by the *Shays District* and *Shays Appeal* rulings. Accordingly, the Commission intends to address the issues presented in the Petition for Rulemaking in the near future.

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

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that there are few ''small entities'' affected by these final rules, and these rules do not impose any significant costs. The Commission's revisions to the electioneering communications rules could affect individuals (not within the definition of ''small entities'') and some non-profit organizations. Based on the record before it, the Commission believes there are not a substantial number of ''small entities'' that are affected by these final rules.

First, removing the ''for a fee'' requirement from the definition of ''publicly distributed'' only affects the small number of communications that qualify as electioneering communications and that are publicly distributed without charge. There are very few small non-profit organizations that receive donated time for such advertising or participate in public access programming. Large national non-profit organizations that run public service announcements on donated time are not ''small organizations'' under section 601(4) of the Regulatory Flexibility Act. Similarly, to the extent these rules affect media organizations donating the time or running their own programming, they do not fall within the definition of ''small business.''

Second, removing the exemption for communications paid for by section 501(c)(3) organizations does not affect a substantial number of small organizations because the factual record developed by the Commission in these proceedings indicates that few, if any, section 501(c)(3) organizations make broadcast, cable or satellite communications that refer to Federal candidates during the electioneering communication time frames to the targeted audience. Additionally, many of these organizations may not be able to afford expensive radio and television advertising. To the extent they can afford such advertisements, they are already limited in what campaign activity they may engage in under the IRC.

Even if the number of small organizations affected by the rules were substantial, these small entities would not feel a significant economic impact from the final rules. There is no indication in the record before the Commission that the inability of any small non-profit organizations to

publicly distribute communications that refer to Federal candidates (such as public service announcements, public access programming, and lobbying ads) during the electioneering communications windows would decrease available funds, or hamper fundraising, or otherwise economically disadvantage these organizations. Therefore, the Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

■ For 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. Section 100.29 is amended by:
■ (a) Revising paragraph (b)(3)(i);
■ (b) Revising the introductory text of paragraph (c);
■ (c) Adding the word ''or'' to follow the semi-colon in paragraph (c)(4);
■ (d) Revising paragraph (c)(5); and
■ (e) Removing paragraph (c)(6).

Revisions read as follows:

§ 100.29 Electioneering communication (2 U.S.C. 434(f)(3)).

* * * * *

(b) * * *

(3)(i) *Publicly distributed* means aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system.

* * * * *

(c) The following communications are exempt from the definition of electioneering *communication*. Any communication that:

* * * * *

(5) Is paid for by a candidate for State or local office in connection with an election to State or local office, provided that the communication does not promote, support, attack or oppose any Federal candidate. *See* 11 CFR 300.71 for communications paid for by a candidate for State or local office that promotes, supports, attacks or opposes a Federal candidate.

Dated: December 15, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–24297 Filed 12–20–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2005–30]

Extension of Administrative Fines Program

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of rules to congress.

SUMMARY: Section 721 of the Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006 (''2006 Appropriations Act'') amended the Treasury and General Government Appropriations Act, 2000, to extend the expiration date for the Administrative Fines Program (''AFP''). Under the AFP, the Federal Election Commission (''Commission'') may assess civil monetary penalties for violations of the reporting requirements of section 434(a) of the Federal Election Campaign Act (''Act'' or ''FECA''). Accordingly, the Commission is extending the applicability of its rules and penalty schedules in implementing the AFP. Further information is provided in the Supplementary Information that follows.

DATES: *Effective Date:* December 21, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Explanation and Justification for 11 CFR 111.30

Section 640 of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, 113 Stat. 430, 476–77 (1999) (''2000 Appropriations Act''), amended 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of certain reporting requirements. Under 2 U.S.C. 437g(a)(4)(C), the Commission may assess a civil monetary penalty for violations of the reporting requirements of 2 U.S.C. 434(a). These amendments to 2 U.S.C. 437g(a)(4) originally applied only to violations occurring between January 1, 2000 and December 31, 2001. See 2000 Appropriations Act, § 640(c). Congress, however, extended authorization for the AFP several times, with the most recent extension expiring on December 31, 2005. See Consolidated Appropriations Act, 2004, Public Law 108–199, § 639, 118 Stat. 3, 359 (2004).

Commission regulations governing the AFP can be found at 11 CFR part 111, subpart B. The Commission incorporated the legislative sunset date into its rule describing the applicability of the AFP in 11 CFR 111.30, and has consistently revised section 111.30 to extend the AFP sunset date in accordance with these statutory amendments. See, *e.g.*, *Final Rule on Extension of Administrative Fines Program*, 69 FR 6525 (Feb. 11, 2004) (changing sunset date in 11 CFR 111.30 to December 31, 2005).

Section 721 of the 2006 Appropriations Act amended the 2000 Appropriations Act by extending the sunset date to include most reports that cover activity between July 14, 2000 and December 31, 2008. *See* 2006 Appropriations Act, Public Law 109–115, 119 Stat. 2396 (Nov. 30, 2005). This final rule amends 11 CFR 111.30 to reflect the extended sunset date of December 31, 2008. The Commission is not making any other revisions to the AFP rules at this time.

The Commission is promulgating this final rule without notice or an opportunity for comment because it falls under the ''good cause'' exemption in the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with notice and comment when ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* The 2006 Appropriations Act was enacted only a month before the AFP's sunset date of December 31, 2005. A notice and comment period for this final rule is impracticable because it would result in a gap in the applicability of the AFP between when the current regulation expires on December 31, 2005 and the date when a new final rule could be effective after additional notice and comment. *See Administrative Procedure Act: Legislative History*, S. Doc. No. 248 200 (1946) (''‘Impracticable' means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings'').

In addition, this final rule merely extends the applicability of the AFP and does not change the substantive regulations themselves. Those regulations were already subject to notice and comment when they were proposed in March 2000, 65 FR 16534, and adopted in May 2000, 65 FR 31787, and again when substantive revisions to the AFP were proposed in April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572. Thus, this final rule satisfies the ''good cause'' exemption, and it is appropriate and necessary for

the Commission to publish this final rule without providing a notice and comment period.

The Commission is making this final rule effective immediately upon publication in the **Federal Register** because it falls within the ''good cause'' exception to the thirty-day delayed effective date requirement set forth at section 553(d)(3) of the Administrative Procedure Act. *See* 5 U.S.C. 553(d)(3). The same reasons that justify the promulgation of this final rule without a notice and comment period, as set forth above, also justify making this final rule effective without the thirty-day delay. Otherwise, a thirty-day delay of the effective date would create a gap in the AFP between December 31, 2005, when the current regulation sunsets, and the delayed effective date.

The Commission is submitting this final rule to the Speaker of the House of Representatives and the President of the Senate pursuant to the Congressional Review of Agency Regulations Act, 5 U.S.C. 801(a)(1)(A), on December 15, 2005. Since this is a non-major rule, it is not subject to the delayed effective date provisions of 5 U.S.C. 801(a)(3).

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

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

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

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

■ 1. The authority for part 111 continues to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

■ 2. Section 111.30 is revised to read as follows:

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers that relate to the reporting periods that begin on or after July 14, 2000 and end on or before December 31, 2008. This subpart, however, does not apply to reports that were due between January 1, 2004 and February 10, 2004 and that relate to reporting periods that begin and end between January 1, 2004 and February 10, 2004.

Dated: December 15, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–24296 Filed 12–20–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1245]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The staff commentary is amended to increase the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment from $34 million to $35 million reflects the increase of that index by 3.51 percent during the twelve-month period ending in November 2005. Thus, depository institutions with assets of $35 million or less as of December 31, 2005, are exempt from data collection in 2006.

DATES: Effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Kathleen C. Ryan, or Dan S. Sokolov, Counsels, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report that data to their federal supervisory agencies and make the data available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. Prior to 1997, HMDA exempted depository institutions with assets totaling $10 million or less, as of the preceding year-end. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to $28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board has adjusted the threshold annually, as appropriate. In 2005, the Board raised the threshold to $34 million.

During the period ending November 2005, the CPIW increased by 3.51 percent. As a result, the exemption threshold is raised to $35 million. Thus, depository institutions with assets of $35 million or less as of December 31, 2005, are exempt from data collection in 2006. An institution's exemption from collecting data in 2006 does not affect its responsibility to report the data it was required to collect in 2005.

Final Rule

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(3)(B). The amendment in this notice is technical. Comment 2(e)–2 to section 203.2 of the regulation is amended to implement the increase in the exemption threshold. This amendment merely applies the formula established by Regulation C for determining adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

■ 2. In Supplement I to part 203, under section 203.2 Definitions, *2(e) Financial Institution*, paragraph 2. is revised.

SUPPLEMENT I to PART 203—STAFF COMMENTARY

* * * * *

§ 203.2 Definitions.

2(e) Financial Institution

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2006, the asset-size exemption threshold is $35 million. Depository institutions with assets at or below $35 million are exempt from collecting data for 2006.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 15, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7579 Filed 12–20–05; 8:45 am]

BILLING CODE 3510–22–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising its member business loans (MBL) rule to clarify the minimum capital requirements a federally insured corporate credit union (corporate) must meet to make unsecured MBLs to members that are not credit unions or corporate credit union service organizations (corporate CUSOs). NCUA is also revising the definition of a construction or development loan (C&D loan) to include certain loans to borrowers who already own or have rights to property and the definition of net worth to be more consistent with its definition in the Federal Credit Union Act (Act) and NCUA's prompt corrective action regulation (PCA). Finally, the rule clarifies that a state may rescind a state MBL rule without NCUA's approval.

DATES: This rule is effective January 20, 2006.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In addition to making regulatory changes as the need arises, NCUA also reviews all of its existing regulations every three years. This review is conducted on a rolling basis so that a third of the regulations are reviewed each year. This helps NCUA update its regulations to address current regulatory concerns. NCUA provides notice to the public of those regulations under review so the public has an opportunity to comment. As a result of this process and comments received on a previous MBL rulemaking, NCUA issued proposed revisions to the MBL rule with a request for comments in April 2005. 70 FR 20487 (April 20, 2005).

B. Corporate Credit Union Capital Requirements

MBLs made by corporates to member credit unions and corporate CUSOs are exempt from the MBL rule. 12 CFR 704.7(e)(1), (2); 12 CFR part 723. MBLs made by corporates to other members, however, are subject to the MBL rule. Accordingly, when the MBL rule applies, a corporate must comply with the rule's collateral and security requirements. 12 CFR 723.7.

For example, one of the conditions a credit union must meet to make unsecured MBLs is to be ''well capitalized as defined by § 702.102(a)(1)'' of the PCA rule. 12 CFR 723.7(c)(1); 12 CFR part 702. The PCA rule, however, does not apply to corporates. 12 U.S.C. 1790d(m); 12 CFR 702.1(c). Rather, Corporate CUs generally must maintain a minimum capital ratio of four percent or a different minimum capital ratio under special circumstances. 12 CFR 704.3(d), (e). Accordingly, NCUA proposed to amend the MBL rule's capital requirements for unsecured MBLs to accommodate the differences between the general capital requirements for natural person credit unions and those for corporates. The proposed amendment is adopted in the final rule without change.

C. Definition of Net Worth

The definition of net worth in the MBL rule is slightly different than in the Act and PCA. 12 U.S.C. 1790d(o)(2); 12 CFR 702.2(f). To avoid confusion, NCUA proposed to revise the definition of net worth in the MBL rule to be the same as in PCA. The PCA rule's definition of net worth expands slightly the definition in the Act. The PCA and Act definitions both state that secondary capital accounts are counted in the net worth of low income credit unions. The proposed amendment is adopted in the final rule without change.

D. Definition of Construction or Development Loan

C&D loans are subject to more stringent regulatory limitations than other MBLs because C&D loans pose a significantly greater risk than other less speculative MBLs. Typically, NCUA has cited examples of C&D loans as including loans to finance development of: (1) Residential real estate projects, such as condominiums and single and multi-family housing; and (2) commercial real estate, such as hotels, strip malls, and office buildings. 56 FR 15053 (April 15, 1991). This type of lending is generally characterized by reliance on the anticipated future sale of the project or future cash flow of an uncompleted project to repay the loan. Id. Additionally, this type of lending is premised on the project being completed on time, within budget and a successful business enterprise. 56 FR 2723 (January 24, 1991). None of these conditions are assured and changing markets further complicate the underwriting analysis.[1] As a result, C&D loans are more speculative in nature than other MBLs.

The MBL rule's current definition of C&D loans is limited to financing arrangements for acquiring property or rights to property with the intent to convert it to an income producing property. This definition, by its terms, would exclude a loan if a borrower already owns or has rights to the property.

In the proposal, NCUA stated it believed an appropriate test for determining if a loan is a C&D loan is whether the loan will be used to renovate or otherwise develop a property for an income producing purpose. NCUA also stated it did not believe loans for these purposes, the essential nature of which is related to construction or development, should be excluded from the definition of C&D

[1] While the MBL rule contains collateral and security requirements and limits of various sorts, it does not require a credit union to employ specific underwriting methods. Rather, a credit union should establish an underwriting process that is tailored to the types of loans it makes, within the bounds of safety and soundness, and in conformity with industry best practices.

loan just because the borrower has already acquired the property or rights to it. NCUA proposed a revised definition of C&D loans to reflect this and still believes that MBLs to borrowers who have already acquired a property or right to property should not be excluded on that basis from the requirements applicable to C&D loans. NCUA recognizes, however, that the proposed definition and the test articulated for determining what is a C&D loan were too broadly stated, especially as related to renovations. NCUA understands that the proposed definition could have been read more broadly than intended.

Accordingly, NCUA is adjusting the definition of C&D loans as discussed in the summary of comments section below to clarify NCUA's intent to broaden the definition to capture only true C&D loans to borrowers who have already acquired the subject property or rights to it.

E. Government Guaranteed Loan Programs

In October 2004, NCUA amended the MBL rule to permit credit unions to make Small Business Administration (SBA) guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule. 69 FR 62563 (October 27, 2004). Before issuing the amendment, NCUA reviewed the SBA's loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness.

Additionally, NCUA determined these SBA programs are ideally suited to the mission of many credit unions to satisfy their members' business loans needs.

When NCUA solicited public comment on the SBA amendment, a number of commenters suggested expanding the scope of the amendment to include other government guaranteed loan programs. Some commenters specifically named the Farm Service Agency and United States Department of Agriculture (USDA) loan programs. Others suggested all government guaranteed loan programs be included.

NCUA is willing to consider other government guaranteed loan programs as it becomes apparent there is demand for the program among credit unions. Since October 2004, NCUA has learned there may be such demand and solicited comment in the proposal on how best to broaden the MBL rule to enable credit unions to participate more fully in other government guaranteed loan programs.

NCUA noted its interest in receiving comments on whether to broaden the MBL rule in this regard, and, if so, if it is better to permit only specifically identified programs on a case-by-case basis or to permit all such programs. The comments received are discussed in the summary of comments section below.

F. Summary of Comments

Although NCUA received 134 comment letters on the proposal, 100 came from one particular federal credit union (FCU), its members and employees, and 4 came from a state credit union. When multiple letters are received from the same party with the same comment, NCUA regards them as one comment. Accordingly, NCUA summarizes total comments received as 32: 11 from FCUs, 5 from state credit unions, 2 from corporates, 2 from credit union service organizations, 10 from credit union trade associations, 1 from a professional association of state and territorial regulatory agencies, and 1 from a banking trade association.

Sixteen commenters addressed the proposal to clarify the minimum capital requirements for corporates, and eighteen commenters addressed the proposal to revise the definition of ''net worth.'' All voiced their support for those proposed amendments and they will become part of the MBL rule.

Seventeen commenters responded to NCUA's request for comments on how best to amend the MBL rule to enable credit unions to participate more fully in government guaranteed loan programs beyond the SBA's programs. All supported expanding the MBL rule to include all government guarantee programs, although with little discussion about safety and soundness issues other than generally contending government guaranteed loan programs should be presumed safe and sound. Some commenters stated this expansion also should include programs of government sponsored enterprises and requested additional relief from various aspects of the MBL rule not raised in this rulemaking. The banking trade association stated that liberalizing the collateral requirements for government guaranteed loan programs would conflict with what it believes is Congress' intent regarding commercial lending limits for credit unions.

NCUA remains committed to enabling credit unions to participate more fully in more government guaranteed loan programs. To this end, NCUA has entered into a memorandum of understanding with the USDA to identify and promote appropriate USDA Rural Development programs to credit unions NCUA insures and regulates and has specifically acknowledged at least two programs permissible for FCUs. NCUA has also entered into a similar memorandum of cooperation with the Export-Import Bank of the United States. Safety and soundness concerns, however, dictate that NCUA move forward carefully. There are significant differences in the terms of various government guarantee programs, some with complex participation and guarantee requirements that could be problematic for inexperienced credit unions. Accordingly, although NCUA is not ready to expand the universe of permissible programs to include all government programs in this rulemaking, NCUA will take the comments received into account as it considers future amendments to the MBL rule in this regard.

Thirteen commenters supported the proposed revision to the definition of C&D loans; 16 commenters opposed it. Many of those opposed supported a change in the definition for the purposes NCUA stated in the proposal but did not believe the language of the proposed definition achieved that purpose.

The most frequent concern about the proposed definition was that it is too broad and could be read to include significantly more MBLs as C&D loans than NCUA intends. Many commenters believed the definition could be read to include loans for routine maintenance, upkeep, and minor improvements for an income producing property.

NCUA is revising the proposed definition of a C&D loan to address the concerns raised by these commenters. NCUA's intent is to broaden the scope of the definition of C&D loans beyond those exclusively related to financing to *acquire* property for C&D purposes to include loans for C&D purposes to borrowers that *already own* the property. NCUA's intent is not to capture less risky MBLs in a definition intended to describe more risky and more speculative loans.

Even with a revised definition, the specific facts and context of a particular loan will need to be analyzed to determine if it fits the definition of a C&D loan. If a member borrows money to repair a roof on a barn on an existing farming operation, this is an MBL but is not a C&D loan. A C&D loan does not include a loan for routine maintenance of a borrower's existing business or a loan to enhance or expand a borrower's existing business unless those renovations convert the property to a different use, which NCUA considers highly speculative, or are so major as to be the equivalent of converting the use of the property. For example, a loan to expand the parking lot of a small strip

shopping center would not be a C&D loan, but a loan to renovate the small strip shopping center into a mega-mall would be a C&D loan as it would be viewed as a major renovation that converts the use of the property, and, therefore, is highly speculative. NCUA does not want to establish specific dollar or percentage of property value limits to determine when a renovation is so major as to be the equivalent of converting the use of the property. NCUA believes it is better and provides more flexibility to analyze this based on the unique facts surrounding a particular loan.

The Office of General Counsel has previously addressed the issue of renovation of commercial property and concluded that a loan for renovation of a commercial property already owned by the borrowers would be considered a C&D loan in an opinion letter issued two years ago. OGC Opinion Letter 03–0430 (September 25, 2003) (referencing OGC Opinion Letter 00–0809 (September 21, 2000)). Letter 03–0430, while based on a limited factual example, contemplated renovation to buildings that were part of a warehouse and office complex and refinancing of an existing mortgage. As noted in Letter 00–0809, the determination of whether a particular loan is a C&D loan may depend on the particular facts surrounding the granting of the loan. This final rule clarifies that a loan to finance a renovation will be subject to the additional requirements of a C&D loan if it is a major renovation. As discussed above, this clarification means that MBLs that finance maintenance or repair of a property without changing the use of the commercial property will not be considered C&D loans. Of course, even if a loan is deemed to be a C&D loan, a credit union may apply for a waiver of the aggregate limit for C&D loans and minimum borrower equity requirement.

Loans to convert a property to a different use are C&D loans. For example, a loan to convert a movie theater into a restaurant is a C&D loan. A loan to convert a large Victorian home used for residential purposes into a six-room inn also would be a C&D loan. In both instances, the loans are for the purpose of converting the use of the properties, which is speculative. By contrast, a loan to repair the roof or replace the carpet and wallpaper of an operating inn would not be a C&D loan as it neither converts the use of the property, nor is so major a renovation to be considered the equivalent of converting the use of the property. Another example is a hotel with a fair market value of $10 million that wants to borrow $1 million to build and outfit an exercise facility in the hotel to enhance and expand its business. While the loan amount represents a significant percentage of the fair market value of the property, 10% in this example, this is not a construction or development loan. It is a member business loan to improve or renovate an existing incoming producing property, but it is not so major a renovation as to be considered the equivalent of converting the use of the property. Alternatively, if the same hotel with a fair market value of $10 million wanted to borrow $4 million or $5 million to build a luxury health spa on the hotel grounds, it should be considered a construction and development loan. The loan amount is 40% to 50% of the fair market value of the property and, even if the use of the property has not been converted, the expansion and renovation are so major as to be considered the equivalent of converting the use of the property, which is speculative.

NCUA believes that loans in the range of 40%–50% of the fair market value of a property or business would, in most cases, be considered construction or development loans and worthy of additional regulatory scrutiny. NCUA cautions that even loans representing a smaller percentage of the fair market value of an existing property could be considered construction or development loans if they do, in fact, involve large dollar amounts, new construction, or new uses for the property.

The NCUA Board believes it should not attempt to establish by regulation a specific dollar amount or a fixed percentage of a property's fair market value as a threshold to determine when a renovation is so major as to be considered the equivalent of converting the use of the property or a major expansion of its current use. Rather, NCUA believes, given the nature of construction and development loans, that credit unions must analyze the facts and circumstances of a particular loan keeping in mind the regulatory definition. To assist credit unions and others that refer to the regulation, examples as discussed in the preamble are being incorporated into the final rule itself as guidance. While the NCUA Board wants to provide flexibility in its regulation, it advises credit unions that they must keep in mind that construction and development loans are, by their nature, more speculative and present greater risks than other business loans. Accordingly, they warrant greater regulatory scrutiny and limitations.

In refining the definition of a C&D loan in the final rule, NCUA has considered if it would be helpful to look to a borrower's accounting treatment of expenditures under generally accepted accounting principles (GAAP), either as part of the definition of a C&D loan in the regulation or as guidance. NCUA has decided not to link the classification of an MBL as a C&D loan to a borrower's accounting of expenditures as expenses or capital improvements requiring depreciation. Whether a credit union classifies an MBL as a C&D loan is to be determined on the basis of the provisions in Part 723, without regard to GAAP's requirements applicable to a borrower's accounting treatment of its expenditures.

G. Technical Correction and Clarification

As noted above, NCUA revised the definition of net worth in § 723.21, the definitions sections of the MBL rule, to be more consistent with the way that term is defined in the Act and PCA. That term is also used in § 723.16 in a way that is not identical to the revised definition in § 723.21. Accordingly, NCUA is revising § 723.16 to eliminate that inconsistency.

NCUA has long taken the position that a state, which has a state MBL rule in place previously approved by NCUA for use for federally-insured state chartered credit unions (FISCUs), may rescind that state MBL rule without NCUA approval. The effect of that rescission is that FISCUs subject to the previous state MBL rule would be subject to NCUA's MBL rule. NCUA believes it would be helpful to make this clarification in the MBL rule as questions have arisen from time to time. To ensure MBL oversight, a state supervisory agency should notify NCUA if it decides to rescind its state MBL rule and the rule also includes a notice provision.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule clarifies capital requirements for making unsecured MBLs, revises definitions for consistency and practical application and addresses comments on expanding the MBL rule regarding government guaranteed loan programs, without imposing any additional regulatory burden. This rule would not have a significant economic impact on a substantial number of small credit

unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

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

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

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

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

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

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 723 as follows:

PART 723—MEMBER BUSINESS LOANS

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

■ 2. Revise § 723.7(c)(1) to read as follows:

§ 723.7 What are the collateral and security requirements?

* * * * *

(c) * * *

(1) You are a natural person credit union that is well capitalized as defined by § 702.102(a)(1) of this chapter or you are a corporate credit union that maintains a minimum capital ratio as required by § 704.3(d) of this chapter or a different ratio as permitted under § 704.3(e) of this chapter;

* * * * *

■ 3. Revise § 723.16, paragraph (a) to read as follows:

§ 723.16 What is the aggregate member business loan limit for a credit union?

(a) *General.* The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

* * * * *

■ 4. Revise § 723.20 by adding new paragraph (c) to read as follows:

§ 723.20 How can a state supervisory authority develop and enforce a member business loan regulation?

* * * * *

(c) A state supervisory authority that administers a state member business loans rule, approved by NCUA under §§ 723.20(a) and (b), may rescind its rule without NCUA approval. A state supervisory authority should notify NCUA if it anticipates rescinding its rule to foster regulatory continuity and cooperation.

■ 5. Revise the definitions of ''Construction or development loan'' and ''Net worth'' in § 723.21 to read as follows:

§ 723.21 Definitions.

* * * * *

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income producing property or convert the use of income producing property to a different use from its use before the major renovation or development or is a major expansion of its current use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income producing property that do not change its use. Examples to illustrate when a loan is or is not a construction or development loan follow.

Example 1. If a member borrows money to repair a roof on a barn on an existing farming operation, this is a member business loan but is not a construction or development loan. A construction or development loan does not include a loan for routine maintenance of a borrower's existing business or a loan to enhance or expand a borrower's existing business unless those renovations convert the property to a different use or are so major as to be considered the equivalent of converting the use of the property.

Example 2. A loan to convert a movie theater into a restaurant is a construction or development loan. A loan to convert a large Victorian home used for residential purposes into a six-room inn also would be a construction or development loan. In both instances, the loans are for the purpose of converting the use of the properties. By contrast, a loan to repair the roof or replace the carpet and wallpaper of an operating inn would not be a construction or development loan as it neither converts the use of the property, nor is so major a renovation to be considered the equivalent of converting the use of the property.

Example 3. A loan to expand the parking lot of a small strip shopping center would not be a construction or development loan, but a loan to renovate the small strip shopping center into a mega-mall would be a construction or development loan as it would be viewed as a major renovation that converts the use of the property.

Example 4. A hotel with a fair market value of $10 million borrows $1 million to build an exercise facility in the hotel to enhance the property. The loan amount is 10% of the fair market value of the property. This is not a construction or development loan. It is a member business loan to improve or renovate an existing incoming producing property, but it is not so major a renovation as to be considered the equivalent of converting the use of the property. In another scenario, a hotel with a fair market value of $10 million borrows $5 million to build a luxury health spa on the hotel grounds. The loan amount is 50% of the fair market value of the property. This is a construction or development loan, even if the use of the property has not been converted, as the renovation is so major as to be considered the equivalent of converting the use of the property.

* * * * *

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF. For any credit union, net worth does not include the allowance for loan and lease losses account.

[FR Doc. 05–24285 Filed 12–20–05; 8:45 am]
BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AD14

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing its rule on the purchase of assets and assumption of liabilities by federally-insured credit unions to clarify which transfers of assets or accounts require approval by the NCUA Board.

DATES: This rule is effective January 20, 2006.

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

SUPPLEMENTARY INFORMATION:

A. Background

In July 2005, the Board published its proposed amendment to clarify the scope of § 741.8, along with a request for comments on projected amendments to §§ 712.3, 712.4 and 741.3, with a 60-day comment period. 70 FR 43794 (July 29, 2005). The proposal identified certain transactions that would require NCUA approval and some exceptions.

The purpose of this rule is to clarify the scope of § 741.8. This regulation identifies certain transactions that require NCUA approval and some exceptions. Confusion in the prior regulation resulted from the fact that the Federal Credit Union Act (Act) required NCUA approval for transactions that were not addressed specifically in the regulation. The Act requires prior approval for an insured credit union to ''acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.'' 12 U.S.C. 1785(b)(3).

B. Discussion

The Act, in sections 205(b)(1) and (3), requires FICUs to obtain NCUA approval for various transactions. 12 U.S.C. 1785(b)(1), (3). Subsection (b)(1) concerns transactions with credit unions and other institutions not insured by the National Credit Union Share Insurance Fund (NCUSIF). Subsection (b)(3) concerns transactions between FICUs. In addition to § 741.8, these sections in the Act provide the authority for other rules, including Part 708b, which addresses mergers generally. Section 741.8 also implements these sections to the extent that it identifies certain transactions that require NCUA approval.

The regulatory history of § 741.8 indicates the Board did not intend to require approval for certain transactions. In 1990, when § 741.8 was first proposed and adopted, NCUA was particularly concerned about FICUs acquiring loans or assuming responsibility for member or customer accounts from privately insured credit unions or any financial institution that was not insured by the NCUSIF. NCUA was concerned because this was a period marked by the failure of many privately insured credit unions as well as the failure of other financial institutions.

Prior to this final rule, § 741.8 was silent on transfers between two FICUs. It required any FICU to receive Board approval before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities from any credit union that is not federally insured or from any non-credit union financial institution. The rule only excluded the purchase of particular student loans and real estate secured loans and the assumption of assets associated with member retirement accounts or in which the FICU has a security interest from the approval requirement.

The regulatory history of § 741.8 addresses this apparent gap. In 1990, when first proposed, § 741.8 would have covered transfers of assets, including fixed assets like a brick and mortar branch office, in addition to transfers of loans and share liabilities and between FICUs. 55 FR 49059 (November 26, 1990). The final version of the rule, however, eliminated the requirement for Board approval of transfers between FICUs. The NCUA Board determined transfers between FICUs did not materially increase risk to the NCUSIF. 56 FR 35808 (July 29, 1991). Additionally, the Board believed transfers between FICUs should not unduly affect the safety and soundness of FICUs because of regulations applicable to these credit unions, the examination of FICUs for compliance with these regulations, and enforcement of the regulations by appropriate regulators. *Id.* Accordingly, NCUA did not require the approval of these individual transactions. These determinations hold true today, so the Board issues this final rule to clarify the scope of § 741.8.

This rule clarifies that transactions involving the sale or purchase of loans or other assets between FICUs do not require NCUA approval. NCUA notes that other regulations may limit or otherwise regulate those transactions, for example, the member business lending rule, the fixed asset rule, the eligible obligations rule, and so forth. 12 CFR part 723, §§ 701.36, 701.23. For those transactions that do require approval, the amendment describes what a credit union seeking approval should submit and where a request for approval should be sent.

NCUA recognizes that in one narrow circumstance, FISCUs will need approval under § 741.8 when FCUs would not. Specifically, FISCUs must apply for NCUA approval to purchase loans from credit union service organizations (CUSOs). Section 741.8 does not exempt transactions between a FICU and a CUSO. An FCU's purchase of a member loan from any source is governed by § 701.23, the eligible obligations rule. That rule does not apply to FISCUs. The differences between the statutory and regulatory authority of FCUs and state-chartered credit unions present this unique problem. Section 741.8 is a safety and soundness regulation and, therefore, NCUA will review transactions involving FISCUs where, as in this limited circumstance, there is no exemption.

NCUA is also aware that other Federal or State laws may apply to the transfer of loans between FICUs. This rule does not address the application of those laws. NCUA expects that FICUs that will exercise due diligence and ensure that they comply with all laws or contractual obligations to third parties before the transfer of loans to other FICUs are completed.

This rule continues to except from coverage loan purchases involving the

packaging of student loans and real estate secured loans by a federal credit union (FCU) under to § 701.23(b) of the NCUA regulations for sale on the secondary market. Secondary market standards promote safety and soundness in these activities and, additionally, the timing of these transactions is often complex, and agency review could disadvantage FCUs' ability to compete in doing these transactions.

C. Comments on the Rulemaking

NCUA received 27 comments regarding the proposed rule and request for comments. Two state supervisory authorities (SSAs), 13 credit unions, nine trade associations, two law firms, and one consultant commented on the proposed rule and request for comments. Fourteen commenters did not address the proposed amendments to § 741.8, and focused only on the request for comments on possible changes to §§ 712.3, 712.4, and 741.3. Comments on possible amendments of the rules governing non-conforming investments and investments in CUSOs by FISCU §§ 712.3, 712.4, and 741.3 will be covered in a proposed rule if one is presented in the future.

Thirteen commenters supported the proposed amendment to the purchase and assumptions rule. 12 CFR 741.8. Five commenters suggested NCUA modify § 741.8(c) to require a credit union to submit its request for approval of a purchase or assumption transaction to the regional office with jurisdiction for the state where the credit union is headquartered instead of where it operates. The Board has adopted this suggestion and modified the regulatory language accordingly.

An SSA requested NCUA permit FICUs to purchase loan participations from financial institutions insured by the Federal Deposit Insurance Corporation without specific Board approval to track the SSA's state law. The SSA stated the NCUA proposal adds administrative burden to credit unions and is unnecessary due to the SSA's examination and supervision of its state-chartered credit unions. The SSA further commented the current proposal places additional and duplicate burdens on FISCUs that do not apply to its state-chartered banks and thrifts.

NCUA believes supervision of transactions between FICUs and other financial institutions is necessary because of the unique nature of credit unions, including different authorities and limits for their operations as compared to other financial institutions. Other financial institutions are regulated differently than FICUs and have powers that FICUs do not have. The purchase of assets or assumption of liabilities from a privately-insured credit union or federally-insured financial institution will affect the acquiring FICU financially and, also, may raise issues of legal permissibility. The Board will continue its oversight of these transactions.

A trade association, while supporting the amendment, questioned whether the proposal would require a credit union to obtain approval for a merger under both Part 708 and § 741.8. This rule covers purchase and assumption transactions by FICUS; a credit union should not ask approval for a merger under this section, which is covered in Part 708b. Mergers are excluded from coverage under § 741.8 because they involve a credit union acquiring another credit union or financial institution, which will, after the acquisition, no longer exist. The rule covers transactions in which a credit union acquires a portion of another credit union or financial institution's assets or liabilities, with a continuation of the transferor.

The same trade association also suggested other insured financial institutions, including privately-insured credit unions and federally-insured banks, should be considered able to purchase from or sell to a FICU under the approval exception. This rule does not address transactions in which FICUs sell assets or liabilities and, as discussed, the Board has determined it will retain its oversight of FICU purchases from entities other than FICUs.

Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, or those with less than ten million dollars in assets. The rule is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on FICUs and the NCUSIF. NCUA has knowledge of only four transactions that would be covered by the rule in two years. Accordingly, the Board determines and certifies that this rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

B. Paperwork Reduction Act

Section 741.8 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), NCUA submitted a copy of the rule to the Office of Management and Budget (OMB) for its review and approval. OMB approved the Collection of Information on October 14, 2005 under Control Number 3133–0169.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule may have an occasional direct affect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule may supersede provisions of State law, regulation or approvals.

Since the rule might lead to conflicts between the NCUA and state financial institution regulators on occasion, NCUA requested comments on means and methods to eliminate, or at least minimize, potential conflicts in this area. NCUA received comments from SSAs concerned about possible inequitable treatment of and the additional administrative burden on FISCUs under this rule. FISCUs may be required to obtain NCUA approval for some purchase or assumptions transactions and not state regulator approval. Additionally, FISCUs may need approval for transactions that FCUs may complete under Part 701 of the NCUA regulations. SSAs suggested exempting transfers between FICUs and other federally-insured financial institutions or setting insurance regulations for FISCUs apart from insurance rules applicable to FCUs.

NCUA's authority to regulate FICUs and administer the NCUSIF derives from the FCU Act. The protection of the NCUSIF and FICUs are concerns of national scope. In light of this, and the small number of applications expected, the Board determines that the final rule will not have 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. However, in considering applications from FISCUs, NCUA will lend substantial weight to recommendations from State regulators.

D. Small Business Regulatory Enforcement Fairness Act

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

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

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

List of Subjects in 12 CFR Part 741

Insurance requirements.

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

Mary Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

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

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 2. Amend § 741.8 to read as follows:

§ 741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) must receive approval from the NCUA before purchasing loans or assuming an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured by the NCUSIF;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions;

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which a federally-insured credit union perfects a security interest in connection with an extension of credit to any member; or

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities by any credit union insured by the NCUSIF from another credit union insured by the NCUSIF, except a purchase or assumption as a part of a merger under Part 708b.

(c) A credit union seeking approval under paragraph (a) of this section must submit a letter to the regional office with jurisdiction for the state where the credit union is headquartered. A corporate credit union seeking approval under paragraph (a) of this section must submit a letter to the Office of Corporate Credit Unions. The letter must request approval and state the nature of the transaction and include copies of relevant transaction documents. The regional director will make a decision to approve or disapprove the request as soon as possible depending on the complexity of the proposed transaction. Credit unions should submit a request for approval in sufficient time to close the transaction.

[FR Doc. 05–24284 Filed 12–20–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22627; Directorate Identifier 2005–NM–156–AD; Amendment 39–14425; AD 2005–26–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) 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 Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. This AD requires measuring to detect migration of the lower gimbal pin and inspecting for other discrepancies of the horizontal stabilizer trim actuator (HSTA). This AD also requires replacing or modifying the HSTA, as applicable. This AD results from reports of failure of the lower gimbal pin of the HSTA. We are issuing this AD to prevent migration of the lower gimbal pin of the HSTA, which could result in loss of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: This AD becomes effective January 25, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 25, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

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 Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. That NPRM was published in the **Federal Register** on October 6, 2005 (70 FR 58355). That NPRM proposed to require measuring to

detect migration of the lower gimbal pin and inspecting for other discrepancies of the horizontal stabilizer trim actuator (HSTA). That NPRM also proposed to require replacing or modifying the HSTA, as applicable.

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.

Clarification of Compliance Time

We have revised paragraph (g)(1) of this AD to clarify that the actions in that paragraph must be done before further flight.

Conclusion

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

Costs of Compliance

This AD will affect about 269 airplanes of U.S. registry. The measurement/inspection and modification will take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $462 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $211,703, or $787 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–26–04 Bombardier, Inc. (Formerly Canadair): Amendment 39–14425. Docket No. FAA–2005–22627; Directorate Identifier 2005–NM–156–AD.

Effective Date

(a) This AD becomes effective January 25, 2006.

Affected ADs

(b) None.

Applicability

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

TABLE 1.—APPLICABILITY

Bombardier airplane models	Serial numbers
CL–600–1A11 (CL–600).	1004 through 1085 inclusive.
CL–600–2A12 (CL–601).	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A and CL–601–3R).	5001 through 5194 inclusive.

Unsafe Condition

(d) This AD results from reports of failure of the lower gimbal pin of the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to prevent migration of the lower gimbal pin of the HSTA, which could result in loss of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For Model CL–600–1A11 (CL–600) airplanes: Bombardier Service Bulletin 600–0720, dated January 31, 2005.

(2) For Bombardier Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes: Bombardier Service Bulletin 601–0555, dated January 31, 2005.

Note 1: The Bombardier service bulletins identified in paragraphs (f)(1) and (f)(2) of this AD refer to Goodrich Service Bulletin 21207–00X–27–05, dated January 31, 2005, as an additional source of service information for doing the modification of the HSTA.

Measurement and Modification or Replacement

(g) Within 600 flight hours or 16 months after the effective date of this AD, whichever is first: Measure the clearance between the yoke and the lower side of the gimbal pin head on the HSTA to detect migration of the lower gimbal pin of the HSTA, and do a detailed inspection to detect discrepancies of the HSTA, in accordance with the service bulletin.

(1) If the lower gimbal pin has not migrated and no discrepancy is found: Before further flight, modify the HSTA by installing the gimbal pin kit, or replace the existing HSTA with a new or serviceable, modified HSTA, in accordance with the service bulletin.

(2) If the lower gimbal pin has migrated or any discrepancy is found: Before further flight, replace the HSTA with a new or serviceable, modified HSTA, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally

supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Reporting

(h) If any gimbal pin is found migrated: Submit a report of the findings (migrated pins only) of the measurement and inspections required by paragraph (g) of this AD to Bombardier, Attention: Dept. Customer Support Program Office (CSPO), fax (514) 855–8798. Submit the report at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the airplane serial number, the HSTA part number and serial number, the results of the inspection, and the action taken. Submitting the Service Bulletin Feedback Form of the service bulletin is an acceptable means of complying with this requirement. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the measurement was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the measurement was done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install an HSTA on any airplane unless the actions required by paragraph (g) of this AD are accomplished on it.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) Canadian airworthiness directive CF–2005–20, dated June 23, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 600–0720, dated January 31, 2005; or Bombardier Service Bulletin 601–0555, dated January 31, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, 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 December 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24244 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22403; Directorate Identifier 2005–NM–144–AD; Amendment 39–14426; AD 2005–26–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires an inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer; a torque check of the attachment bolts in the attachment fittings of the front, middle, and rear spars; and corrective actions if necessary. This AD results from a report indicating that delaminated shims extruded from the interface between the forward attaching fittings of the horizontal stabilizer and the top rib of the vertical stabilizer, and that inadequate torque values of some bolts were found. We are issuing this AD to prevent reduced structural integrity of the horizontal stabilizer, and consequent loss of controllability of the airplane.

DATES: This AD becomes effective January 25, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 25, 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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

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 Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on September 14, 2005 (70 FR 54316). (An NPRM correction was published in the **Federal Register** on September 30, 2005 (70 FR 57221).) That NPRM proposed to require an inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer; a torque check of the attachment bolts in the attachment fittings of the front, middle, and rear spars; and corrective actions if necessary.

Comments

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

Request for Credit for Doing Bombardier All Operator Message (AOM)

One commenter requests that operators be given credit for doing the procedures in accordance with

Bombardier AOM 096B, dated June 12, 2003, before the effective date of the AD, as an alternative method of compliance (AMOC) with the requirements of paragraphs (i)(1) and (i)(2) of the NPRM.

We agree with the commenter that accomplishing the actions specified in Bombardier AOM 096B before the effective date of this AD is acceptable for compliance with the detailed inspection and torque check required by paragraphs (i)(1) and (i)(2) of the AD. We also have determined that those actions are also acceptable for the replacement requirements of the AD. We have revised paragraph (g) of the final rule accordingly and reidentified subsequent paragraphs.

Explanation of Change to Identified Repair Drawings

We have revised paragraph (h) of the final rule to refer to the correct revisions and dates of Bombardier Repair Drawing RD 8/4–55–090 and RD 8/4–55–094.

Clarification of AMOC Paragraph

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

Conclusion

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

Costs of Compliance

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
Detailed inspection and torque check	2	$65	None	$130	19	$2,470
Replacement	30	$65	Free of charge	$1,950	19	37,050

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):

2005–26–05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14426. Docket No. FAA–2005–22403; Directorate Identifier 2005–NM–144–AD.

Effective Date

(a) This AD becomes effective January 25, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial numbers 4001, and 4003 through 4081 inclusive.

Unsafe Condition

(d) This AD results from a report indicating that laminated shims were delaminated and extruded from the interface between the forward attaching fittings of horizontal stabilizer and the top rib of the vertical stabilizer, and that inadequate torque values of some bolts were found. We are issuing this AD to prevent reduced structural integrity of the horizontal stabilizer, and consequent loss of controllability of the airplane.

Compliance

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

Service Information

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Bombardier Service Bulletin 84–55–02, Revision ''A,'' dated January 12, 2005.

(g) Accomplishing a detailed inspection, a breakaway torque check, and corrective actions if necessary before the effective date of this AD in accordance with Bombardier Service Bulletin 84–55–02, dated December 11, 2003; or Bombardier All Operator Message 096B, dated June 12, 2003; is acceptable for compliance with the corresponding requirements of this AD.

(h) Accomplishing the repair before the effective date of this AD in accordance with the applicable Bombardier repair drawings in Table 1 of this AD is acceptable for compliance with the requirements of this AD.

TABLE 1.—REPAIR DRAWINGS

Bombardier repair drawing	RD issue	Dated
RD 8/4–55–083	3	April 16, 2003.
RD 8/4–55–084	1	May 5, 2003.
RD 8/4–55–089	2	June 6, 2003.
RD 8/4–55–090	8	October 9, 2003.
RD 8/4–55–093	2	June 20, 2003.
RD 8/4–55–094	4	October 20, 2003.
RD 8/4–55–106	2	July 31, 2003.
RD 8/4–55–110	3	October 1, 2003.
RD 8/4–55–138	1	October 29, 2003.

Detailed Inspection and Torque Check

(i) Within 4,000 flight hours after the effective date of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD in accordance with Part A of the service bulletin.

(1) Do a detailed inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer.

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

(2) Do a breakaway torque check of the six attachment bolts in the attachment fittings of the front, middle, and rear spars.

Corrective Actions

(j) If, during the inspection required by paragraph (i)(1) of this AD, any cracked, damaged, or extruded laminated shim is found, before further flight, replace the discrepant laminated shim with a solid shim, and replace the attachment bolts, barrel nuts, and retainers of both front spars with new parts, in accordance with Parts A and B of the service bulletin.

(k) If, during the torque check required by paragraph (i)(2) of this AD, any attachment bolt is found with a breakaway torque value outside the limits specified in the service bulletin, before further flight, replace the attachment bolt and its corresponding barrel nut and retainer with new parts, in accordance Part A of the service bulletin.

Replacement of Laminated Shims

(1) Within 8,000 flight hours after the effective date of this AD, unless previously accomplished in accordance with paragraph (j) of this AD, replace the laminated shims, between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer, with solid shims and replace the corresponding barrel nut and retainer with new parts, in accordance with Part B of the service bulletin.

No Reporting

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

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 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

(o) Canadian airworthiness directive CF–2005–07, issued March 21, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use Bombardier Service Bulletin 84–55–02, Revision 'A,' dated January 12, 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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, 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 December 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24245 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 051215336–5336–01]

RIN 0605–AA21

Disclosure of Government Information; Addition of Designated Official

AGENCY: Office of the Secretary; Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Commerce's Freedom of Information Act regulations (15 CFR part 4) by adding an official authorized To deny requests for records under the Freedom of Information Act, and requests for correction or amendment under the Privacy Act, for the Technology Administration.

DATES: Effective December 16, 2005.

FOR FURTHER INFORMATION CONTACT: Philip Greene, Freedom of Information Officer, Office of the Chief Counsel, Technology Administration, 202–482–1984.

SUPPLEMENTARY INFORMATION: Appendix B to 15 CFR part 4 designates the officials authorized to deny requests for records under the Freedom of Information Act (FOIA), and requests for records and requests for correction or amendment under the Privacy Act (PA). The Department of Commerce (Department) amends its regulations to add the Deputy Assistant Secretary for Technology Policy as a designated

official for the Technology Administration.

Classification

Executive Order 12866

This rule is not subject to E.O. 12866.

Administrative Procedure Act

This rule of agency procedure and practice is not subject to the requirement to provide prior notice and an opportunity for comment. (5 U.S.C. 553(b)(A)). The Department also finds good cause to waive prior notice and an opportunity for public comment because it is unnecessary. (5 U.S.C. 553(b)(B)). This rule amends the regulations to add the Deputy Assistant Secretary for Technology Policy as a designated official for the Technology Administration in denying requests for records under the FOIA, and requests for records and requests for correction or amendment under the PA. The addition of this individual to the list of designated officials is a procedural matter for the Department and does not affect the rights of the public. Therefore, the Department finds that it is unnecessary to provide prior notice and an opportunity for comment on this action.

The Department finds good cause to waive the 30-day delay in effectiveness because the addition of this individual to the list of designated officials is a procedural matter for the Department and does not affect the rights of the public. Therefore, the Department makes this rule effective upon publication.

Regulatory Flexibility Act

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

■ For the reasons stated in the preamble, the Department amends appendix B to part 4, title 15 of the Code of Federal Regulations as follows:

Appendix B to Part 4—Officials Authorized to Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act

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

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

Appendix B to 15 CFR Part 4 [Amended]

■ 2. Amend Appendix B to 15 CFR Part 4 by adding the position of ''Deputy Assistant Secretary for Technology Policy'' following the ''Assistant Secretary for Technology Policy'' for the *Technology Administration.*

Dated: December 16, 2005.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. 05–24295 Filed 12–16–05; 11:24 am]

BILLING CODE 3510–18–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9236]

RIN 1545–BD95

Section 1374 Effective Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance concerning the applicability of section 1374 of the Internal Revenue Code to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S corporation status and later elect again to become S corporations.

DATES: Effective Date: These regulations are effective December 21, 2005.

Applicability Dates: Section 1.1374–8 applies to any transaction described in section 1374(d)(8) that occurs on or after December 27, 1994. Section 1.1374–10 applies for taxable years beginning after December 22, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary, (202) 622–7750, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR Part 1. On December 22, 2004, temporary regulations (TD 9170) regarding the applicability of section 1374 to S corporations that acquire assets in certain carryover basis transactions and to certain corporations that terminate S corporation status and later elect again to become S corporations were published in the **Federal Register** (69 FR 76612). A notice of proposed rule making (REG–139683–04) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (69 FR 76635). The temporary regulations provide that (1) section 1374(d)(8) applies to any transaction described in that section that occurs on or after December 27, 1994, regardless of the date of the S corporation's election under section 1362, and (2) for purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988, a corporation's most recent S election, not an earlier election that has been revoked or terminated, determines whether or not it is subject to current section 1374.

No comments were received responding to the notice of proposed rulemaking, and no public hearing was requested or held. The proposed regulations are adopted with no substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to § 1.1374–8(a)(2) of these regulations. With respect to § 1.1374–10(c) of these regulations, it has been determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to dispense with a delayed effective date. This section, which is substantively identical to currently effective temporary regulations, merely continues to provide necessary guidance to taxpayers with respect to the application of the transition rule regarding qualified corporations in section 633(d)(8) of TRA, as amended by TAMRA, and, accordingly, with respect to the application of section 1374 to asset dispositions which occur during taxable years beginning after December 22, 2004. Because § 1.1374–8(a)(2) does not impose a collection of information on small entities, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6). It is hereby certified that § 1.1374–10(c) of these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that § 1.1374–10(c) of these regulations addresses an uncommon fact situation not likely to affect a significant number of small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code,

the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

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

Section 1.1374–8 also issued under 26 U.S.C 337(d) and 1374(e).* * *

Section 1.1374–10 also issued under 26 U.S.C. 337(d) and 1374(e).* * *

■ **Par. 2.** Section 1.1374–0 is amended by revising the entries for § 1.1374–8 and adding an entry for § 1.1374–10(c) to read as follows:

§ 1.1374–0 Table of contents.

* * * * *

§ 1.1374–8 Section 1374(d)(8) transactions.

(a) In general.

(b) Effective date of section 1374(d)(8).

(c) Separate determination of tax.

(d) Taxable income limitation.

(e) Examples.

* * * * *

§ 1.1374–10 Effective date and additional rules.

* * * * *

(c) Revocation and re-election of S corporation status.

(1) In general.

(2) Example.

■ **Par. 3.** Section 1.1374–8 is amended by:

■ 1. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively.

■ 2. Revising paragraph (a).

■ 3. Adding new paragraph (b).

The revision and addition read as follows:

§ 1.1374–8 Section 1374(d)(8) transactions.

(a) *In general.* If any S corporation acquires any asset in a transaction in which the S corporation's basis in the asset is determined (in whole or in part) by reference to a C corporation's basis in the assets (or any other property) (a section 1374(d)(8) transaction), section 1374 applies to the net recognized built-in gain attributable to the assets acquired in any section 1374(d)(8) transaction.

(b) *Effective date of section 1374(d)(8).* Section 1374(d)(8) applies to any section 1374(d)(8) transaction, as defined in paragraph (a)(1) of this section, that occurs on or after December 27, 1994, without regard to the date of the corporation's election to be an S corporation under section 1362.

* * * * *

§ 1.1374–8T [Removed]

■ **Par. 4.** Section 1.1374–8T is removed.

■ **Par. 5.** Section 1.1374–10 is amended by revising paragraph (c) to read as follows:

§ 1.1374–10 Effective date and additional rules.

* * * * *

(c) *Termination and re-election of S corporation status*—(1) *In general.* For purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended, any reference to an election to be an S corporation under section 1362 shall be treated as a reference to the corporation's most recent election to be an S corporation under section 1362. This paragraph (c) applies for taxable years beginning after December 22, 2004, without regard to the date of the corporation's most recent election to be an S corporation under section 1362.

(2) *Example.* The following example illustrates the rules of this paragraph (c):

Example. (i) Effective January 1, 1988, X, a C corporation that is a qualified corporation under section 633(d) of the Tax Reform Act of 1986, as amended, elects to be an S corporation under section 1362. Effective January 1, 1990, X revokes its S status and becomes a C corporation. On January 1, 2004, X again elects to be an S corporation under section 1362. X disposes of assets in 2006, 2007, and 2008, recognizing gain.

(ii) X is not eligible for treatment under the transition rule of section 633(d)(8) of the Tax Reform Act of 1986, as amended, with respect to these assets. Accordingly, X is subject to section 1374, as amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988, and the 10-year recognition period begins on January 1, 2004.

(iii) To the extent the gain that X recognizes on the asset sales in 2006, 2007, and 2008 reflects built-in gain inherent in such assets in X's hands on January 1, 2004, such gain is subject to tax under section 1374 as amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

§ 1.1374–10T [Removed]

■ **Par. 6.** Section 1.1374–10T is removed.

Approved: December 9, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–24283 Filed 12–20–05; 8:45 am]

BILLING CODE 4820–01–P 3

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Chapter I and

46 CFR Chapter I

[USCG–2005–23172]

RIN 1625–ZA06

Marine Safety Center Address Change

AGENCY: Coast Guard, DHS.

ACTION: Technical amendment.

SUMMARY: This technical amendment makes non-substantive changes throughout chapters I of title 33 and title 46 of the Code of Federal Regulations. The purpose of this amendment is to change the address of the United States Coast Guard Marine Safety Center as it appears in Coast Guard regulations. This rule will have no substantive effect on the regulated public.

DATES: These changes are effective December 21, 2005. We will accept comments on this technical amendment through February 21, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2005–23172 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this amendment, call Commander Hung Nguyen, Executive Officer, United States Coast Guard Marine Safety Center, telephone 202–475–3400. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2005–23172), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh, Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this amendment. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that this technical amendment is exempt from notice and comment rulemaking requirements because the amendment only makes non-substantive address changes. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM.

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**. The MSC left its previous location on December 9, 2005, and correspondence should be directed to the new address.

Background and Purpose

The office of the United States Coast Guard Marine Safety Center will change locations resulting in the need for an address change in the Code of Federal Regulations. This rule also changes the abbreviated designation of the Marine Safety Center from ''G–MSC'' to ''MSC'' throughout chapters I of title 33 and title 46.

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). Because this amendment makes only address changes, we expect the economic impact to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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.

It is not expected that this amendment will have a significant economic impact on any small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this technical amendment will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This amendment 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 amendment 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 amendment will not result in such an expenditure, we do discuss the effects of this amendment elsewhere in this preamble.

Taking of Private Property

This amendment 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 amendment 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 amendment under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This amendment 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 amendment 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 amendment 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 amendment 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)(a), of the Instruction from further environmental documentation. Paragraph (34)(a) excludes regulatory actions that are editorial or procedural, such as those updating addresses. Under figure 2–1, paragraph (34)(a), of the Instruction, an Environmental Analysis Check List and a Categorical Exclusion Determination are not required for this technical amendment.

List of Subjects

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures, Terrorism.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 159

Alaska, Reporting and recordkeeping requirements, Sewage disposal, Vessels.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 39

Cargo vessels, Fire prevention, Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 44

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 63

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 69

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 116

Fire prevention, Marine safety, Passenger vessels, Seamen.

46 CFR Part 127

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 133

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 177

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, and under the authority of 14 U.S.C. 633; 5 U.S.C. 552(a); 33 CFR

1.05–1(a)–(d); and, Department of Homeland Security Delegation No. 0170.1, the Coast Guard amends titles 33 and 46 of the Code of Federal Regulations as set forth below:

■ 1. Wherever it appears in chapters I of titles 33 and/or 46, the phrase ''Commanding Officer, Marine Safety Center (MSC) 400 Seventh Street, SW., Room 6302, Nassif Building, Washington, DC 20590–0001'' is revised to read ''Commanding Officer (MSC), USCG Marine Safety Center, 1900 Half Street, SW., Suite 1000, Room 525, Washington, DC 20024 for visitors and private courier service delivery. Send all regular mail to Commanding Officer (MSC), USCG Marine Safety Center, 2100 2nd Street, SW., Washington, DC 20593.''

■ 2. Wherever it appears in chapters I of titles 33 and/or 46, the phrase ''U.S. Coast Guard Marine Safety Center (G–MSC)'' is revised to read ''U.S. Coast Guard Marine Safety Center (MSC)''.

Dated: December 15, 2005.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 05–24319 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

New Preparation Requirements for Bundles of Mail on Pallets

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes preparation requirements for bundles of Periodicals, Standard Mail, and Package Services flat-size mail or irregular parcels on pallets. The rule gives the conditions under which mailers must prepare an area distribution center, bulk mail center/auxiliary service facility, or sectional center facility pallet with 250 or more pounds of bundles.

DATES: *Effective Date:* May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Julia Carroll, 202–268–2108.

SUPPLEMENTARY INFORMATION: On September 30, 2005, the Postal Service™ published for comment in the **Federal Register** (70 FR 57237) a proposal to change preparation requirements for bundles of mail on pallets.

Bundles of flat-size mailpieces or irregular parcels on pallets are easier and less costly for us to handle than bundles in sacks. In addition, bundles on pallets maintain their integrity to a greater degree than bundles in sacks. Our new standards will help increase the volume of mail on pallets by revising the requirements for pallet preparation.

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) 705.8.5.2 requires mailers who prepare bundles of flat-size mail or bundles of irregular parcels on pallets to prepare a pallet to a required sortation level if a mailing contains 500 or more pounds of bundles.

Under this final rule, after preparing all other pallets at the 500-pound required minimum, if there are 250 or more pounds of bundles labeled to destinations within the ZIP Code range for an area distribution center (ADC), a mailer who prepares bundles of Periodicals flat-size mail or irregular parcels on pallets must prepare the ADC pallet. If there are 250 or more pounds of bundles labeled to destinations within the ZIP Code range for a bulk mail center/auxiliary service facility (BMC/ASF), a mailer who prepares bundles of Standard Mail and Package Services flat-size mail or irregular parcels on pallets must prepare the BMC/ASF pallet. If a mailing does not contain any ADC or BMC/ASF pallets and there are 250 or more pounds for an SCF, the mailer must prepare the SCF pallet.

In addition to these changes, we are removing text in 705.8.5.2 about labeling pallets and optional bundle reallocation, because we cover these topics in detail elsewhere in the DMM.

Comments Received

We requested comments on the proposal by October 31, 2005. We received two comments, one from a publisher and one from a mailing association. Both supported the proposal.

For the reasons discussed above, the Postal Service adopts the following amendments to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows:

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparation for Pallets

* * * * *

8.5 General Preparation

* * * * *

8.5.2 Required Preparation

[Revise 8.5.2 to require ADC, BMC/ASF, or SCF pallets at 250 pounds of bundles, as follows:]

The following standards apply to Periodicals, Standard Mail, and Package Services, except Parcel Post mailed at BMC Presort, OBMC Presort, DSCF, and DDU rates.

a. Mailers must prepare a pallet to the required sortation level(s) for the class of mail when a mailing contains 500 or more pounds of bundles, sacks, or parcels or 72 linear feet or six layers of letter trays for the destination.

b. For bundles of flat-size mailpieces or bundles of irregular parcels on pallets, after preparing all possible pallets under 8.5.2a, when 250 or more pounds of bundles remain for an ADC (Periodicals) or for a BMC/ASF (Standard Mail and Package Services), mailers must prepare the ADC or BMC/ASF pallet, as applicable for the class of mail. Exception: If there are no ADC or BMC/ASF pallets in a mailing and 250 or more pounds remain for an SCF, mailers must prepare the SCF pallet.

c. If bundles remain that cannot be prepared on an ADC, BMC/ASF, or SCF pallet, mailers must place those bundles in sacks (8.9.1).

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–24209 Filed 12–20–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0292]; FRL–7749–4]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective December 21, 2005. Objections and requests for hearings must be received on or before February 21, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number EPA–HQ–OPP–2005–0292. All documents in the docket are 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 through *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.

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Pesticide/CFR cite	Contact person
Diflubenzuron, 180.377; Maneb, 180.110; Propiconazole, 180.434; Tebuconazole, 180.474	Libby Pemberton Sec-18-Mailbox@epamail.epa.gov (703) 308–9364
Lambda-cyhalothrin, 180.438; Spinosad, 180.495	Andrew Ertman Sec-18-Mailbox@epamail.epa.gov (703) 308–9367
Methoxyfenozide, 180.544	Stacey Milan Groce Sec-18-Mailbox@epamail.epa.gov (703) 305–2505
Difenoconazole, 180.475; Fenbuconazole, 180.480; Thiophanate methyl, 180.371	Andrea Conrath Sec-18-Mailbox@epamail.epa.gov (703) 308–9356

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. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*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. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety

standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

Difenoconazole. EPA has authorized under FIFRA section 18 the use of difenoconazole on sweet corn seed for control of various fungal diseases in Colorado and Idaho. This regulation extends time-limited tolerances for residues of the fungicide difenoconazole, (2S,4R)/(2R,4S)/(2R,4R)/(2S,4S)]1-[2-[4- (4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl]- 1H-1,2,4-triazole in or on sweet corn seed, forage, and stover at 0.1 part per million (ppm) for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2008. Time-limited tolerances were originally published in the **Federal Register** of September 1, 1999 (64 FR 47680) (FRL–6094–3).

Diflubenzuron. EPA has authorized under FIFRA section 18 the use of diflubenzuron on wheat and barley for control of grasshoppers in Montana, Washington, and Idaho. This regulation extends time-limited tolerances for combined residues of the insecticide diflubenzuron, N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide and its metabolites 4-chlorophenlyurea and 4-chloroaniline (CPU) and (PCA) in or on wheat and barley grain at 0.05 ppm, wheat and barley straw at 0.50 ppm, wheat and barley hay at 1.0 ppm, wheat milled byproducts at 0.10 ppm, and aspirated grain fractions at 30 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2008. Time-limited tolerances were originally published in the **Federal Register** of August 27, 2003 (68 FR 51479) (FRL–7323–1).

Fenbuconazole. EPA has authorized under FIFRA section 18 the use of fenbuconazole on grapefruit for control of greasy spot disease in Florida. This regulation extends time-limited tolerances for combined residues of the fungicide fenbuconazole and its metabolites RH-9129 and RH-9130, expressed as the parent fenbuconazole, in or on whole grapefruit at 0.5 ppm, at 4.0 ppm in/on dried grapefruit, at 35 ppm in/on grapefruit oil; and at 0.1 ppm in/on meat and meat by-products of cattle, goats, hogs, horses, and sheep for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2008. Time-limited tolerances were originally published in the **Federal Register** of January 29, 1999 (64 FR 4577) (FRL6054–3).

Lambda-cyhalothrin. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on barley for control of the Russian wheat aphid and cutworms in Idaho, Colrado, Wyoming and Montana. This regulation extends time-limited tolerances for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)- (1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl) -2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl- (Z)-(1S,3S)-3-(2-chloro-3,3,3- trifluoroprop-1- enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-α-cyano-3- phenoxybenzyl-(Z)-(1S,3S) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl) -2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3- phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)- 2,2-dimethylcyclopropanecarboxylate in or on barley grain at 0.05 ppm, barley bran at 0.2 ppm, and barley hay and straw at 2.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2008. Time-limited tolerances were originally published in the **Federal Register** of October 29, 1997 (62 FR 56095) (FRL–5745–5).

Lambda-cyhalothrin. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on alfalfa/clover/grass mixed stands for control of potato leafhoppers in New York. This regulation extends time-limited tolerances for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl- (Z)-(1S,3S)-3-(2-chloro-3,3,3- trifluoroprop-1- enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-α-cyano-3- phenoxybenzyl-(Z)-(1S,3S) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl) -2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3- phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)- 2,2-dimethylcyclopropanecarboxylate in or on Clover, forage at 5.0 ppm; Clover, hay at 6.0 ppm; Grass, forage at 5.0 ppm; and Grass, hay at 6.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2008. Time-limited tolerances were originally published in the **Federal Registers** of January 3, 2003 (68 FR 283) (FRL–7285–2) and September 3, 2003 (68 FR 52354)(FRL–7321–3).

Lambda-cyhalothrin. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on wild rice for control of rice worms in Minnesota. This regulation extends a time-limited tolerance for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)- (1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl- (Z)-(1S,3S)-3-(2-chloro-3,3,3- trifluoroprop-1- enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-α-cyano-3- phenoxybenzyl-(Z)-(1S,3S) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl) -2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3- phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)- 2,2-dimethylcyclopropanecarboxylate in or on rice, wild at 1.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2008. The time-limited tolerance was originally published in

the **Federal Register** of January 3, 2003 (68 FR 283) (FRL–7285–2).

Maneb. EPA has authorized under FIFRA section 18 the use of maneb on walnuts for control of bacterial blight in California. This regulation extends a time-limited tolerance for combined residues of the fungicide maneb (manganous ethylenebisdithiocarbamate) calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea in or on walnuts at 0.05 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2008. A time-limited tolerance was originally published in the **Federal Register** on March 17, 1999 (64 FR 13097) (FRL–6067–9).

Methoxyfenozide. EPA has authorized under FIFRA section 18 the use of methoxyfenozide on soybeans for control of soybean loopers and salt marsh catepillars in Mississippi, Louisiana, and Arkansas. This regulation extends a time-limited tolerance for residues of the insecticide methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide in or on soybean aspirated grain fractions at 20 ppm, soybean seed at 0.04 ppm, soybean forage at 10 ppm, soybean hay at 75 ppm, and soybean refined oil at 1.0 ppm for an additional 2–year period. These tolerances will expire and are revoked on December 31, 2007. Time-limited tolerances were originally published in the **Federal Register** on November 2, 2001 (66 FR 55585) (FRL–6806–4).

Propiconazole. EPA has authorized under FIFRA section 18 the use of propiconazole on cranberries for control of cottonball disease in Wisconsin. This regulation extends a time-limited tolerance for combined residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on cranberry for an additional two–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** on April 11, 1997 (62 FR 17710) (FRL–5600–5).

Spinosad. EPA has authorized under FIFRA section 18 the use of spinosad on alfalfa for control of armyworms in New Mexico and on pastureland and rangeland for control of armyworms in Arkansas, Mississippi, and Oregon. This regulation extends time-limited tolerances for combined residues of the insecticide spinosad, Factor A is 2-[(6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]-13-[[5-(dimethlamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]9-ethyl-2,3,3a,5a,6,9,10,11,12,13,14,16a,6b, tetradecahydro-14-methyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione. Factor D is 2-[6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]13-[[5-(dimethylamino)-tetrahydri-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14,dimethyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione. in or on alfalfa forage at 4.0 ppm; alfalfa hay at 4.0 ppm; grass forage at 7.0 ppm; and grass hay at 7.0 ppm; for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2008. A time-limited tolerance was originally published for sunflowers in the **Federal Register** of January 9, 2001 (66 FR 1592) (FRL–6760–2).

Tebuconazole. EPA has authorized under FIFRA section 18 the use of tebuconazole on garlic for control of garlic rust in California. This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole in or on garlic at 0.1 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** on May 26, 1999 (64 FR 28377) (FRL–6079–1).

Tebuconazole. EPA has authorized under FIFRA section 18 the use of tebuconazole on sunflowers for control of rust in Colorado. This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole in or on sunflower oil at 0.4 ppm and sunflower seed at 0.2 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2007. A time-limited tolerance was originally published in the **Federal Register** on June 20, 1997 (62 FR 33550) (FRL–5725–7).

Thiophanate methyl. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on fruiting vegetables, including tomato, for control of white mold in Florida, Virginia, and New Jersey. This regulation extends a crop group time-limited tolerance for residues of the fungicide thiophanate methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC) in or on the fruiting vegetable crop group at 0.5 ppm for an additional 3–year period. This crop group tolerance will expire and is revoked on December 31, 2008. The time-limited tolerance was originally published in the **Federal Register** on July 23, 2003 (68 FR 43465) (FRL–7317–5).

III. 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 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–2005–0292 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 January 20, 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 III.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–2005–0292, 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**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. 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 file format 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).

IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. 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 under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances 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 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.

V. 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: December 15, 2005.

Rachel C. Holloman,

Acting 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.

§ 180.110 [Amended]

■ 2. In § 180.110, in the table to paragraph (b), amend the entry for Walnuts by revising the expiration date ''12/31/07'' to read ''12/31/08.''

§ 180.371 [Amended]

■ 3. In § 180.371, in the table to paragraph (b), amend the entry for Vegetables, Fruiting, Group 8 by revising the expiration date ''12/31/05'' to read ''12/31/08.''

§ 180.377 [Amended]

■ 4. In § 180.377, in the table to paragraph (b), amend the entries for Barley, grain; Barley, hay; Barley, straw; Wheat, aspirated grain fractions; Wheat, grain; Wheat, hay; Wheat, milled byproducts; and Wheat, straw by revising the expiration date ''12/31/05'' to read ''12/31/08.''

§ 180.434 [Amended]

■ 5. In § 180.434, in the table to paragraph (b), amend the entry for Cranberry by revising the expiration date ''12/31/05'' to read ''12/31/07.''

§ 180.438 [Amended]

■ 6. In § 180.438, in the table to paragraph (b), amend the entries for Barley, bran; Barley, grain; Barley, hay; Barley, straw; Clover, forage; Clover, hay; Grass, forage; Grass, hay; Rice, wild by revising the expiration dates ''12/31/05'' to read ''12/31/08.''

§ 180.474 [Amended]

■ 8. In § 180.474, in the table to paragraph (b), amend the entries for Garlic; Sunflower, oil and Sunflower, seed by revising the expiration date ''12/31/05'' to read ''12/31/07.''

§ 180.475 [Amended]

■ 9. In § 180.475, in the table to paragraph (b), amend the entries for Corn, sweet (kernel + cob with husk removed; Corn, sweet, forage; and Corn, sweet, stover by revising the expiration dates ''12/31/05'' to read ''12/31/08.''

§ 180.480 [Amended]

■ 10. In § 180.480, in the table to paragraph (b), amend the entries for Cattle, fat; Cattle, meat byproducts; Cattle, meat; Goat, fat; Goat, meat byproducts; Goat, meat; Grapefruit; Grapefruit, dried pulp; Grapefruit oil; Hogs, fat; Hogs, meat byproducts; Hogs, meat; Horse, fat; Horse, meat byproducts; Horse, meat; Sheep, fat; Sheep, meat byproducts; and, Sheep, meat; by revising the expiration dates ''12/31/05'' to read ''12/31/08.''

§ 180.495 [Amended]

■ 11. In § 180.495, in the table to paragraph (b), amend the entries for Alfalfa, forage; Alfalfa, hay; Grass, forage; and Grass, hay; by revising the expiration date ''12/31/05'' to read ''12/31/08.''

§ 180.544 [Amended]

■ 12. In § 180.544, in the table to paragraph (b), amend the entries for Soybean, aspirated grain fractions; Soybean, forage; Soybean, hay; Soybean, refined oil; Soybean, seed by revising the expiration date ''12/31/05'' to read ''12/31/07.''

[FR Doc. 05–24322 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 05–24; FCC 05–190]

DTV Tuner Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the rules to advance the date on which new television receivers with certain screen sizes and other TV receiving devices such as VCRs and digital video recorders, must include the capability to receive digital television signals forward four months. This action is intended to further the Commission's efforts to ensure that consumers are able to receive off-the-air digital broadcast television services as soon as possible.

DATES: Effective January 20, 2006.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, e-mail: *Alan.Stillwell@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order,* ET Docket No. 05–24, FCC 05–190, adopted November 3, 2005 and released November 8, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Congressional Review Act

The Commission will send a copy of this Second Report and Order, in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Summary of the Report and Order

1. The Commission modified its rules to advance the date on which new television receivers with screen sizes 13–24″ and certain other TV receiving devices such as VCRs and digital video recorders must include the capability to receive broadcast digital television signals from the current date of July 1, 2007 to March 1, 2007. The Commission also amended its rules to apply the digital television reception capability requirement to new receivers with screen sizes smaller than 13″ on this same schedule. The DTV reception requirement, which also often is termed the ''DTV tuner requirement,'' is being implemented under an approach that applies it first to large screen receivers and then progressively to smaller screen receivers and other devices over a period of several years. The modifications made herein affect the final step of this phase-in plan. With these changes, the scheduled implementation plan will provide for all new TV receiver equipment to include digital reception capability as of March 1, 2007.

2. This action follows the Commission's previous decision in the *Report and Order and Further Notice of Proposed Rulemaking* (R&O/FNPRM), 70 FR 38800 and 38845, July 6, 2005, in this proceeding to advance the date on which 100 percent of TV receivers with screen sizes 25–36″ must include digital reception capability to March 1, 2006. In this regard, the Commission continues to believe that it is essential that DTV reception capability be provided to consumers in new TV receivers as rapidly as possible in order to promote an expeditious completion of the transition from analog to digital broadcast television service. Consistent with that objective, our goal in this

further action is to advance the schedule on which all new television receivers must comply with the DTV tuner requirement. The Commission concluded that advancing the DTV tuner mandate effective date for 13–24″ TV sets and other TV receiving devices to March 1, 2007 and applying this requirement to receivers with screens smaller than 13″ will most effectively ensure that products in these categories are equipped to receive digital television signals as quickly as possible consistent with the manufacturing and product distribution capabilities of manufacturers and retailers.

3. As we have observed previously, consumers must be able to receive digital TV signals for the transition to move forward to a successful completion. The DTV tuner requirement is intended to provide off-the-air DTV reception capability to the general population on a schedule that will promote a rapid completion of the DTV transition. Our goal in this matter remains to maximize the number of TV receivers with DTV tuners on the market, with a final goal that all new television receiver products include a DTV tuner, as quickly as possible. We recognize, however, that manufacturers' and retailers' product development and distribution resources and capabilities will affect their ability to comply with the tuner requirement and therefore need to be considered in decisions modifying that requirement.

Receivers 13–24″ and Other TV Receiving Devices

4. *Decision.* Consistent with the need to promote a rapid and orderly end to the DTV transition, we continue to believe it is desirable and appropriate to advance the date by which all new television receiving equipment must include the capability to receive over-the-air broadcast DTV signals. The rules already require that all new large screen receivers and 50 percent of a responsible party's mid-size receivers include digital reception capability and we recently advanced the date by which all mid-size receivers must include that capability by four months, to March 1, 2006. Advancing the date by which the remaining 13–24″ smaller-size sets and other TV receiver devices categories must comply with the DTV tuner requirement will serve to ensure that a greater portion of all TV receiver products that are in use by consumers at the time analog service ceases will be able to receive broadcasters' digital signals and thus provide for a smooth and orderly completion of the switchover process. Commenters observed, that many consumers do, in fact, rely on a smaller-size set as their primary device for watching TV service and those consumers will receive only limited benefits from purchasing new analog-only sets that will not receive broadcast signals when analog service ceases.

5. Our goal in the R&O/FNPRM with respect to the smaller-size sets and other TV receiving devices categories was to advance the date by which these products must include digital reception capability to December 31, 2006 or earlier, if feasible. In deciding on a new date for applying the tuner requirement to these products, we need to consider the ability of manufacturers to produce compliant products as well as the benefits of including DTV tuners in these products. After carefully examining the record, the Commission concludes that the action which most appropriately balances our concerns on both sides of this matter is to advance the date by which new 13–24″ television sets and other TV receiver devices must include the capability to receive broadcast digital television signals to March 1, 2007. From the information provided by commenters and the participating manufacturers, we conclude that it may not be feasible for the general population of receiver manufacturers to produce all of their products in these categories with DTV tuners at an earlier date. In particular, we recognize the manufacturers' points that the DTV tuners that will be included in smaller receivers are not the same units as installed in larger screen sets, that the design of smaller screen receivers is changing to flat or thin panel formats, and that the product development, parts acquisition, manufacturing, distribution, and marketing processes for new television receiver products are both technically demanding and complex with multiple steps that must be completed in succession. We are not adopting Philips' suggestion that we exempt other TV receiver products from the accelerated date for compliance with the tuner requirements, as other manufacturers appear to be able to include DTV tuners in those products by March 1, 2007.

6. The Commission is concerned that if it were to require DTV reception capability in smaller-size and other TV receiver products before the general population of manufacturers is able to properly complete the product development process, it could prove disruptive to the market for those products. Specifically, we are concerned that such disruptions could possibly involve deficiencies in the quality of products marketed so that they would not be acceptable to consumers, manufacturers deciding to simply leave the market for these products, or manufacturers just removing broadcast television reception capability from these products. The Commission does not find that it would be better to accept the removal of 13–24″ TV sets from the marketplace or the removal of all television reception capability from a display device. To do so might pose business costs for manufacturers in terms of lost sales or possible shut-down of production facilities that we do not believe are necessary.

7. We also note that the March 1, 2007 date when the industry indicates that the general population could be ready to produce 13–24″ sets and other TV receiver products with DTV tuners is only two months beyond our December 31, 2006 proposal. We believe that the benefits of allowing manufacturers to proceed with the inclusion of DTV tuners in these products on a more orderly basis would outweigh the adverse effects of the relatively small number of affected products (as compared to the hundreds of millions of analog-only receivers currently in use) that would be brought into the market in the two month period between December 31, 2006 and March 1, 2007. Upon balancing the production capabilities of manufacturers and our interests in promoting a rapid conclusion to the DTV transition, we believe the brief two month period when new analog-only sets can be brought onto the market will still allow the return of the 700 MHz spectrum in a timely manner without overly burdening manufacturers. Accordingly, we are advancing the date by which television receivers with screen sizes 13–24″ and other TV receiver devices must include the capability to receive digital television signals from July 1, 2007 to March 1, 2007.

Receivers With Screen Sizes Less Than 13″

8. In the R&O/FNPRM, the Commission sought comment on whether it should extend the DTV tuner requirement to apply to receivers with screen sizes less than 13″ inches. It noted that if such devices are to provide off-the-air reception of TV signals after the transition, they too must be able to receive DTV signals and that it is less likely that very small screen receivers, and particularly handheld and similar portable devices, would be used with a separate device for receiving DTV signals.

9. *Decision.* The Commission finds merit in the concerns that receivers with screen sizes less than 13″ should also be required to include DTV reception

capability. Unlike larger screen receivers, the portable and typically battery-powered products in this category are more likely to be used to receive off-the-air signals and to not have inputs for connection to a separate DTV receiver. Thus, in contrast to larger screen receivers and other TV receiving devices, it is reasonable to expect that sets with screen sizes less than 13″ would generally not be useful to consumers once analog television service ceases. We recognize that these very small receivers are not typically used as a viewer's primary receiver. Nonetheless we also note their particular value for enabling the reception of news and public safety information in times of emergency. We therefore conclude that it would benefit consumers and the purposes of the broadcast television service and its transition to digital operation to require that receivers with screens less than 13″ are able to receive digital signals on the same schedule as other TV receiver products. Extending the DTV tuner requirement to receivers with screen sizes less than 13″ on that schedule will maximize the number of receivers in this category that will continue to be able to provide service after analog TV operation ceases. We are not convinced that it would be overly burdensome for the consumer electronics industry to bring these products into compliance with the DTV tuner requirement by the date when all other TV receiver products must include DTV reception capability. For example, Philips supports extending the tuner requirement to sets in this category. Because of the limited usefulness of these products for other purposes after analog service ends, we believe it would be preferable to restrict the marketing of products than to continue to allow non-compliant products to be sold to consumers. Accordingly, we will require that responsible parties equip television receivers with screens less than 13″ that are imported into this country or shipped in interstate commerce on and after March 1, 2007 with the capability to receive broadcast digital television signals.

10. The Commission agrees with commenters that this extension of the DTV tuner requirement to very small screen devices should only apply to products that receive off-the-air broadcasts and not other types of off-the-air reception devices such as cell phones and personal digital assistants (PDAs) that do not include the capability to receive broadcast TV service on the frequencies allocated for that service but may be able to receive broadcast TV programming that is re-transmitted over a wireless communications link other than a TV channel. To the extent that such devices are able to display broadcast TV programming transmitted over a non-broadcast communications link, we do not consider a device with that capability to be a broadcast TV receiver. Therefore, the DTV tuner requirement does not extend to small screen video capable devices that do not include the ability to receive broadcast television signals off-the-air. However, in cases where a cell phone, PDA or similar device does include the capability to receive TV programming on the channels allocated for the broadcast television service, that device is a TV broadcast receiver under § 15.3(w) of the rules and must comply with the DTV tuner requirement.

Other Approaches—Labeling Requirements

11. In the R&O/FNPRM the Commission also requested suggestions for alternative approaches for including DTV reception capability in all new TV receivers. Chris Llana recommends that as an alternative approach in conjunction with the DTV tuner requirement the Commission also require that television receiver products be labeled with enough information to permit consumers to make a fully informed decision before purchase and to alert them to the downsides of buying an analog-only product. He submits that any label should be clear and complete and that the label should be placed on the screen of TV sets, where it would draw attention to itself.

12. The Commission believes that consumer awareness of whether a television can receive off-the-air DTV signals or only off-the-air analog signals is critical to ensuring that consumer expectations are met. It also believes that it would further consumer education if manufacturers and retailers would provide point-of-sale and other marketing information to consumers and/or clearly label new television sets. The Commission believes that such efforts would result in more informed consumer choices about whether to buy DTV tuner equipped sets. These issues have been raised in the Second DTV Periodic Review, MB Docket No. 03–15, and we intend to address these issues expeditiously. In the interim, the Commission encourages manufacturers and retailers to clearly label and identify the tuning capabilities of new TV sets and/or employ other means to disseminate to consumers information regarding whether or not specific models are able to receive off-the-air digital television signals.

Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the R&O/FNPRM in ET Docket No. 05–24 (Report and Order and Further Notice). The Commission sought written public comment on the proposals on the NPRM concerning modification of the plan for applying the DTV tuner requirement to TV receivers with screen sizes 25–36″, including comment on the IRFA. No comments were received in response to the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[2]

A. *Need for and Objectives of the Rules Adopted in the Second Report and Order*. As described in the *Second Report and Order and Further Notice*, the changes to the rules adopted in this proceeding are intended to ensure a smooth transition of the nation's television system to digital television. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television.[3] That effort resulted in several Commission decisions, including those adopting a digital television (DTV) standard,[4] DTV service rules,[5] and a Table of DTV Allotments.[6] The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for a transition period in which stations will operate both analog and digital TV service, after which analog service will cease and one of each station's two channels will revert to the government for use in other services. The transition deadline established by Congress was December 31, 2006.

In 2002, consistent with its efforts to promote the expeditious completion of

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

[2] *See* 5 U.S.C. 604.

[3] *See Notice of Inquiry* in MM Docket No. 87–268, 2 FCC Rcd 5125 (1987); 52 FR 34259, September 10, 1987, *see also Tentative Decision and Further Notice of Proposed Rulemaking* in MM Docket No. 87–268, 3 FCC Rcd 6520 (1988), 53 FR 38747, October 3, 1988.

[4] *See Fourth Report and Order* in MM Docket No. 87–268, 11 FCC Rcd 17771 (1996), 62 FR 14006, March 25, 1997.

[5] *See Fifth Report and Order* in MM Docket No. 87–268, 12 FCC Rcd 12809 (1997), 63 FR 13546, May 20, 1998.

[6] *See Sixth Report and Order* in MM Docket No. 87–268, 12 FCC Rcd 14588 (1997), 62 FR 2668, July 11, 1997.

the DTV transition, the Commission adopted a requirement that all new television receivers imported or shipped in interstate commerce after July 1, 2007 include the capability to receive DTV signals off-the-air. In order to minimize the impact of the DTV tuner requirement on both manufacturers and consumers, the Commission adopted a phase-in schedule that applies the DTV tuner requirement first to receivers with the screens and then to progressively smaller screen receivers and other TV receiving devices. In the R&O/FNPRM, the Commission modified the phase-in schedule for requiring DTV tuners in new television receiver products by advancing the date for 100% compliance by receivers with 25–36″ screens to March 1, 2006 from July 1, 2006. In that action, the Commission concluded that maintaining the 50 percent requirement for 25–36″ receivers for the period from July 1, 2005 to February 28, 2005 and advancing the 100 percent compliance date for mid-size receivers to March 1, 2006 will ameliorate the concerns of the consumer electronics manufacturers and retailers with respect to the 50 percent approach and further its goal of promoting DTV reception availability. In that action, the Commission also proposed to advance the compliance date for 13–24″ receivers in order to promote a more rapid conclusion to the digital television transition.

In the Second Report and Order, the Commission revised its rules to advance the date on which new television receivers with screen sizes 13–24″ and certain other TV receiving devices such as VCRs and digital video recorders must include the capability to receive broadcast digital television signals from the current date of July 1, 2007 to March 1, 2007. The Commission also amends its rules to apply the digital television reception capability requirement to new receivers with screen sizes smaller than 13″ on this same schedule. With these changes, the scheduled DTV tuner implementation plan will require that all new TV receiver equipment include digital reception capability as of March 1, 2007. The Commission is taking these steps to ensure that digital television reception capability is provided to the general population on a schedule that will promote a rapid completion of the DTV transition. In this regard, we observe that consumers must be able to receive digital signals for the transition to move forward to a successful completion. The Commission's goal in taking the actions in the Second Report and Order is to maximize the number of TV receivers on the market, with a final goal that all new television receiver products include a DTV tuner as quickly as possible. In crafting those actions, the Commission recognized that manufacturers' product and distribution resources will affect their ability to comply with the tuner requirement and balanced those considerations with the need to ensure that new TV receiver products include DTV tuners.

B. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA:* No comments were filed in response to the IRFA.

C. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[7] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity.''[8] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[9] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').[10]

Electronics Equipment Manufacturers. Rules adopted in this proceeding will apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment[11] as well as radio and television broadcasting and wireless communications equipment.[12] These categories include the types of equipment affected by the rules adopted herein and both include all such companies employing 750 or fewer employees. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[13] Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.[14] The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.[15] Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[16] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers. The Commission has not developed a definition of small entities applicable to

[7] 5 U.S.C. 603(b)(3).

[8] 5 U.S.C. 601(6).

[9] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[10] 15 U.S.C. 632.

[11] 13 CFR 121.201 (NAICS Code 334310).

[12] 13 CFR 121.201 (NAICS Code 334220).

[13] 13 CFR 121.201 (NAICS Code 334310).

[14] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[15] 13 CFR 121.201 (NAICS Code 513220).

[16] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[17] Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.[18] The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

D. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* The rule changes adopted in the Report and Order impose no additional recordkeeping or recordkeeping requirements on manufacturers of television receiving equipment, large or small. While the modifications adopted therein may have a small impact on consumer electronics manufacturers, any such impact would be similar for both large and small entities. We do not believe that the potential impact on an specified number of small entities outweighs the overall public interest benefits conferred by of the rule changes adopted in the Second Report and Order.

E. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[19]

The modification of the date for implementing the DTV tuner requirement in TV receivers with screen sizes in the 13–24″ and under 13″ size ranges and other television receiver products set forth herein is intended to expedite the availability of DTV tuners in products in these categories that are offered to consumers. The consumer electronics industry has indicated that it prefers the DTV tuner requirement to become effective for 13–24″ receivers and other television receiver products on March 1, 2007 rather than a date of December 31, 2006 or earlier as proposed. The Commission also found that it was necessary to apply the tuner requirement to receivers with screen sizes less than 13″ in order to ensure that new products in that category remain functional after the cessation of analog TV service. Moving the compliance date for these receivers to March 1, 2007 rather than an earlier date will allow the general population of manufacturers sufficient time to include digital reception capability in small TV sets and other television receiver products and will also serve to promote the availability of digital reception capability in these sets for consumers.

Alternative approaches considered by the Commission, but rejected, include various suggestions by broadcasters and others to advance the deadline for DTV tuners in 25–36″ sets to either October 1, 2006 or November 1, 2006. We rejected these options on the basis that the lead-times available for product development under those scenarios would be too short for the general population of manufacturers, including smaller manufacturers, to bring new compliant products to the market, especially given the times associated with specification, design, testing and obtaining parts and components from suppliers. While other options that would have extended the deadline beyond March 1, 2007 may have posed less potential impact on manufacturers, including small business manufacturers, extending the date beyond March 1, 2007 would be inconsistent with the need to expedite the DTV transition. In its decision, the Commission balanced the need to ensure that DTV reception capability is included in new TV receivers as soon as possible with its concerns for impact on manufacturers, including small manufacturers. Thus, the plan adopted minimizes the potential impact on small manufacturers consistent with the Commission's goals for the DTV reception requirement.

F. *Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals.* None.

Ordering Clauses

14. Pursuant to the authority contained in Sections 2(a), 4(i) & (j), 7, 151 and 303 of the Communications Act of 1934 as amended, 47 U.S.C. 152(a), 154(i) & (j), 151, 157, and 303, this Second Report and Order *is adopted* and the Commission's rules *are hereby amended* as set forth in Rule Changes, and shall become effective January 20, 2006.

15. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.[20]

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, and 554A.

■ 2. Section 15.117 is amended by revising paragraphs (i)(1)(iii) and (iv) and by adding paragraph (i)(4) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(i) * * *

(1) * * *

(iii) Receivers with screen sizes less than 25″—100% of all such units must include DTV tuners effective March 1, 2007

(iv) Other video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.) that receive television signals—100% of all such units must include DTV tuners effective March 1, 2007.

* * * * *

(4) The requirement to include digital television reception capability in new TV broadcast receivers does not apply to devices such as mobile telephones and personal digital assistants where such devices do not include the capability to receive TV service on the frequencies allocated for broadcast television service.

* * * * *

[FR Doc. 05–24217 Filed 12–20–05; 8:45 am]

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[17] 13 CFR 121.201 (NAICS Code 334111).

[18] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

[19] 5 U.S.C. 603(c)(1)–(c)(4).

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

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3101; MB Docket No. 04–20; RM–10842, RM–11128, RM–11129, RM–11130]

Radio Broadcasting Services; Cambridge, Newark, St. Michaels, and Stockton, MD and Chincoteague, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 69 FR 9790 (March 2, 2004) this *Report and Order* denies a request by CWA Broadcasting, Inc., the licensee of Station WINX–FM, St. Michaels, Maryland, to upgrade its present Channel 232A to Channel 232B1, reallot Channel 232B1 to Cambridge, Maryland, and modify Station WINX–FM's license accordingly. The *Report and Order* allots Channel 235A to Newark, Maryland, thus providing that community with a first local aural transmission service. The reference coordinates for Channel 235A at Newark, Maryland are 38–12–20 NL and 75–17–15 WL, with a site restriction of 5.0 kilometers (3.1 miles) south of Newark. The *Report and Order* denies the counterproposal of Route 12 Community Broadcasters to allot Channel 232A to Stockton, Maryland, and allots Channel 233A to Chincoteague, Virginia, which would provide Chincoteague with a second local aural transmission service. The reference coordinates for Channel 233A at Chincoteague are 37–56–00 NL and 75–22–36 WL.

DATES: Effective January 17, 2006.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–20, adopted November 30, 2005, and released December 2, 2005. 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, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document 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 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).

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 reads 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 Maryland, is amended by adding Newark, Channel 235A.

■ 3. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel 233A at Chincoteague.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–24216 Filed 12–20–05; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 70, No. 244
Wednesday, December 21, 2005

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 337 and 930

RIN 3206–AK86

Examining System and Programs for Specific Positions and Examinations (Miscellaneous)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is republishing the proposed rule published on December 13, 2005, due to information that was inadvertently omitted. The purpose of these regulations is to revise the Administrative Law Judge Program. The purpose of these revisions is to remove procedures that appear in other parts of this chapter, update outdated information, and remove the internal examining processes from the regulations. Additionally, these revisions describe OPM and agency responsibilities concerning the Administrative Law Judge Program. This proposed regulation continues the basic intent of making administrative law judges independent in matters of tenure and compensation.

DATES: Comments must be received on or before February 21, 2006.

ADDRESSES: Send, deliver, or fax written comments to: Mr. Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street NW., Washington, DC 20415–9700; e-mail: *employ@opm.gov;* fax: (202) 606–2329.

Comments may also be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Watson by telephone at (202) 606–0830; by fax at (202) 606–2329; by TTY at (202) 418–3134; or by e-mail at *linda.watson@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is republishing the proposed rule published on December 13, 2005, (70 FR 73646) due to information that was inadvertently omitted. The administrative law judge function was established by the Administrative Procedure Act (APA) (Act of June 11, 1946, 60 Stat. 237, as amended) and codified in title 5, United States Code (U.S.C.), sections 556, 557, 1305, 3105, 3344, 4301(2)(D), 5372, and 7521. Administrative law judges preside at formal hearings and make or recommend decisions on the basis of the record. The APA requires that this function be carried out in an impartial manner. To assure objectivity of administrative law judges and to insulate them from improper pressure, the law made these positions independent of the employing agencies in matters of tenure and compensation.

The goal of this revision is to streamline the current administrative law judge regulations as prescribed in 5 CFR part 930, subpart B. Therefore, OPM is proposing a substantive rewrite of the administrative law judge regulations to eliminate procedures that appear in other parts of this chapter, remove the internal examination process, and remove obsolete instructions for implementing the current pay system authorized by the Federal Employees Pay Comparability Act of 1990; to add clarifying language; to include OPM and agency responsibilities under the program; to emphasize components of the Administrative Law Judge Program; to organize information into new sections for emphasis and clarity; and to revise the language to improve readability.

We propose in § 930.201, ''Coverage,'' to clarify that administrative law judge positions are in the competitive service, and competitive examining procedures apply. In addition, we propose to move §§ 930.203b, ''Title of administrative law judge,'' and 930.212, ''Rotation of administrative law judges,'' to § 930.201 because this information applies to the general coverage of the Administrative Law Judge Program.

We also propose to add the authorities and responsibilities of OPM and agencies that employ administrative law judges in § 930.201. Currently, the regulations do not identify these authorities and responsibilities. Although OPM does not employ administrative law judges for the Federal Government, OPM does administer the Administrative Law Judge Program. In § 930.201, we describe OPM's authority and responsibility, according to the APA, as assuring that administrative law judges are independent in matters of appointment, pay, and tenure.

Proposed § 930.201(e)(3) states that OPM has the authority to establish classification and qualification standards for administrative law judge positions. OPM's authority to establish classification standards for administrative law judge positions is 5 U.S.C. 5372(b)(2). Section 104 of Public Law 101–509 removed administrative law judge positions from coverage under 5 U.S.C. 5104 and amended 5 U.S.C. 5372(b)(2) to authorize OPM to classify administrative law judge positions outside the General Schedule. Under 5 U.S.C. 1305, OPM may use its rulemaking authority to implement this classification authority for administrative law judge positions.

OPM's authority to establish administrative law judge qualifications as an adjunct to competitive examination is Civil Service Rule II, 5 CFR 2.1(a), which authorizes OPM ''to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.''

The legislative history of 5 U.S.C. 3105, formerly section 11 (1st sentence) of the APA, governing administrative law judge appointments, confirms the clear intent of Congress to give OPM the authority to establish qualification standards for administrative law judges as an adjunct to competitive examination. OPM may utilize its rulemaking authority in 5 U.S.C. 1305 to authorize qualification standards for administrative law judges.

An agency employing administrative law judges is responsible for appointing as many administrative law judges as needed and to assign cases to administrative law judges on a rotational basis so far as practicable.

We propose to move paragraph (c) of the current § 930.201, ''Coverage,'' to

§ 930.203, ''Cost of competitive examination.'' Paragraph (c) discusses the financial responsibility for the Administrative Law Judge Program. By adding paragraph (c) to § 930.203, we are highlighting agencies' responsibility for the cost of the examination. Currently, under 5 U.S.C. 1104(a)(2), agencies employing administrative law judges are required to reimburse OPM for its examining services. Reimbursement is currently based on the agency's relative number of administrative law judge positions as of March 31 of the preceding fiscal year. To ensure an accurate count of administrative law judges, we also propose to change the time period from March 31 of the preceding fiscal year to the current fiscal year. The cost is calculated by OPM and each employing agency is notified of its share.

We propose to remove the definition of ''Promotion'' from § 930.202, ''Definitions.'' This term uses a common definition throughout the Federal Government and is defined in 5 CFR part 210.102(b)(11). Standardizing definitions of common terms ensures their consistent application. We propose to add and define two significant terms to the regulations and clarify their specific use in this subpart: senior administrative law judge and superior qualifications.

We propose to change the title of § 930.203, ''Examination,'' to ''Cost of competitive examination.'' OPM has great discretion to design and administer competitive examinations (See 5 U.S.C. 1104, 1302, 3301, 3304.) OPM must be able to incorporate advances in the state of the art of examination methodology in the design of each administrative law judge examination. Consequently, OPM proposes to remove the examination scoring process currently published in section 930.203, and to state in § 930.201(e)(1) that use of the examination scoring process published in 5 CFR 337.101(a) is not required in scoring administrative law judge examinations. OPM is proposing a conforming revision in part 337. The current examination covered by OPM Examination Announcement No. 318 is closed and will be replaced by a new administrative law judge examination; therefore, we propose to remove all references to Announcement No. 318 from this subpart. When the new examination is available, OPM will announce the examinations as prescribed in 5 U.S.C. 3330.

A lengthy description of the administrative law judge examination and its procedures is contained in the existing § 930.203 of this subpart. The method by which examinations are conducted and administered is subject to periodic changes; therefore, removing these procedures from the regulations will provide OPM with the flexibility to adopt such changes, as appropriate. We propose to remove the detailed language describing internal examining and program processes and procedures from the regulations, such as the language concerning periodic open competition, minimum qualifications, supplemental qualifications, participation in examination procedures, final rating, preparation of certificates, and appeal of rating. The appropriate mechanism to address this type of information is the vacancy announcement. This information is prescribed in 5 U.S.C. 3330 and 5 CFR 300.104(b), 330.102(b) and 330.707, and is required in all vacancy announcements. As appropriate, OPM will continue to work with employing agencies to review the Administrative Law Judge Program for effectiveness and efficiency consistent with statutory requirements.

We propose to redesignate § 930.203a, ''Appointment,'' as § 930.204, ''Appointments and conditions of employment.'' We also propose to move paragraphs (b), (c), and (e) of § 930.203a, ''Appointment,'' and §§ 930.204, ''Promotion,'' 930.205, ''Reassignment,'' 930.206, ''Transfer,'' and 930.207, ''Reinstatement,'' to section 930.204. The purpose is to highlight the prohibition of a probationary period for administrative law judges and to consolidate the various types of appointments under one section. With the consolidation, we propose to remove the internal examining processes and procedures involved in appointing an individual to an administrative law judge position; revise the language to clarify that agencies must obtain OPM's approval before making any promotion, transfer, reinstatement, reassignment, pay adjustments or senior administrative law judge appointments to an administrative law judge position; and include information related to the type of appointment and tenure group. Because provisions of the Ramspeck Act formerly codified at 5 U.S.C. 3304(c) were repealed by Public Law 104–65 on December 19, 1997, we are removing paragraph (d) of section 930.203a which involves the appointment of legislative and judicial employees to an administrative law judge position. These individuals now must compete with other outside candidates and meet the qualification and examination requirements for an administrative law judge position.

We propose to remove § 930.208, ''Restoration'' from this regulation. Part 353 of title 5, Code of Federal Regulations, governs the restoration of an employee to duty after military service or recovering from compensable injury, also applies to restoration to an administrative law judge position.

Currently, the administrative law judge regulations contain two terms, ''absolute status'' and ''career absolute appointment,'' that are not defined in either the United States Code or Code of Federal Regulations. We propose to remove these terms from the regulations and replace them with terms used in the competitive service, ''competitive status'' and ''career appointment.'' To be a career employee in the competitive service, an employee must serve 3 years of substantially continuous creditable service and is subject to a 1-year probationary period. However, § 315.201(c), ''Exceptions from service requirement,'' includes an exception from the 3-year service requirement when an appointment to a position is required by law to be filled on a permanent basis. The APA provides administrative law judges protection from improper influences and ensures independence when carrying out their duties by conferring competitive status at the time of appointment. Therefore, the requirements for probationary and career-conditional periods do not apply to administrative law judges. An administrative law judge appointment confers competitive status, places the employee in tenure group I, and does not require a probationary period.

Currently § 930.203a(c)(3), ''Appointment of incumbents of newly classified administrative law judge positions,'' addresses the appointment of employees whose positions are classified as an administrative law judge position on the basis of legislation, Executive order, or decision of the court. An agency has 6 months after the classification to recommend to OPM the appointment of an administrative law judge. We propose to delete the 6-month requirement and rely on the terms of the legislation, Executive order, or court decision for any time frames for appointments. Paragraph (c)(4) of the current regulations states that in an emergency situation OPM may authorize a conditional appointment of an employee to an administrative law judge position pending final decision on the employee's eligibility for career appointment. We propose to delete this provision because it is inconsistent with the intent of the APA that administrative law judges serve without condition.

The function of an administrative law judge is to prepare for and preside at formal hearings in accordance with the

APA. Administrative law judges must be held to a high standard of conduct so that the integrity and independence of the administrative judiciary can be maintained. Similar to the attorneys employed by the Federal Government who are required to maintain an ''active'' status to practice law, administrative law judges are expected to meet professional licensing requirements as attorneys. Presently, an applicant who wishes to be an administrative law judge must have been duly licensed and authorized to practice law as an attorney under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. We propose to clarify that a professional license requirement continues as a condition of employment for any individual serving as an administrative law judge. A professional license to practice law is required while serving as an administrative law judge. This requirement applies to eligibles on the Administrative Law Judge register, incumbent administrative law judges, former administrative law judges applying for reinstatement or reemployment, and retired administrative law judges applying under the Senior Administrative Law Judge Program. An administrative law judge must maintain an ''active'' status to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. In lieu of maintaining an ''active'' status to practice law, judicial status is acceptable in States that prohibit sitting judges from maintaining ''active'' status to practice law. Being in ''good standing'' is also acceptable in lieu of ''active'' status in States where the licensing authority considers ''good standing'' as having a current license to practice law.

For clarity, we propose to redesignate § 930.210, ''Pay'' as section 930.205, ''Administrative law judge pay system.''

We propose to delete paragraphs (j) through (m) of current § 930.210, which contain instructions for converting GS employees to the administrative law judge pay system on the first day of the first pay period beginning on or after February 10, 1991. Because all administrative law judges have been converted to the current pay system, these paragraphs are obsolete.

Currently, with OPM approval, an agency may pay a higher minimum rate to a candidate with superior qualifications who is appointed from an OPM certificate of eligibles to an administrative law judge position at level AL–3. Under § 930.205(f)(2), we propose to expand coverage under this authority to include an administrative law judge applicant with superior qualifications as well as a former administrative law judge with superior qualifications who is eligible for reinstatement.

We propose to add a new paragraph (i) to § 930.205 (as redesignated) to clarify that an agency may reduce the pay level or rate of basic pay of an administrative law judge for good cause either after the Merit Systems Protection Board orders the action, as provided in § 930.211 (as redesignated), or if agreed upon by the administrative law judge and with OPM's approval.

We propose to redesignate the existing § 930.211 as § 930.206, ''Performance rating and awards,'' and to move paragraph (b) of existing § 930.210, ''Pay,'' to § 930.206. This change consolidates the information on performance rating and awards into one section.

We propose to redesignate § 930.209 as § 930.207, and to change its title from ''Detail and assignment to other duties'' to ''Details and assignments to other duties within the same agency.'' The new title emphasizes the movement of an administrative law judge within the agency.

We propose to redesignate § 930.213, ''Use of administrative law judges on detail from other agencies,'' as § 930.208, ''Administrative law judge loan program—detail to other agencies.'' The title change echoes the term commonly used by the administrative law judge community for the process of detailing administrative law judges to other agencies. We also propose to clarify OPM's current practice of detailing an administrative law judge for a period within the current fiscal year with the possibility of an extension into the next fiscal year. OPM approves extensions on a case-by-case basis. Section 930.208 gives agencies the flexibility to meet unusual work circumstances requiring an administrative law judge to stay beyond the initial 1-year period.

We propose to redesignate § 930.216, ''Temporary reemployment: senior administrative law judges,'' as § 930.209, ''Senior administrative law judge program,'' to echo the term commonly used by the administrative law judge community for the process of employing retired administrative law judges. The title distinguishes this program from the loan program described in § 930.208 (as redesignated). We also are clarifying the employment limitation for reemployed administrative law judges to be either a specified period not to exceed 1 year or such periods as may be necessary to conduct and complete the hearing of one or more specified cases.

We propose to redesignate § 930.215, ''Reduction in force,'' as § 930.210. At the present time, agencies are allowed to fill vacant positions only through the OPM priority referral list. We propose to add a hiring flexibility allowing agencies to fill their vacant administrative law judge positions by reassigning administrative law judges within their workforce. This flexibility allows agencies to manage their administrative law judge workforce by providing the flexibility to make reassignments within their agency and will assure that adversely affected administrative law judges retain priority when the agency seeks to fill from outside its workforce. OPM will continue to retain the authority to grant exceptions to the order of selection.

We propose to redesignate § 930.214, ''Actions against administrative law judges,'' as § 930.211. We also propose to revise this section to improve clarity and readability. This section continues to recognize that administrative law judge applicants and appointees, like other applicants and appointees to the competitive service, are subject to suitability investigations and determinations.

Derivative Table Comparing New Section Numbers in Part 930, Subpart B With Old Section Numbers.

To assist readers in comparing OPM's proposed rule to 5 CFR part 930, subpart B with the regulation as it is currently published, we have prepared the following derivation table.

DERIVATION TABLE FOR 5 CFR 930 SUBPART B

New section	Old section
930.201	930.201.
930.201(a)	930.201(a).
930.201(b)	930.201(b).
930.201(c)	930.203b.
930.201(d)	New.
930.201(e)(1) through (9).	New.
930.201(f)(1) and (2)	New.
930.201(f)(2)(i)	930.212.
930.202	930.202.
Administrative Law Judge Position.	930.202(c).
Agency	930.202(a).
Detail	930.202(b).
	930.202(d) (Removed).
	930.202(e) (Removed).
Removal	930.202(f).

DERIVATION TABLE FOR 5 CFR 930 SUBPART B—Continued

New section	Old section
Senior Administrative Law Judge.	930.216(a)(2).
Superior Qualifications	930.210(g)(2).
930.203	930.201(c).
930.204	930.203a.
930.204(a)	930.203a(a) and (b).
930.204(b)	New.
930.204(c)	930.203a(c).
930.204(c)(1)	930.203a(c)(1).
930.204(c)(2)	930.203a(c)(2).
930.204(c)(3)	930.203a(c)(3) (Revised).
930.204(c)(4)	930.203a(c)(4) (Revised).
	930.203a(d) (Removed).
930.204(d)	930.203a(e).
930.204(e)	930.204 (Revised).
930.204(f)	930.205 (Revised).
930.204(g)	930.207 (Revised).
930.204(h)	930.206 (Revised).
	930.208 (Removed).
930.205	930.210.
930.205(f)(2)	930.210(g)(2).
930.205(i)	New.
	930.210(j) through (m) (Removed).
930.206	New title.
930.206(a)	930.211.
930.206(b)	930.210(b).
930.207	930.209.
930.208	930.213.
930.209	930.216.
930.210	930.215.
930.211	930.214.

Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would affect only some Federal agencies and employees.

List of Subjects in 5 CFR Parts 337 and 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM is proposing to amend 5 CFR parts 337 and 930 as follows:

PART 337—EXAMINING SYSTEM

1. The authority citation for part 337 continues to read as follows:

Authority: 5 U.S.C. 1104(a) (2), 1302, 2302, 3301, 3302, 3304, 3319, 5364, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; and 45 FR 18365, Mar. 21, 1980.

Subpart A—General Provisions

2. Revise § 337.101(a) to read as follows:

§ 337.101 Rating applicants.

(a) OPM shall prescribe the relative weights to be given subjects in an examination, and shall assign numerical ratings on a scale of 100. Except as otherwise provided in this chapter, each applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination is eligible for appointment.

* * * * *

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

3. Revise subpart B to read as follows:

Subpart B—Administrative Law Judge Program

Sec.
930.201 Coverage.
930.202 Definitions.
930.203 Cost of competitive examination.
930.204 Appointments and conditions of employment.
930.205 Administrative law judge pay system.
930.206 Performance rating and awards.
930.207 Details and assignments to other duties within the same agency.
930.208 Administrative Law Judge Loan Program—detail to other agencies.
930.209 Senior Administrative Law Judge Program.
930.210 Reduction in force.
930.211 Actions against administrative law judges.

Authority: 5 U.S.C. 1104(a)(2), 1302(a), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521, and E.O. 10577, 3 CFR, 1954–1958 Comp., p. 219.

Subpart B—Administrative Law Judge Program

§ 930.201 Coverage.

(a) This subpart applies to individuals appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557 and to administrative law judge positions.

(b) Administrative law judge positions are in the competitive service. Except as otherwise stated in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

(c) The title ''administrative law judge'' is the official title for an administrative law judge position. Each agency must use only this title for personnel, budget, and fiscal purposes.

(d)The Director of OPM, or designee, shall prescribe the examination methodology in the design of each administrative law judge examination.

(e) OPM does not hire administrative law judges for other agencies but has authority to:

(1) Recruit and examine applicants for administrative law judge positions, including developing and administering the administrative law judge examinations under 5 U.S.C. 1104(a)(2), except OPM is not required to use the examination scoring process in 5 CFR 337.101(a);

(2) Assure that decisions concerning the appointment, pay, and tenure of administrative law judges in Federal agencies are consistent with applicable laws and regulations;

(3) Establish classification and qualification standards for administrative law judge positions in Federal agencies;

(4) Approve noncompetitive personnel actions for administrative law judges, including but not limited to promotions, transfers, reinstatements, restorations, reassignments, and pay adjustments;

(5) Approve an intra-agency detail or assignment of an administrative law judge to a non-administrative law judge position that lasts more than 120 days or when an administrative law judge cumulates a total of more than 120 days for more than one detail or assignment within the preceding 12 months;

(6) Arrange the temporary detail (loan) of an administrative law judge from one agency to another under the provisions of the administrative law judge loan program in § 930.208;

(7) Arrange temporary reemployment of retired administrative law judges to meet changing agency workloads under the provisions of the senior administrative law judge program in § 930.209;

(8) Maintain and administer the administrative law judge priority referral program; and

(9) Comply with 5 U.S.C. 1305 for purposes of sections 3105, 3344, 4301(2)(D) and 5372 of title 5 U.S.C. and the provisions of section 5335(a)(B) of 5 U.S.C. that relate to administrative law judges.

(f) An agency employing administrative law judges under 5 U.S.C. 3105 has:

(1) Authority to appoint as many administrative law judges as necessary for proceedings conducted under 5 U.S.C. 556 and 557; and

(2) Responsibility for:

(i) Assigning an administrative law judge to cases in rotation so far as is practicable;

(ii) Obtaining OPM's approval before making any promotion, transfer, detail in excess of 120 days, reinstatement, reassignment, or restoration appointments to an administrative law judge position, employment of senior administrative law judges, or pay adjustments as required under § 930.205; and

(iii) Ensuring the independence of the administrative law judge.

§ 930.202 Definitions.

In this subpart:

Administrative law judge position means a position in which any portion of the duties requires the appointment of an administrative law judge under 5 U.S.C. 3105.

Agency has the same meaning given in 5 U.S.C. 551(1).

Detail means the temporary assignment of an administrative law judge from one position to another administrative law judge position without change in civil service or pay status.

Removal means the involuntary separation of an administrative law judge from employment as an administrative law judge or employment with an agency.

Senior administrative law judge means a retired administrative law judge who is reemployed under a temporary appointment under 5 U.S.C. 3323(b)(2) and § 930.209.

Superior qualifications means an appointment made at a rate above the minimum rate based on such qualifications that may include, but are not restricted to, experience practicing law before the hiring agency; experience practicing before another forum in a field of law relevant to the hiring agency; outstanding reputation among others in a field of law relevant to the hiring agency; or special skills that will meet a demonstrated need of the hiring agency.

§ 930.203 Cost of competitive examination.

Each agency employing administrative law judges must reimburse OPM for the cost of developing, examining, and administering the administrative law judge examinations. Each agency is charged a pro rata share of the examination cost, based on the actual number of administrative law judges the agency employs. OPM computes the cost of the examination program on an annual basis and notifies the employing agencies of their respective shares after the calculations are made.

§ 930.204 Appointments and conditions of employment.

(a) *Appointment.* An agency may appoint an individual to an administrative law judge position only with prior approval of OPM, except when it makes its selection from the list of eligibles provided by OPM. An administrative law judge receives a career appointment and is exempt from the probationary period requirements.

(b) *Licensure.* At the time of application and any new appointment and while serving as an administrative law judge, the individual must possess a professional license to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of ''active'' status in States that prohibit sitting judges from maintaining ''active'' status to practice law. Being in ''good standing'' is also acceptable in lieu of ''active'' status in States where the licensing authority considers ''good standing'' as having a current license to practice law.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give an incumbent employee an administrative law judge career appointment if that employee is serving in the position when it is classified as an administrative law judge position on the basis of legislation, Executive order, or a decision of a court and if:

(1) The employee has competitive status or is serving in an excepted position under a permanent appointment;

(2) The employee is serving in an administrative law judge position on the day the legislation, Executive order, or decision of the court on which the classification of the position is based becomes effective;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM determines the employee meets the qualification requirements and has passed the current examination for an administrative law judge position.

(d) *Appointment of an employee of non-administrative law judge positions.* Except as provided for in paragraphs (a) and (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position.

(e) *Promotion.* (1) Except as otherwise stated in this subpart, 5 CFR part 335 applies in the promotion of administrative law judges.

(2) To reclassify an administrative law judge position at a higher level, the agency must submit a request to OPM. When OPM approves the higher level classification, OPM will direct the promotion of the administrative law judge occupying the position prior to the reclassification.

(f) *Reassignment.* Prior to OPM's approval, the agency must provide a bona fide management reason for the reassignment.

(g) *Reinstatement.* An agency may reinstate a former administrative law judge who has served under 5 U.S.C. 3105, meets the qualification requirements, and has passed either the current or immediately preceding administrative law judge examination.

(h) *Transfer.* An agency may not transfer an individual from one administrative law judge position to another administrative law judge position sooner than 1 year after the individual's last appointment, unless the gaining and losing agencies agree to the transfer.

§ 930.205 Administrative law judge pay system.

(a) OPM assigns each administrative law judge position in one of the three grades or levels of basic pay, AL–3, AL–2 or AL–1, of the administrative law judge pay system established under 5 U.S.C. 5372 in accordance with this section. Pay level AL–3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL–3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL–1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President determines the appropriate adjustment for each level in the administrative law judge pay system, subject to paragraph (a)(1) of this section. Such adjustments take effect on the first day of the first pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

(3) An agency must use the following procedures to convert an administrative law judge's annual rate of basic pay to an hourly, daily, weekly, or biweekly rate:

(i) To derive an hourly rate, divide the annual rate of pay by 2,087 and round

to the nearest cent, counting one-half cent and over as the next higher cent.

(ii) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative law judge's basic daily tour of duty.

(iii) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, respectively.

(b) Pay level AL–3 is the basic pay level for administrative law judge positions filled through a competitive examination.

(c) Subject to OPM approval, agencies may establish administrative law judge positions in pay levels AL–2 and AL–1. Administrative law judge positions are placed at these levels when they involve significant administrative and managerial responsibilities.

(d) Administrative law judges must serve at least 1 year in each AL pay level, or in an equivalent or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time.

(e) Except as provided in paragraph (f) of this section, upon appointment to an administrative law judge position placed in level AL–3, an administrative law judge is paid at the minimum rate A of AL–3. He or she is automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a non-pay status is generally creditable service when computing the 52-week period as long as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to uniformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL–3, an administrative law judge may be paid at the minimum rate A, unless the administrative law judge is eligible for a higher rate B, C, D, E, or F because of prior service or superior qualifications, as provided in paragraphs (f)(1) and (f)(2) of this section.

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate up to the lowest rate of basic pay that equals or exceeds the applicant's highest previous Federal rate of basic pay, not to exceed the maximum rate F.

(2) With prior OPM approval, an agency may pay the rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. The agency may offer a higher than minimum rate to:

(i) An administrative law judge applicant with superior qualifications (as defined in § 930.202) who is within reach for appointment from an administrative law judge certificate of eligibles; or

(ii) A former administrative law judge with superior qualifications who is eligible for reinstatement.

(g) With prior OPM approval, an agency, on a one-time basis, may advance an administrative law judge in an AL–3 position with added administrative and managerial duties and responsibilities one rate above the administrative law judge's current AL–3 pay rate, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at AL–2 or AL–1, an administrative law judge is paid at the established rates for those levels.

(i) An employing agency may reduce the level or rate of basic pay of an administrative law judge under § 930.211 or if the administrative law judge voluntarily consents in writing to the reduction and with prior OPM approval.

§ 930.206 Performance rating and awards.

(a) An agency may not rate the job performance of an administrative law judge.

(b) An agency may not grant any award or financial incentives under 5 U.S.C. 4502, 4503, or 4504 to an administrative law judge.

§ 930.207 Details and assignments to other duties within the same agency.

(a) An agency may detail an administrative law judge from one administrative law judge position to another administrative law judge position within the same agency in accordance with 5 U.S.C. 3341.

(b) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(c) An agency may assign an administrative law judge to perform non-administrative law judge duties only when:

(1) The other duties are consistent with administrative law judge duties and responsibilities;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had a total of more than 120 days of such assignments or details within the preceding 12 months.

(d) OPM may authorize a waiver of paragraphs (c)(2) and (c)(3) of this section if an agency shows that it is in the public interest to do so. In determining whether a waiver is justified, OPM may consider, but is not restricted to considering, such factors as unusual case load or special expertise of the detailee.

§ 930.208 Administrative Law Judge Loan Program—detail to other agencies.

(a) In accordance with 5 U.S.C. 3344, OPM administers an Administrative Law Judge Loan Program that coordinates the loan/detail of an administrative law judge from one agency to another. An agency may request from OPM the services of an administrative law judge if the agency is occasionally or temporarily insufficiently staffed with administrative law judges, or an agency may loan the services of its administrative law judges to other agencies if there is insufficient work to fully occupy the administrative law judges' work schedule.

(b) An agency's request to OPM for the services of an administrative law judge must:

(1) Identify and briefly describe the nature of the cases(s) to be heard;

(2) Specify the legal authority for which the use of an administrative law judge is required; and

(3) Demonstrate, as appropriate, that the agency has no administrative law judge available to hear the case(s).

(c) The services of an administrative law judge under this program are made from the starting date of the detail until the end of the current fiscal year, but may be extended into the next fiscal year with OPM's approval. Decisions for an extension are made by OPM on a case-by-case basis.

(d) The agency requesting the services of an administrative law judge under this program is responsible for reimbursing the agency that employs the administrative law judge for the cost of the service.

§ 930.209 Senior Administrative Law Judge Program.

(a) OPM administers a Senior Administrative Law Judge Program in accordance with 5 U.S.C. 3323(b)(2). The Senior Administrative Law Judge Program is subject to the requirements and limitations in this section.

(b) A senior administrative law judge must meet the:

(1) Annuitant requirements under 5 U.S.C. 3323;

(2) Professional license requirement in § 930.204(b); and

(3) Suitability requirements in 5 CFR parts 5 and 731.

(c) Under the Senior Administrative Law Judge Program, OPM authorizes

agencies that have temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557 to temporarily reemploy administrative law judge annuitants. If OPM is unable to identify an administrative law judge under § 930.208 who meets the agency's qualification requirements, OPM will approve the agency's request.

(d) An agency wishing to temporarily reemploy an administrative law judge must submit a written request to OPM. The request must:

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate the agency's temporary or irregular workload requirements for conducting proceedings;

(3) Specify the tour of duty, location, period of time, or particular cases(s) for the requested reemployment; and

(4) Describe any special qualifications the retired administrative law judge possesses that are required of the position, such as experience in a particular field, agency, or substantive area of law.

(e) OPM establishes the terms of the appointment for a senior administrative law judge. The senior administrative law judge may be reemployed either for a specified period not to exceed 1 year or for such time as may be necessary for the senior administrative law judge to conduct and complete the hearing and issue decisions for one or more specified cases. Upon agency request, OPM may reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements.

(f) A senior administrative law judge serves subject to the same limitations as any other administrative law judge employed under this subpart and 5 U.S.C. 3105.

(g) A senior law judge is paid the rate of basic pay for the pay level at which the position has been classified. If the position is classified at pay level AL–3, the senior administrative law judge is paid the lowest rate of basic pay in AL–3 that equals or exceeds the highest previous rate of basic pay attained by the individual as an administrative law judge immediately before retirement, up to the maximum rate F.

§ 930.210 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction in force regulations in part 351 of this chapter apply to administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency lists its administrative law judges by group and subgroups according to tenure of employment, veterans' preference, and service date as outlined in part 351 of this chapter. Because administrative law judges are not given performance ratings (see § 930.206), the provisions in part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement assistance.* (1) An administrative law judge who is reached in an agency's reduction in force and receives a notification of separation is eligible for placement assistance under the agency's reemployment priority list established and maintained in accordance with subpart B of part 330 of this chapter.

(2) An administrative law judge who is reached by an agency in a reduction in force and who is notified of being separated, furloughed for more than 30 days, or demoted, is entitled to have his or her name placed on OPM's administrative law judge priority referral list for the level in which last served and for all lower levels.

(i) To have his or her name placed on the OPM priority referral list, a displaced administrative law judge must provide OPM with a request for priority referral placement, a resume or equivalent, and a copy of the reduction in force notice at any time after the receipt of the specific reduction in force notice, but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion.

(ii) Eligibility on the OPM priority referral list expires 2 years after the effective date of the reduction in force action.

(iii) Referral and selection of administrative law judges are made without regard to selective certification or special qualification procedures.

(iv) Termination of eligibility on the OPM priority referral list takes place when an administrative law judge submits a written request to terminate eligibility, accepts a permanent full-time administrative law judge position, or declines one full-time employment offer as an administrative law judge at or above the level held when reached for reduction in force at geographic locations previously indicated as acceptable.

(3) With OPM's prior approval, when there is no administrative law judge available on the agency's reemployment priority list, an agency may fill a vacant administrative law judge position through any of the following methods:

(i) OPM's administrative law judge priority referral list;

(ii) Reassignment from within the agency; or

(iii) Competitive examining, promotion, transfer, or reinstatement procedures; provided that the proposed candidate possesses experience and qualifications superior to an available displaced administrative law judge(s) on OPM's priority referral list.

§ 930.211 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as prescribed in 5 U.S.C. 7521 and 5 CFR part 1201. Procedures for adverse actions by agencies under part 752 of this chapter do not apply to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances in which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, is detrimental to the interests of the Federal Government, the agency may:

(1) Assign the administrative law judge to duties consistent with his or her normal duties in which these conditions would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on annual leave, sick leave, leave without pay, or absence without leave, as appropriate, if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If the alternatives in paragraphs (b)(1) through (b)(3) of this section are not available, the agency may consider placing the administrative law judge in a paid non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in paragraphs (a) and (b) of this section do not apply:

(1) In making dismissals or taking other actions under 5 CFR parts 5 and 731;

(2) In making dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532;

(3) To reduction in force actions taken by agencies under 5 U.S.C. 3502; or

(4) In any action initiated by the Office of Special Counsel under 5 U.S.C. 1215.

[FR Doc. 05–24286 Filed 12–16–05; 9:42 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–18]

Peter G. Crane; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Peter G. Crane (petitioner). The petition has been docketed by the NRC and has been assigned Docket No. PRM–35–18. The petitioner is requesting that the NRC amend the regulation that governs medical use of byproduct material concerning release of individuals who have been treated with radio pharmaceuticals. The petitioner believes that this regulation is defective on legal and policy grounds. The petitioner requests that the patient release rule be partially revoked to not allow patients to be released from radioactive isolation with more than the equivalent of 30 millicuries of radioactive iodine I–131 in their bodies.

DATES: Submit comments by March 6, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (PRM–35–18) in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address comments about our rulemaking Web site to Carol Gallagher, (301) 415–5905; (e-mail *cag@nrc.gov*). Comments can also be submitted via the Federal eRulemaking Portal *http:www.regulations.gov.*

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http:// ruleforum.llnl.gov.*

Publically available documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/ reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *MTL@NRC.Gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a petition for rulemaking dated September 2, 2005, submitted by Peter G. Crane (petitioner) entitled ''Re: Petition for Partial Revocation of the Patient Release Criteria Rule.'' The petitioner is an attorney who was formerly employed in the NRC's Office of the General Counsel from 1975 until his retirement from the NRC in 1999. The petitioner requests that the NRC amend 10 CFR part 35, ''Medical Use of Byproduct Material.'' Specifically, the petitioner requests that the 1997 amendment to 10 CFR 35.75, ''Release of Individuals Containing Radiopharmaceuticals or Permanent Implants'' (62 FR 4120; January 29, 1997 (Patient Release Criteria Rule), be partially revoked.

The petitioner believes the Patient Release Criteria Rule is defective on both legal and policy grounds. The petitioner recommends that 10 CFR 35.75 be amended to prohibit the release of patients from radioactive isolation with more than the equivalent of 30 millicuries of radioactive iodine-131 (I–131) in their systems. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–35–18. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The NRC amended its patient release criteria in 10 CFR Part 35 in 1997 to allow the release of patients from licensee control who had been administered unsealed by product material if the total dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 mSv. (0.5rem). Prior to that time, NRC regulations required the hospitalization of patients with the equivalent of 30 millicuries or more of radioactive iodine 131 (I–131) in their systems, a dose which the petitioner believes is consistent with the International Basic Safety Standards on radiation protection.

The petitioner objects to the release of patients with more than the equivalent of 30 millicuries of I–131 in their systems. The petitioner clarifies that his objection to the patient release criteria rule is based on both legal and policy grounds. On legal grounds, the petitioner asserts that the 1997 rulemaking was ''a sham'' in that it was ''legally tainted'' by collusion between the NRC staff and a petitioner. Specifically, the petitioner asserts that a former member of NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI) who submitted a petition for rulemaking in 1991 requesting the patient release criteria rule, submitted the petition at the NRC staff's request with NRC staff assistance, in violation of NRC regulations.

The petitioner also objects to the patient release criteria rule on policy grounds, stating that it creates unwarranted hazards with regard to the radioactive iodine treatment of thyroid patients. The petitioner's concern is that there is no ''hard and fast limit on the amount of I–131'' administered to an outpatient, and that a licensee must only perform a calculation showing that no one will receive a dose that exceeds a prescribed limit. However, the patient release criteria rule means that patients who are sick, stressed, hypothyroid, potentially nauseous, and highly radioactive are being ''sent out the door,'' where they may come into close contact with family members and members of the public, and although they are supposed to receive instructions on minimizing exposure, may have trouble comprehending and remembering the guidance they are given. The petitioner expresses particular concern regarding how children of released patients will be adequately protected from radiological exposure, stating that children are more radiation-sensitive than adults and deserve more protection. The petitioner also expresses concern that there is a likelihood of vomiting and that, unlike hospital staff who wear protective clothing to protect against radiological contamination encountered while cleaning up, family members caring for patients at home will be unlikely to take such precautions.

The petitioner also claims that during the 1997 rulemaking, when the NRC gave notice of the receipt of the petition for rulemaking, it received numerous adverse comments from the ACMUI, Agreement States, and other commenters. However, according to the petitioner, the NRC proceeded to issue the proposed rule and largely ignored comments that ran counter to the NRC staff's preferred approach. In fact, the petitioner asserts that the notice of the final rule misrepresented critical comments on the release of patients with I–131 in their systems.

The petitioner states that the NRC acknowledged in promulgating the 1997 final rule that family members of patients would receive higher doses of radiation, but justified this in part by arguing that members of the clergy who visit hospitals frequently would receive lower doses of radiation as a result of patients having been sent out of the hospital, and by referring to the emotional benefit of releasing these patients. Specifically, the petitioner asserts that the NRC claimed in the final rule (see, 62 FR 4129) that although individuals exposed to the patient could receive higher doses than if the patient had been hospitalized longer, ''these higher doses are balanced by shorter hospital stays and thus lower health care costs. In addition, shorter hospital stays may provide emotional benefits to patients and their families. Allowing earlier reunion of families can improve the patient's state of mind, which in itself may improve the outcome of the treatment and lead to the delivery of more effective health care.''

The petitioner argues, however, that the NRC's reasoning ignored his and other thyroid patients' comments that some ''patients may experience greater 'emotional benefit' from knowing that by receiving their treatment as in-patients, they are protecting their families from unnecessary radiation exposure.'' Moreover, the petitioner is skeptical of the NRC's rationale that releasing patients with treatment doses of radioactivity in their bodies will reduce exposure to clergy who regularly visit hospitals, or hospital orderlies.

Finally, the petitioner takes issue with other aspects that he notes constituted part of the NRC staff's rationale for the patient release criteria rule. Specifically, he contests the NRC's assertion that I–131 treatment for thyroid cancer occurs ''probably no more than once in a lifetime,'' the NRC's implication that no harm is done by exposing family members to the exposure from just one treatment, and the implication that it is not ''reasonably achievable'' to keep radiation exposure to family members low by treating patients in radioactive isolation.

The Petitioner's Conclusion

The petitioner concludes that the patient release criteria rule is irredeemably flawed, as was the rulemaking that produced that rule. The petitioner therefore requests that the NRC institute rulemaking to rescind that portion of 10 CFR 35.75 that allows patients to be released from radiological isolation with I–131 in their systems in amounts greater than 30 millicuries. The petitioner requests that this rulemaking be undertaken expeditiously.

Dated at Rockville, Maryland, this 15th day of December, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E5–7641 Filed 12–20–05; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Third-Party Servicing of Indirect Vehicle Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: The NCUA is issuing a proposed rule to regulate purchases by federally insured credit unions of indirect vehicle loans serviced by third-parties. NCUA proposes to limit the aggregate amount of these loans serviced by any single third-party to a percentage of the credit union's net worth. The effect of the proposed rule would be to ensure that federally insured credit unions do not undertake undue risk with these purchases.

DATES: Comments must be received on or before February 21, 2006.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Advance Notice of Proposed Rulemaking (Specialized Lending Activities)'' 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, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540, Matt Biliouris, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360, or Steve Sherrod, Division of Capital Markets Director, Office of Capital Markets and Planning, at the above address or telephone (703) 518–6620.

SUPPLEMENTARY INFORMATION:

A. Background

Indirect lending involves credit union financing for the purchase of goods at the point-of-sale. The merchant, typically an automobile dealer, brings a potential member-borrower to the credit

union and also assists with underwriting. When done properly, indirect lending has certain advantages for credit unions, including possible growth in membership and lending volume. Still, because the dealer's primary interest is in facilitating a vehicle sale and not in careful underwriting, indirect lending poses particular risks to credit unions.

Some vendors offer indirect lending programs in which the vendor manages the credit union's relationship with the automobile dealer and, through loan servicing conducted by the vendor or a related business entity, the credit union's relationship with the member. These vehicle lending programs, referred to in this preamble as ''indirect, outsourced programs,'' carry all the risks of indirect lending programs as well as additional risks.

NCUA is concerned some credit unions may increase risk exposures in indirect, outsourced programs without first conducting adequate due diligence, implementing appropriate controls, and gaining experience with servicer performance. Some credit unions have realized weaker than expected earnings because of participation in these programs. Therefore, the Board has determined that regulatory concentration limits on indirect, outsourced programs are appropriate.

The types of risk associated with these indirect, outsourced loan programs include: (1) Credit risk, (2) liquidity risk, (3) transaction risk, (4) compliance risk, and (5) reputation risk. A credit union should exercise caution and gain experience before significantly growing a portfolio of loans underwritten and serviced by a third party. A credit union's due diligence should include an initial review of each of these risks, as well as ongoing reviews.

Credit risk. Both underwriting and post-underwriting factors generate potential credit risk. Credit loss experience may be worse if the indirect, outsourced loan program uses more permissive underwriting criteria than the credit union uses for its direct lending. Post-underwriting, credit loss experience may be worse if the quality of a third-party's servicing is not as good as that of the credit union's own servicing. Credit unions should adopt appropriate metrics (e.g., performance standards) in their servicing agreements to ensure timely servicing and collection performance by the third-party servicer.

Liquidity risk. A credit union's liquidity position may suffer if the credit union experiences a sudden increase in indirect, outsourced loans. Liquidity may also be impaired if an indirect, outsourced arrangement restricts the ability to transfer servicing by imposing a material cost for the transfer, including the loss of a material economic benefit, such as cancellation of an insurance policy. Additionally, loans contractually bound to a third-party servicer may have a more limited market than the market for loans sold with servicing released.

Transaction risk. Transaction risk (also referred to as operating or fraud risk) may arise in indirect, outsourced programs because the credit union is relying to a significant extent on the third-party servicer's internal controls, information systems, employee integrity, and operating processes. A credit union's due diligence should include continuing review of each of these areas, as well as the financial condition of the servicer.

Compliance risk. Compliance risk in lending programs may arise from violations of, or nonconformance with, consumer protection laws, such as the Truth-in-Lending Act and Fair Debt Collection Practices Act. To the extent a credit union has reduced control and supervision of a third-party servicer's collection activities, a credit union's compliance risk in an indirect, outsourced program may be greater than that of an in-house servicing program.

Reputation risk. Reputation risk may result from a third-party servicer's compliance failures or transaction losses. Poor quality servicing, improper collection processes, and questionable or excessive fees assessed against the borrower by the servicer may also alienate members from the credit union and affect the ability of the credit union to maintain existing relationships or establish new ones.

NCUA has discussed sound business practices related to this form of lending in a series of letters to credit unions going back several years. In November 2001, for example, NCUA published NCUA Letter to Credit Unions (LTCU) No. 01–CU–20, *Due Diligence over Third Party Service Providers,* providing minimum due diligence practices over third-party service providers In September 2004, the Board expressed its concern with specialized lending activities and the associated risks in NCUA LTCU No. 04–CU–13, *Specialized Lending Activities.* That letter discussed three, higher risk lending activities: subprime lending, indirect lending, and outsourced lending relationships, and included three examiner questionnaires so credit unions could see how examiners evaluate the risks in these activities. These two letters are available on NCUA's Web site at *http://www.ncua.gov/letters/2001/01-CU-20.pdf* and *http://www.ncua.gov/letters/2004/04-CU-13.pdf,* respectively. Members of the public without access to the internet may request copies of letters to credit unions and other NCUA publications by calling NCUA's publication line at (703) 518–6340.

Since the summer of 2004, NCUA has also observed a significant increase in specialized lending activities, including the use of third parties to service indirect vehicle loans. NCUA began collecting indirect loan data from all credit unions beginning with the June 30, 2004, Call Report. The portfolios of credit unions reporting indirect loans increased to $58 billion (at June 30, 2005) from $45 billion (at June 30, 2004), a 29 percent increase in one year.[1] Based on supervision and insurance information, the growth in indirect, outsourced vehicle loan programs was even more rapid, and NCUA also detected increasing concentration levels at particular credit unions in these loans. Currently, NCUA estimates there are approximately twenty or more credit unions with more than 100 percent of their net worth invested in indirect, outsourced vehicle loans.

In June 2005, the NCUA Board issued Risk Alert 05–RISK–01 (the Risk Alert), Subject: Specialized Lending Activities—Third-Party Subprime Indirect Lending and Participations, available on NCUA's website at *http://www.ncua.gov/letters/RiskAlert/2005/05-RISK-01.pdf.* The Risk Alert discussed concerns related to subprime, indirect automobile loans underwritten or serviced by third parties. The Risk Alert further discussed due diligence practices and on-going control mechanisms appropriate for such programs.

Despite these NCUA supervision and insurance initiatives, the Board remains concerned that some credit unions engaging in these programs still do not undertake the requisite due diligence to understand and protect themselves from the risks inherent in these programs. In fact, some credit unions with significant concentrations in indirect, outsourced loans have indicated to NCUA their desire to fund new loans even though they have not yet completed the due diligence described in NCUA issuances.

[1] Based on anecdotal information, NCUA believes that the vast majority of these indirect loans are vehicle loans.

B. Proposed Rule

1. General

NCUA proposes a two-step, regulatory concentration limit for indirect, outsourced programs with a waiver provision for higher limits in appropriate cases. The Board believes the proposed rule is necessary to protect the National Credit Union Share Insurance Fund (NCUSIF) from the risks associated with this activity.

For the first 30 months of a new relationship, § 701.21(h)(1) limits a credit union's interest in indirect vehicle loans serviced by any single third party to 50 percent of the credit union's net worth. This permits a credit union to enter and gain experience with a new indirect, outsourced vendor program. After 30 months of experience with that third party's program, the proposed rule permits a credit union to increase its interests in that program to 100 percent of the credit union's net worth.

The Board believes that limits of 50 percent and 100 percent are appropriate, assuming credit unions maintain an adequate due diligence program. As explained below, however, a credit union that can demonstrate appropriate initial and ongoing due diligence may apply for a waiver to obtain higher limits.

In determining these concentration limits, the Board noted that indirect, outsourced programs typically require a credit union to give a third party servicer significant control over the loan assets. For example, the third-party generally makes all contacts with the member-borrowers; determines when the loans are in default; determines the pace of and resource allocation to loan collection, vehicle repossession, and vehicle remarketing; and also controls all the cash flows.

The indirect lending aspect of these programs creates additional loss of control for the credit union, as member-borrower information does not come directly to the credit union but instead is filtered through both the dealer and the vendor. In some of these programs, the third-party also controls the quality of the loan receivables because it dictates the underwriting criteria and processes the loan applications. In addition, some third-party vendors control the insurance coverage associated with these loans. The third-party may even assume some of the credit risk through reinsurance arrangements or stop-loss agreements. All these factors increase a credit union's reliance on the third-party to produce a positive return for the credit union. Some vendors have advertised these programs in the past by promoting them as ''turn-key'' and suggesting that credit unions need do very little in the way of due diligence.

The control exercised by the third-party in indirect, outsourced programs is similar to the control exercised by an issuer of an asset backed security (ABS) collateralized by loan receivables. The originator of a pool of loan receivables (*e.g.*, auto loans) sells the receivables into a bankruptcy-remote grantor trust or owner trust (*i.e.*, the ABS issuer). The ABS issuer contracts with a servicer, usually affiliated with the seller (*e.g.*, seller/servicer), to service the receivables, and determines what sort of credit enhancements or insurance will be necessary to support issuance of ABS. The ABS issuer also controls the cash flows. The Board believes the risks to a credit union from indirect, outsourced programs are similar to those posed by the purchase of an ABS investment. Accordingly, in determining appropriate concentration limits for indirect, outsourced vendor loan programs the Board examined established concentration limits for investment in ABS.

Natural person federal credit unions are not authorized to invest in ABS, even highly rated ABS.[2] 12 U.S.C. 1757. National banks may invest in ABS, but the Office of the Comptroller of the Currency (OCC) limits a bank's aggregate investments in ABS issued by any one issuer to 25 percent of capital and surplus.[3] 12 CFR 1.3(f). For purposes of this limit, the OCC requires aggregation of ABS issued by obligors that are related directly or indirectly through common control. 12 CFR 1.4(d)(i).

The OCC established this 25 percent limit in 1996. Originally, the OCC proposed an even more restrictive 15 percent limit, but ultimately chose a 25 percent limit with the following explanation:

> The OCC believes the 25 percent of capital limit is a prudential limit that provides sufficient protection against undue risk concentrations. This limit parallels the 25 percent credit concentration benchmark in the Comptroller's Handbook for National Bank Examiners. The Handbook identifies credit concentrations in excess of 25 percent of a bank's capital as raising potential safety and soundness concerns. For this purpose, the Handbook guidance aggregates direct and indirect obligations of an obligor or issuer and also specifically contemplates application of the 25 percent benchmark to concentrations that may result from an acquisition of a volume of loans from a single source, regardless of the diversity of the individual borrowers.

61 FR 63972, 63977 (Dec. 2, 1996)(emphasis in original).

In comparing indirect, outsourced programs and ABS, the Board notes there are certain protections for the ABS investor that do not exist in the indirect, outsourced loan programs. The creation and sale of ABS securities are regulated by the Securities and Exchange Commission, while the various vendors that currently market indirect, outsourced loan programs to credit unions have no specific regulatory oversight. Further, the only ABS that corporate credit unions and national banks may invest in are reviewed and rated by nationally recognized statistical rating organizations (NRSROs) while the vendors currently offering indirect, outsourced programs to credit unions are often privately held companies with no NRSRO rating.

The proposed rule, with limits of 50 and 100 percent, is less restrictive than the 25 percent that the OCC permits for national bank investment in ABS. While investing is a secondary activity for credit unions, lending is a primary purpose. Credit unions should have maximum flexibility to make loans to members within the bounds of safety and soundness.

The Board is generally not inclined to allow a credit union to place over 100 percent of its net worth at risk. A credit union is not likely to experience a 100 percent devaluation of any particular indirect, outsourced vehicle loan portfolio but substantial devaluations are possible, particularly in portfolios of poor credit quality or in the event of fraud. In addition, inadequate oversight in one credit union program, such as a lending program, may indicate poor due diligence and potential losses in other programs at that credit union. Accordingly, the Board has determined that a credit union should be held to a maximum concentration of 100 percent of net worth unless it can demonstrate a high level of due diligence and controls.

In determining when a credit union may move from the 50 percent limit to the 100 percent limit, the Board examined the average life of the loans that make up an indirect, outsourced program portfolio. Average vehicle loan life depends on various factors. For

[2] NCUA's corporate credit union rule, however, does permit corporate credit unions to invest in ABS. 12 CFR 704.5(c)(5). The corporate rule generally limits the aggregate of all investments, including ABS, issued by any single obligor to 50 percent of the corporate credit union's capital or $5 million, whichever is greater. 12 CFR 704.6(c).

[3] The capital and surplus of a national bank is roughly equivalent to the net worth of a natural person credit union. Compare 12 CFR 1.2(a) with 12 CFR 702.2(f) and the definition of the ''net worth'' in proposed § 701.21(h)(3)(iv).

example, it can be as little as 20 to 24 months for subprime vehicle loans, and as much as 36 months or more for prime, new vehicle loans. After about 30 months of experience, then, a credit union that is properly monitoring loan performance on vehicle loans should have a sufficient understanding of the historical performance of that portfolio. At the 30-month point, the Board believes that an increase in concentration limits from 50 percent of net worth to 100 percent is appropriate.

Regardless of whether a credit union is at or below its concentration limit, all credit unions should conduct due diligence, both before entering into indirect, outsourced lending programs and on an on-going basis. Even at lesser concentration levels, these programs entail significant risk that can negatively affect net worth. All credit unions involved in these programs must be familiar with relevant regulatory limitations and guidance, including those documents referenced earlier in this preamble.

The proposed rule is limited in scope, in that it is limited to loans made to finance vehicle purchases and the concentration limits do not apply to servicers that are federally-insured depository institutions or wholly-owned subsidiaries of federally-insured depository institutions. The risks to credit unions associated with these servicers are mitigated because federal regulators have access to and oversight of these entities. Of course, credit unions must still conduct appropriate due diligence even when using these servicers.

The proposed concentration limits are not, however, limited to loans of any particular credit quality, such as prime, nonprime, or subprime loans. Still, loan portfolios of lesser credit quality require greater due diligence, as described in the Risk Alert.[4] Also, the due diligence required for a waiver of the concentration limits may increase for portfolios of lesser credit quality.

2. Waiver Provision

Section 701.21(h)(2) of the proposed rule establishes a waiver process to permit credit unions with high levels of due diligence and tight controls to have greater concentration limits. A credit union requesting a waiver of the concentration limits may apply to the regional director who will consider various criteria in determining whether to grant a waiver, including:

- The credit union's understanding of the third party servicer's business model, organization, financial health, and the program risks;
- The credit union's due diligence in monitoring and protecting against program risks;
- The credit union's ability to control the servicer's actions and replace an inadequate servicer as provided by contract;
- Other relevant factors related to safety and soundness considerations.

If a regional director determines that a waiver is appropriate, the regional director will include appropriate limitations on the waiver such as a substitute concentration limit and a waiver expiration date.

3. Waiver Criteria

Credit unions that desire greater concentration limits must have high levels of due diligence and tight controls. A discussion of the criteria a regional director will use when reviewing an application for waiver follows.

a. The Credit Union's Understanding of the Third Party Servicer's Organization, Business Model, Financial Health, and Program Risks

Often, an indirect, outsourced vendor is a privately held company that processes significant cash flows for the credit union and also controls important credit union records, such as the vehicle title documents and current member contact information. A credit union requesting a concentration limit waiver must demonstrate a comprehensive understanding of the third party's organization, business model, financial health, and the risks associated with the vendor's program. The credit union must also demonstrate that the servicer is adequately capitalized to meet its financial obligations.

A credit union requesting a waiver should provide detailed information about the following in its waiver request to the regional director:

- The vendor's organization, including identification of subsidiaries and affiliates involved in the program and the purpose of each;
- The various sources of income to the vendor and the credit union in the program and any potential vendor conflicts with the interests of the credit union;
- The experience, character, and fitness of the vendor's owners and key employees;
- The vendor's ability to fulfill commitments, as evidenced by aggregate financial commitments, capital strength, liquidity, reputation, and operating results;[5]
- How loan-related cash flows, including borrower payments, borrower payoffs, and insurance payments, are tracked and identified in the program;
- The vendor's internal controls to protect against fraud and abuse, as documented by, for example, a current SAS 70 type II report prepared by an independent and well-qualified accounting firm;
- Insurance offered by the vendor, including interrelated insurance products, premiums, conditions for coverage beyond the control of the credit union (e.g., a prohibition on extension of the insured loans past maturity), and limitations such as aggregate loss limits;
- The underwriting criteria provided by the vendor, including an analysis of the expected yield based on historical loan data, and a sensitivity analysis considering the potential effects of a deteriorating economic environment, failure of associated insurance, the possibility of fraud at the servicer, a decline in average portfolio credit quality, and, if applicable, movement in the program back toward industry-wide performance statistics;[6]
- Vendor involvement in the underwriting and processing of loan applications, including use of proprietary scoring or screening models not included in the credit union approved underwriting criteria; and
- The program risks, including (1) credit risk, (2) liquidity risk, (3) transaction risk, (4) compliance risk, (5) strategic risk, (6) interest rate risk, and (7) reputation risk.

Some indirect, outsourced programs have complex business models that include vendor management of the dealer relationship and also insurance provided by the vendor. These business models can produce situations where the vendor's financial interests are not aligned with the credit union's interests. The credit union needs to be aware of

[4] The Board would like to clarify that, potentially, there could be vendor programs affected by this rulemaking that are not affected by the Risk Alert, and vice versa. For example, an indirect, outsourced program that only involves vehicle loans of prime credit quality would be affected by the limits in this proposed rule but not by the Risk Alert. On the other hand, any vendor program that requires the credit union adopt vendor-generated subprime underwriting criteria but does not involve any third-party servicing would be subject to portions of the Risk Alert but not subject to the limits imposed by this proposed rule.

[5] NRSRO ratings, multi-year audited and segmented financials, and explanations of related party transactions and changes to the net worth of the vendor, if any, are also relevant.

[6] If the program loans have historically outperformed industry averages, perhaps because of lower prepayment rates or lower default proportions, the credit union should calculate expected yield should the prepayment rates or default proportions move upwards toward the industry averages.

these situations and, if appropriate, take protective action.

For example, the dealer's interest in an indirect lending situation is to obtain financing so that the dealer can sell a vehicle. The credit union's interest is to ensure that loan applications are properly underwritten, and that only members who are qualified for loans receive loans. With an indirect, outsourced program, the third-party vendor controls information on the quality of all of a particular dealer's originations. A vendor could present loans to a credit union from a changing list of dealers, making it difficult for the credit union to identify and screen out such substandard dealers. This creates a potential for the vendor to permit dealers with substandard underwriting performance to remain active in the program.

Unlike typical indirect lending where the dealer receives an origination fee, in some vendor programs the vendor processes the loan application for the credit union and the vendor also receives significant income from dealer fees. The credit union needs to fully understand the relationship between the vendor and the dealers. Credit unions seeking a concentration limit waiver should review agreements between the vendor and associated dealers.

Some vendors provide third-party default insurance to credit unions, and this presents a potential conflict. This insurance pays most of the loan deficiency balance to the credit union if a loan defaults and a vehicle is repossessed and sold at auction. In the event of high loan default rates, the interests of the credit union and insurance company may conflict. The credit union would like the vehicles repossessed and sold and the insurance paid, while the insurance company would rather not pay the claims if they can be legally avoided. Some vendors align their interests with the insurance company, not the credit union, through guaranty or reinsurance agreements. That is, if the vehicle is repossessed and sold, the insurance company passes some or all of its costs for paying the claim through to the vendor. This creates a potential conflict of interest and an incentive for the vendor, as servicer, not to repossess vehicles. For example, a delay in repossession increases the odds that a vehicle will disappear (i.e., go skip) or a borrower will declare and complete a bankruptcy under chapter 13, and in neither situation will the default insurance pay. In addition, a delay in repossession on a default near loan maturity may also cause the insurance coverage to lapse whether or not the vehicle is ultimately repossessed. Accordingly, a credit union needs to understand the relationship between the vendor and the insurance company and the associated risks to the credit union. To understand this relationship fully, a credit union desiring a concentration limit waiver should review all agreements between the vendor, affiliates of the vendor, and the associated insurance companies.

Another potential conflict exists where the vendor controls the dealer relationship and can route a potential loan to multiple funding sources. For example, some vendors track statistics on loan performance by dealership. A credit union should be aware if a vendor then routes loan applications from the preferred dealerships to the preferred funding sources. A credit union desiring a waiver should understand the various funding sources available to the vendor and document how the vendor tracks vendor performance and makes funding decisions.

b. The Credit Union's Due Diligence in Monitoring and Protecting Against Program Risks

Credit unions must design a due diligence program that identifies and assesses all material risks. The nature and extent of the due diligence required for a waiver depends on the nature and extent of the identified risks. Higher concentration levels entail more risk to the net worth of the credit union, and so the requisite due diligence also depends on the substitute concentration limit that the credit union requests.

c. Whether Contracts Between the Credit Union and the Third-Party Servicer Grant the Credit Union Sufficient Control Over the Servicer's Actions and Provide for Replacing an Inadequate Servicer

After a loan is funded, the most important activity affecting loan performance is the quality of the servicing. As NCUA stated in LTCU No. 04–CU–13, and, again, in the Risk Alert, safety and soundness requires a credit union to limit the power of a third-party servicer to alter loan terms. Also, the servicing contract must contain a mechanism, or exit clause, to replace an unsatisfactory servicer.

To qualify for a waiver of these regulatory concentration limits, the servicing agreement should include more than minimal protections for the credit union. Servicer performance standards should be objective and clear, and the waiver request should clearly articulate how the performance standards protect the interests of the credit union. The exit clause, including any cure period, should be exercisable in a reasonable period of time. The more intensive the requisite servicing, such as for nonprime or subprime loans, the shorter that period of time should be. A credit union's right to exit the servicing agreement should be exercisable at a reasonable cost to the credit union. If the credit union must pay a punitive fee to replace a poor servicer, or give up valuable insurance protection or legal rights without adequate compensation, the servicing agreement will not satisfy this waiver criterion.

The regional director may also consider any legal reviews obtained by the credit union on these contracts. The regional director should consider the scope and depth of the review and the qualifications of the reviewer.

d. Other Factors Related to Safety and Soundness

Regional directors may consider other relevant factors when determining whether to grant a waiver of the concentration limits as well as the size of any substitute limit. Other factors include, but are not limited to, the demonstrated strength of the credit union's management and the credit union's previous history in exercising due diligence over similar programs.

4. Grandfathering

Several credit unions that currently participate in indirect, outsourced programs have concentration levels that exceed the proposed concentration limits. For those credit unions that exceed the concentration limits on the effective date of any final rule, the rule will not require any divestiture. The rule will prohibit these credit unions from purchasing any additional loans, or interests in loans, from the affected vendor program until such time as the credit union either reduces its holdings below the appropriate concentration limit or the credit union obtains a waiver to permit a greater concentration limit.

The Board is concerned that some credit unions may consider making large purchases of loans that would be subject to the rule before the effective date of a final rule. NCUA will review any large purchases closely and credit unions should be advised that NCUA may consider appropriate supervisory action, including divestiture, to ensure that the credit union's actions were safe and sound.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic

impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This proposed rule establishes for federally-insured credit unions a concentration limit on indirect vehicle loans serviced by third parties. As of May 31, 2005, NCUA estimates no more than five small credit unions were involved in purchasing vehicle loans, or interests in loans, from an indirect, outsourced vendor program. The proposed rule, therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The waiver provision of section 701.21(h)(2) contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), NCUA has submitted a copy of this proposed rule as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval of a new Collection of Information, Third-Party Servicing of Indirect Vehicle Loans.

The proposed § 701.21(h)(2) requires that credit unions requesting a waiver provide sufficient information to NCUA to determine if a waiver is appropriate. NCUA is not certain how many credit unions may request a waiver. Currently, there are approximately twenty credit unions that have in excess of 100 percent of net worth invested in indirect, outsourced vehicle loan programs. NCUA believes that no more than ten of these credit unions will request a waiver during the first year. Also, during the first year, NCUA estimates that no more than five additional credit unions will approach their concentration limits and also request a waiver. It will take a credit union approximately fifty hours to prepare the waiver request, including preparing a description of current and planned due diligence efforts and making copies of all supporting documentation. Fifteen respondents times fifty hours each is a total annual burden of seven hundred and fifty hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Mark Menchik, Room 10226, New Executive Office Building, Washington, DC 20503.

The NCUA considers comments by the public on this proposed collection of information in—

—Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;

—Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhancing the quality, usefulness, and clarity of the information to be collected; and

—Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulations.

Executive Order 13132

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

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

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR part 701

Credit unions, Loans.

12 CFR part 741

Credit unions, Requirements for insurance.

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

Mary Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 701 and 741 as set forth below:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3619. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. In part 701, add a new paragraph (h) to § 701.21 to read as follows:

§ 701.21 Loans to Members and Lines of Credit to Members.

* * * * *

(h) Third-Party Servicing of Indirect Vehicle Loans.

(1) A federally-insured credit union must not acquire any vehicle loan, or any interest in a vehicle loan, serviced by a third-party servicer if the aggregate amount of vehicle loans and interests in vehicle loans serviced by that third-party servicer and its affiliates would exceed:

(i) 50 percent of the credit union's net worth during the initial thirty months of that third-party servicing relationship; or

(ii) 100 percent of the credit union's net worth after the initial thirty months of that third-party servicing relationship.

(2) Regional directors may grant a waiver of the limits in paragraph (h)(1) of this section to permit greater limits upon written application by a credit union. In determining whether to grant or deny a waiver, a regional director will consider:

(i) The credit union's understanding of the third party servicer's organization, business model, financial health, and the related program risks;

(ii) The credit union's due diligence in monitoring and protecting against program risks;

(iii) Whether contracts between the credit union and the third-party servicer grant the credit union sufficient control over the servicer's actions and provide for replacing an inadequate servicer; and

(iv) Other factors relevant to safety and soundness.

(3) For purposes of paragraph (h) of this section:

(i) The term ''third-party servicer'' means any entity, other than a federally-insured depository institution or a wholly-owned subsidiary of a federally-insured depository institution, that receives any scheduled periodic payments from a borrower pursuant to the terms of a loan and distributes the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(ii) The term ''its affiliates,'' as it relates to the third-party servicer, means any entities that:

(A) Control, are controlled by, or are under common control with, that third-party servicer; or

(B) Are under contract with that third-party servicer or other entity described in paragraph (h)(3)(ii)(A) of this section.

(iii) The term ''vehicle loan'' means any installment vehicle sales contract or its equivalent that the credit union must report as an asset under generally accepted accounting principles. The term does not include loans made directly by the credit union to a member.

(iv) The term ''net worth'' means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the National Credit Union Share Insurance Fund.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

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

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

4. Add a new paragraph (c) to § 741.203 to read as follows:

§ 741.203 Minimum loan policy requirements.

* * * * *

(c) Adhere to the requirements stated in § 701.21(h) of this chapter concerning third-party servicing of indirect vehicle loans. Before a state-chartered credit union applies to a regional director for a waiver under § 701.21(h)(2) it must first notify its state supervisory authority. The regional director will not grant a waiver unless the appropriate state official concurs in the waiver.

[FR Doc. E5–7584 Filed 12–20–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–144615–02]

RIN 1545–BB26

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects notice of proposed rulemaking (REG–144615–02) that was published in the **Federal Register** on Monday, August 29, 2005 (70 FR 51116). The document contains proposed regulations that provide guidance regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry or Christopher J. Bello, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–144615–02) that is the subject of this correction is under section 482 of the Internal Revenue Code.

Need for Correction

As published, REG–144615–02 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–144615–02), that was the subject of FR Doc. 05–16626, is corrected as follows:

1. On page 51116, column 2, in the preamble, under the paragraph heading ''Paperwork Reduction Act'', eighth paragraph, third line, the language ''of information (see below);'' is corrected to read ''of information (see above);''.

2. On page 51116, column 3, in the preamble, under the paragraph heading ''Background'', tenth line from the bottom of the last paragraph, the language ''for this type of external contributions is'' is corrected to read ''for this type of external contribution is''.

3. On page 51117, column 1, in the preamble, under the paragraph heading ''*A. Overview*'', fourth line from the bottom of the first paragraph, the language ''the commensurate income standard'' is corrected to read ''the commensurate with income standard''.

4. On page 51117, column 2, in the preamble, under the paragraph heading ''*A. Overview*'', the second line from the bottom of the column, the language ''*appropriate return would be provided to such*'' is corrected to read ''*appropriate return would be required to such*''.

5. On page 51118, column 2, in the preamble, under the paragraph heading ''1. General Rule—Proposed § 1.482–7(a)'', the last line of the second paragraph, the language ''exploiting cost shared intangibles.'' is corrected to read ''exploiting the cost shared intangibles.''.

6. On page 51118, column 3, in the preamble, under the paragraph heading ''1. General Rule Proposed § 1.482–7(a)'', the second line from the bottom of the first full paragraph of the column, the language ''the rules of §§ 1.482–1 and 1.482–5'' is corrected to read ''the rules of §§ 1.482–1 and 1.482–4''.

7. On page 51118, column 3, in the preamble, under the paragraph heading ''a. CSA Transactions in General'', the eighth line of the first paragraph, the language ''circumstances. ''(Emphasis added.)'' is corrected to read ''circumstances * * * ''(Emphasis added.)''.

8. On page 51119, column 1, in the preamble, under the paragraph heading ''a. CSA Transactions in General'', the fifteenth line of the first paragraph of the column, the language ''expected in a cost sharing agreement'' is corrected to read ''expected in a cost sharing arrangement.''.

9. On page 51119, column 1, in the preamble, under the paragraph heading ''a. CSA Transactions in General'', the second line from bottom of the second full paragraph, the language ''be provided to such party to reflect its'' is corrected to read ''be required to such party to reflect its''.

10. On page 51124, column 3, in the preamble, under the paragraph heading ''h. Valuation Consistent With the Investor Model—Proposed § 1.482–7(g)(2)(viii)'', the third line from the bottom of the column, the language

''would be expected to yield a rate return'' is corrected to read ''would be expected to yield a rate of return''.

11. On page 51125, column 1, in the preamble, under the paragraph heading ''h. Valuation Consistent With the Investor Model—Proposed § 1.482–7(g)(2)(viii)'', the sixth and seventh lines from the bottom of the column, the language ''ins effectively diminish the value of the buy-in payments, such that the return to'' is corrected to read ''ins effectively diminishes the value of the buy-in payments, such that''.

12. On page 51125, column 2, in the preamble, under the paragraph heading ''i. Coordination of Best Method Rule and Form of Payment—Proposed § 1.482–7(g)(2)(ix)'', the last line of the paragraph, the language '' method as to its method payment form.'' is corrected to read ''method.''.

13. On page 51127, column 1, in the preamble, under the paragraph heading ''6. Market Capitalization Method—Proposed § 1.482–7(g)(6)'', the seventeenth and eighteenth lines of the first full paragraph, the language ''separately accounted for under proposed § 1.482–7(d) and by the value'' is corrected to read ''(separately accounted for under proposed § 1.482–7(d)) and by the value''.

14. On page 51128, column 3, in the preamble, under the paragraph heading ''2. Allocations When CSTs Are Consistently and Materially Disproportionate to RAB Shares—Proposed § 1.482–7(i)(5)'', the second full paragraph of the column, the first line, the language ''Current § 1.482–7(g)(5) provides that'' is corrected to read ''Current § 1.482–7(g)(5) to the extent it provides that''.

15. On page 51129, column 2, in the preamble, under the paragraph heading ''3. Periodic Adjustments—Proposed § 1.482–7(i)(6)'', the fourth line from the bottom of the first full paragraph of the column, the language ''*would be provided to such party to*'' is corrected to read ''*would be required to such party to*''.

16. On page 51130, column 1, in the preamble, under the paragraph heading ''3. Periodic Adjustments—Proposed § 1.482–7(i)(6)'', the seventh line from the top of the column, the language ''profits, cost contributions, or PCT'' is corrected to read ''profits, cost contributions, and PCT''.

17. On page 51130, column 3, in the preamble, under the paragraph heading ''6. Territorial Operating Profit or Loss-Proposed § 1.482–7(j)(1)(vi)'', the sixth line of the paragraph, the language ''Activity, determined before an expense'' is corrected to read ''Activity, determined before any expense''.

§ 1.482–7 [Corrected]

18. On page 51133, column 2, § 1.482–7(b)(5)(iii), the language ''Example.'' is corrected to read ''Examples.''.

19. On page 51133, column 2, § 1.482–7(e)(2)(ii), the language ''Indirect bases for measuring benefits.'' is corrected to read ''Indirect bases for measuring anticipated benefits.''.

20. On page 51133, column 3, § 1.482–7(g)(2)(x), the language ''Coordination of the valuations or prior and subsequent PCTs.'' is corrected to read ''Coordination of the valuations of prior and subsequent PCTs.''.

21. On page 51133, column 3, § 1.482–0 is corrected by adding two entries to the outline for § 1.482–7(g)(2)(x)(A) and (g)(2)(x)(B) to read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

* * * * *

(g) * * *

(2) * * *

(x) * * *

(A) In general.

(B) Coordination with regard to PFAs.

* * * * *

22. On page 51133, column 3, § 1.482–7(g)(7), the language ''Residual profit split.'' is corrected to read ''Residual profit split method.''.

23. On page 51134, column 1, § 1.482–7(i)(6)(vi)(A), second line, the language ''external contributions as in the PCT.'' is corrected to read ''external contribution as in the PCT.''.

24. On page 51134, column 1, § 1.482–7(i)(6)(viii), the language ''Documentation.'' is removed.

§ 1.482–5 [Corrected]

25. On page 51136, column 3, § 1.482–7(b)(3)(viii), *Example 4.*, second line from the bottom of the paragraph, the language ''as Company's P acquisition of Company X,'' is corrected to read ''as Company P's acquisition of Company X,''.

26. On page 51140, column 3, § 1.482–7(e)(2)(ii)(C), sixth line, the language ''amortization) on account of IDCS, may'' is corrected to read ''amortization) on account of IDCs, may''.

27. On page 51141, column 1, § 1.482–7(e)(2)(ii)(E), *Example 2.,* lines fourteen through seventeen, the language ''relative to USS' units by a factor of 2. This reflects the fact that FP pays twice as much as USS as a percentage of its other production costs for electricity and,'' is corrected to read ''relative to USS's units by a factor of 2. This reflects the fact that FP pays twice as much as USS for electricity and,''.

28. On page 51142, column 1, § 1.482–7(e)(2)(iii)(B), paragraph (ii) of *Example 1.,* fourth line, the language ''order to reflect USS' one-year lag in'' is corrected to read ''order to reflect USS's one-year lag in''.

29. On page 51142, column 2, § 1.482–7(g), ninth line, the language ''provisions of § 1.482–1, including best'' is corrected to read ''provisions of § 1.482–1, including the best''.

30. On page 51143, column 1, § 1.482–7(g)(2)(iv)(B), paragraph (i) of *Example 1.,* first line of the column, the language ''product and are therefore the RT Rights in'' is corrected to read ''product and therefore the RT Rights in''.

31. On page 51143, column 1, § 1.482–7(g)(2)(iv)(B), paragraph (iii) of *Example 1.,* third line, the language ''product outside of the Country X for a royalty'' is corrected to read ''product outside of Country X for a royalty''.

32. On page 51144, column 1, § 1.482–7(g)(2)(vi)(B), *Example 1.,* twenty second line, the language ''USPharm in the form of the RT Rights in its'' is corrected to read ''USPharm consisting of the RT Rights in its''.

33. On page 51144, column 2, § 1.482–7(g)(2)(vi)(B), *Example 2.,* fourth line from the top of the column, the language ''USPharm's cost of debt is 6%. Equity'' is corrected to read ''USPharm's after-tax cost of debt is 6%. Equity''.

34. On page 51144, column 2, § 1.482–7(g)(2)(vii)(B), paragraph (ii) of *Example 1.,* sixth line, the language ''technology and workforce of Company X'' is corrected to read ''technology and workforce of Company X are''.

35. On page 51144, column 3, § 1.482–7(g)(2)(vii)(B), paragraph (ii) of *Example 1.,* second line from the bottom of the paragraph, the language ''PCTs. See paragraph (g)(5)(iv(A) of this'' is corrected to read ''PCTs. See paragraph (g)(5)(iv)(A) of this''.

36. On page 51146, column 3, § 1.482–7(g)(4)(ii)(B), paragraph (i) of *Example.,* twentieth line, the language ''did not participate in the CSA, its next best'' is corrected to read ''did not participate in the CSA, its best''.

37. On page 51146, column 3, § 1.482–7(g)(4)(ii)(B), paragraph (ii) of *Example.,* fourth line, the language ''present value to USP of the next best realistic'' is corrected to read ''present value to USP of the best realistic''.

38. On page 51148, column 1, § 1.482–7(g)(4)(iv)(D), paragraph (ii) of

Example., second line, the language ''Payment under the income method is an'' is corrected to read ''Payment based on territorial sales under the income method is an''.

39. On page 51148, column 1, § 1.482–7(g)(4)(iv)(D), paragraph (ii) of *Example.,* fifth line, the language ''case the alternative rate is 80% (($80 million'' is corrected to read ''case the alternative rate is 80% ($80 million''.

40. On page 51148, column 1, § 1.482–7(g)(4)(iv)(D), paragraph (ii) of *Example.,* fourteenth line, the language ''payable by the FS to the USP over the period'' is corrected to read ''payable by FS to USP over the period''.

41. On page 51148, column 1, § 1.482–7(g)(4)(iv)(D), paragraph (iii) of *Example.,* sixth line, the language ''alternative rate is 100% ($80 million'' and is corrected to read ''alternative rate is 100% ($80 million''.

42. On page 51148, column 1, § 1.482–7(g)(4)(iv)(D), paragraph (iii) of *Example.,* fifth line from the bottom of the paragraph, the language ''PCT Payment, payable by the FS to the USP'' is corrected to read ''PCT Payment, payable by FS to USP''.

43. On page 51148, column 2, § 1.482–7(g)(4)(vi)(C), sixth line, the language ''considerations stated in § 1.482–5(c)'' is corrected to read ''considerations stated in § 1.482–5(c) may''.

44. On page 51149, column 1, § 1.482–7(g)(5)(v), eighth line from the bottom of the paragraph, the language ''acquisition price $100 million ($110 million'' is corrected to read ''acquisition price of $100 million ($110 million''.

45. On page 51149, column 3, § 1.482–7(g)(6)(vi), *Example 2.,* lines six through nine, the language ''reasonably anticipated to contribute software development that is the subject of the CSA and are therefore not external contributions and accordingly not required to be covered '' is corrected to read ''reasonably anticipated to contribute to the software development that is the subject of the CSA and, therefore, are not external contributions and, accordingly, are not required to be covered''.

46. On page 51150, column 3, § 1.482–7(g)(7)(iii)(C)(4), second line from the bottom of the paragraph, the language ''controlled participant for its such'' is corrected to read ''controlled participant for such''.

47. On page 51151, column 1, § 1.482–7(g)(7)(iv)(D), third line, the language ''3, 1.482–4, and 1.482–5, or with the'' is corrected to read ''3, 1.482–4, and 1.482–5, or the''.

48. On page 51151, column 3, § 1.482–7(g)(7)(v)(ix), sixth line, the language ''amount of its territorial operating iprofit or'' is corrected to read ''amount of its territorial operating profit or''.

49. On page 51154, column 1, § 1.482–7(i)(2)(ii)(D), paragraph (iii) of *Example 7.,* fourth line from the bottom of the paragraph, the language ''Commissioner adjusts costs shares for each of'' is corrected to read ''Commissioner adjusts cost shares for each of''.

50. On page 51155, column 1, § 1.482–7(i)(6)(v)(A)(*1*), fifth and sixth lines, the language ''paragraphs (i)(6)(vi)(A)(*2*) and (i)(6)(vi)(A)(*3*) of this section.'' is corrected to read ''paragraphs (i)(6)(v)(A)(*2*) and (i)(6)(v)(A)(*3*) of this section.''.

51. On page 51155, column 2, § 1.482–7(i)(6)(v)(B)(*1*), fifth and sixth lines, the language ''specified in paragraphs (i)(6)(vi)(B)(*2*) and (i)(6)(vi)(B)(*3*) of this section.'' is corrected to read ''specified in paragraphs (i)(6)(v)(B)(*2*) and (i)(6)(v)(B)(*3*) of this section.''.

52. On page 51155, column 2, § 1.482–7(i)(6)(vi)(D)(*1*), fifth line, the language ''RT (as defined in paragraph (b)(3)(iii) of'' is corrected to read ''RT (as defined in paragraph (b)(3)(iv) of''.

53. On page 51155, column 3, § 1.482–7(i)(6)(vi)(D)(*2*), second line, the language ''(i)(6)(vii)(D) of this section, the'' is corrected to read ''(i)(6)(vi)(D) of this section, the''.

54. On page 51156, column 1, § 1.482–7(i)(6)(vi)(E), fourth line from the top of the column, the language ''CSA is, then no periodic adjustment in'' is corrected to read ''CSA, then no periodic adjustment in''.

55. On page 51156, column 3, § 1.482–7(i)(6)(vi)(F)(vii), paragraph (ii) of *Example 1.,* third line, the language ''cash flows include the lump sum PCT of'' is corrected to read ''cash flows include the lump sum PCT Payment of''.

56. On page 51158, column 1, § 1.482–7(j)(1)(viii), *Example 1.,* second line from the bottom of the paragraph, the language ''derive a benefit from the exploiting the'' is corrected to read ''derive a benefit from exploiting the''.

57. On page 51158, column 3, § 1.482–7(j)(3)(iii), *Example 1.,* twelfth line, the language ''FS's share is 120X. The payment will be'' is corrected to read ''FS's share is 120X so that FS must make a payment to USP of 20X. The payment will be''.

58. On page 51160, column 1, § 1.482–7(k)(2)(ii)(J)(*2*), last line, the language ''use;'' is corrected to read ''used;''.

59. On page 51160, column 1, § 1.482–7(k)(2)(ii)(J)(*4*), fourth line, the language ''controlled participant method selected'' is corrected to read ''controlled participant's method selected''.

60. On page 51161, column 2, § 1.482–7(m)(3)(vii), fifth line, the language ''paragraph (m)(3)(iv) of this section no'' is corrected to read ''paragraph (m)(3)(v) of this section no''.

§ 1.482–8 [Corrected]

61. On page 51161, column 3, § 1.482–8, paragraph (i) of *Example 10.,* fourteenth line, the language ''Y, a promising molecular compound derived'' is corrected to read ''X, a promising molecular compound derived''.

62. On page 51161, column 3, § 1.482–8, paragraph (i) of *Example 11.,* sixth line, the language ''are its workforce and the its sole patent,'' is corrected to read ''are its workforce and its sole patent,''.

63. On page 51161, column 3, § 1.482–8, paragraph (i) of *Example 11.,* thirteenth line, the language ''derived from Compound Y. Compound X is'' is corrected to read ''derived from Compound Y. Compound Y is''.

64. On page 51161, column 3, § 1.482–8, paragraph (i) of *Example 11.,* eighteenth line, the language ''the developing Oncol under the CSA. The RT'' is corrected to read ''developing Oncol under the CSA. The RT''.

65. On page 51162, column 2, § 1.482–8, paragraph (ii) of *Example 14.,* sixth line, the language ''evidence of the arm's length price of USP''' is corrected to read ''evidence of the arm's length price of USP's''.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel. (Procedure and Administration)

[FR Doc. E5–7582 Filed 12–20–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104385–01]

RIN 1545–AY75

Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease To Be Public Utility Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of public hearing, and withdrawal of previous proposed regulations.

SUMMARY: This document contains proposed regulations that provide guidance on the normalization requirements applicable to public utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law. The proposed regulations permit a utility whose assets cease to be public utility property to return to its ratepayers the normalization reserve for excess deferred income taxes (EDFIT) with respect to those assets and, in certain circumstances, also permit the return of part or all of the reserve for accumulated deferred investment tax credits (ADITC) with respect to those assets. This document also provides notice of a public hearing on these proposed regulations and a withdrawal of proposed regulations [REG–104385–01] published March 4, 2003, at 68 FR 10190.

DATES: Written or electronic comments must be received by March 21, 2006. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for April 5, 2006, at 10 a.m. must be received by March 15, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104385–01), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–104385–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–104385–01). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, at (202) 622–3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Treena Garrett, at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the normalization requirements of sections 168(f)(2) and 168(i)(9) of the Internal Revenue Code (Code), section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146), and former section 46(f) of the Code. Proposed regulations relating to the normalization requirements applicable to electric utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law [REG–104385–01] were published in the **Federal Register** on March 4, 2003 (the 2003 proposed regulations). The 2003 proposed regulations would have provided rules under which electric utilities whose electricity generation assets cease to be public utility property, whether by disposition, deregulation, or otherwise, could continue to flow through certain reserves associated with those assets without violating the normalization requirements. In response to public comments and after further analysis, the 2003 proposed regulations are withdrawn, and new regulations are proposed in this document.

Normalization Method of Accounting

Section 168 of the Code permits the use of accelerated depreciation methods. Section 168(f)(2) provides, however, that accelerated depreciation is permitted with respect to public utility property only if the taxpayer uses a normalization method of accounting for ratemaking purposes.

Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (typically straight-line). In the early years of an asset's life, this results in ratemaking tax expense that is greater than actual tax expense. The difference between the ratemaking tax expense and the actual tax expense is added to a reserve (the accumulated deferred federal income tax reserve, or ADFIT). The difference between ratemaking tax expense and actual tax expense is not permanent and reverses in the later years of the asset's life when the ratemaking depreciation method provides larger depreciation deductions and lower tax expense than the accelerated method used in computing actual tax expense.

This accounting treatment prevents the immediate flow-through to utility ratepayers of the reduction in current taxes resulting from the use of accelerated depreciation. Instead, the reduction is treated as a deferred tax expense that is collected from current ratepayers through utility rates, and thus is available to utilities as investment capital. When the accelerated method provides lower depreciation deductions in later years, only the ratemaking tax expense is collected from ratepayers and the difference between actual tax expense and ratemaking tax expense is charged to ADFIT.

Excess Deferred Income Tax

The Tax Reform Act of 1986 (the 1986 Act) reduced the highest corporate tax rate from 46 percent to 34 percent. The excess deferred federal income tax (EDFIT) reserve is the balance of the deferred tax reserve immediately before the rate reduction over the balance that would have been held in the reserve if the 34 percent rate had been in effect for prior periods. The EDFIT reserves were amounts that utilities had collected from ratepayers to pay future taxes that, as a result of the 1986 Act reduction in corporate tax rates, would not be imposed.

Section 203(e) of the 1986 Act specifies the manner in which the EDFIT reserve must be flowed through to ratepayers under a normalization method of accounting. It provides that the EDFIT reserve may be reduced, with a corresponding reduction in the cost of service the utility collects from ratepayers, no more rapidly than the EDFIT reserve would be reduced under the average rate assumption method (ARAM). For taxpayers that did not have adequate data to apply the average rate assumption method, subsequent guidance permitted use of the reverse South Georgia method as an alternative. In general, both the average rate assumption method and the reverse South Georgia method spread the flow-through of the EDFIT reserve over the remaining lives of the property that gave rise to the excess.

Accumulated Deferred Investment Tax Credits (ADITC)

Former section 46 of the Code similarly addressed the flow-through to ratepayers of the investment tax credit determined under that section. Under former section 46(f)(1), the rate base (the amount on which the utility is permitted to collect a return from ratepayers) could be reduced by reason of the credit if the reduction in the rate base was restored not less rapidly than ratably. If the rate base is reduced, the credit may not also be used to reduce the utility's cost of service. Under former section 46(f)(2), an electing utility could flow through the investment credit not more rapidly than ratably (that is, could reduce the cost of service collected from ratepayers by no more than a ratable portion of the credit) over the investment's regulatory life. The balance of the credit remaining to be flowed through to ratepayers would be held in a reserve for accumulated deferred investment tax credits (ADITC). If the utility elected ratable flow-through of the credit, the rate base could not be reduced by reason of any portion of the credit.

Private Letter Rulings

The IRS has issued a number of private letter rulings holding that flow-through of the EDFIT and ADITC reserves associated with an asset is not permitted after the asset's deregulation, whether by disposition or otherwise. These rulings were based on the principle that flow-through is permitted only over the asset's regulatory life and when that life is terminated by deregulation no further flow-through is permitted. After further consideration, the IRS and Treasury have concluded that former section 46(f) does not, in all cases, prohibit flowthrough of ADITC reserves after deregulation and that section 203(e) of the Tax Reform Act does not preclude flowthrough of the EDFIT reserve with respect to deregulated property.

Explanation of Provisions

The 2003 proposed regulations provided that utilities whose generation assets cease to be public utility property, whether by disposition, deregulation, or otherwise (deregulated public utility property), may continue to flow through EDFIT reserves associated with those assets without violating the normalization requirements. The rate of flowthrough was limited to the rate that would have been permitted under a normalization method of accounting if the assets had remained public utility property. But for section 203(e) of the 1986 Act, the entire EDFIT reserve would have been flowed through to ratepayers when the reduction in rates became effective, whether the assets to which the EDFIT reserve was attributable remained public utility property for their entire useful life or were subsequently deregulated or sold. As noted in the preamble of the 2003 proposed regulations, the IRS and Treasury have concluded that section 203 of the 1986 Act provides a schedule for flowing through the EDFIT reserve but that nothing in that section suggests that something less than the entire reserve should ultimately be flowed through to ratepayers. Accordingly, these proposed regulations retain the rule of the 2003 proposed regulations, with the effective date changes described below, for generation assets and extend the application of the rule to all other public utility property.

The 2003 proposed regulations also provided similar rules under which utilities could continue to flow through ADITC reserves associated with deregulated generation assets without violating the normalization requirements. The proposed regulations did not address the treatment of deregulated assets under former section 46(f)(1) (relating to the use of the investment credit to reduce the taxpayer's rate base). After further consideration, the IRS and Treasury have concluded that flowthrough of the ADITC reserve should not continue after deregulation except to the extent the utility is permitted to recover stranded costs after deregulation.

If an asset qualifying for the investment tax credit is purchased by a utility, the allowance of the credit, without flowthrough, lowers the utility's actual tax expense but does not result in higher tax expense for ratepayers than would have been the case if the asset had not been purchased. Thus, in the absence of flowthrough, the investment tax credit is a subsidy from the Federal government for the purchase of the asset rather than a transfer from ratepayers to the utility. The underlying policy of former section 46(f) is to share this subsidy between ratepayers and utilities in proportion to their respective contributions to the purchase price. In general, former section 46(f) treats ratepayers as contributing to the purchase price when ratemaking depreciation expense with respect to the asset is included in the rates they pay, resulting in full flowthrough over the asset's regulatory life. In the case of a deregulated asset, the contribution of ratepayers can be appropriately measured by the ratemaking depreciation expense they are charged with respect to the asset and any additional stranded cost that the utility is permitted to recover with respect to the asset after its deregulation.

Accordingly, the proposed regulations permit flowthrough of the ADITC reserve with respect to public utility property to continue after its deregulation only to the extent the reduction in cost of service does not exceed, as a percentage of the ADITC with respect to the property at the time of deregulation, the percentage of the total stranded cost that the taxpayer is permitted to recover with respect to the property. In addition, the credit may not be flowed through more rapidly than the rate at which the taxpayer is permitted to recover the stranded cost with respect to the property.

As in the case of the EDFIT reserve, these proposed regulations extend the flowthrough rule for generation assets to all public utility property. In addition, these proposed regulations provide equivalent rules for property to which former section 46(f)(1) (relating to rate base restoration) applies.

Proposed Effective Date

The 2003 proposed regulations would have applied to public utility property deregulated after March 4, 2003. Utilities would have been permitted an election to apply the proposed rules to property that was deregulated on or before that date.

Comments suggested that deregulation agreements between utilities and their regulators entered into before the March 4, 2003 proposed effective date were based on the only guidance then available (*i.e.,* the private letter rulings issued by the IRS) and that the availability of a retroactive election could effectively change the terms of those agreements. Although private letter rulings are directed only to the taxpayers who requested them and may not be used or cited as precedent, the IRS and Treasury have concluded that the Secretary's authority under section 7805(b)(7) to provide for retroactive elections should not be exercised in a manner that impairs existing agreements between utilities and their regulators. Accordingly, these proposed regulations do not include a similar election to apply the regulations retroactively.

As noted above, these proposed regulations are broader in scope than the 2003 proposed regulations. Accordingly, these regulations are proposed to apply to public utility property that becomes deregulated public utility property after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**]. For public utility property that becomes

deregulated public utility property on or before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the IRS will follow the holdings set forth in the private letter rulings that prohibit flow-through of the EDFIT and ADITC reserves associated with an asset after the asset's disposition. Flowthrough will be permitted, however, if it is consistent with the 2003 proposed regulations, and occurs during the period March 5, 2003, through the earlier of the last date on which the utility's rates are determined under the rate order in effect on [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], or [DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**].

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in the **ADDRESSES** caption) timely to the IRS. All comments will be available for public inspection and copying. Treasury and IRS specifically request comments on the clarity of the proposed regulations and how they may be made clearer and easier to understand.

A public hearing has been scheduled for April 5, 2006, at 10 a.m. in room 7218 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 15, 2006.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–104385–01) published in the **Federal Register** on March 4, 2003 (68 FR 10190) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.46–6 is amended by adding paragraph (k) to read as follows:

§ 1.46–6 Limitation in case of certain regulated companies.

* * * * *

(k) Treatment of accumulated deferred investment tax credits upon the deregulation of public utility property—(1) *Scope.* This paragraph (k) provides rules for the application of former sections 46(f)(1) and 46(f)(2) of the Internal Revenue Code with respect to public utility property that ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated public utility property).

(2) *Ratable amount*—(i) *Restoration of rate base reduction.* A reduction in the taxpayer's rate base on account of the credit with respect to public utility property that becomes deregulated public utility property is restored ratably during the period after the property becomes deregulated public utility property if the amount of the reduction remaining to be restored does not, at any time during the period, exceed the restoration percentage of the recoverable stranded cost of the property at such time. For this purpose—

(A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated;

(B) The recoverable stranded cost of the property at any time is the stranded cost of the property that the taxpayer will be permitted to recover through rates after such time; and

(C) The restoration percentage for the property is determined by dividing the reduction in rate base remaining to be restored with respect to the property immediately before the property becomes deregulated public utility property by the stranded cost of the property.

(ii) *Cost of service reduction.* Reductions in the taxpayer's cost of service on account of the credit with respect to public utility property that becomes deregulated public utility property are ratable during the period after the property becomes deregulated public utility property if the cumulative amount of the reduction during such period does not, at any time during the period, exceed the flow-through percentage of the cumulative stranded cost recovery for the property at such time. For this purpose—

(A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated;

(B) The cumulative stranded cost recovery for the property at any time is the stranded cost of the property that the taxpayer has been permitted to recover through rates on or before such time; and

(C) The flow-through percentage for the property is determined by dividing the amount of credit with respect to the property remaining to be used to reduce cost of service immediately before the property becomes deregulated public utility property by the stranded cost of the property.

(3) *Cross reference.* See § 1.168(i)–(3) for rules relating to the treatment of balances of excess deferred income

taxes when public utility property becomes deregulated public utility property.

(4) *Effective dates*—(i) *In general.* This paragraph (k) applies to public utility property that becomes deregulated public utility property after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(ii) *Application of regulation project REG–104385–01 to pre-effective date reductions in cost of service.* A reduction in the taxpayer's cost of service will be treated as ratable if it is consistent with the proposed rules in regulation project REG–104385–01 (2003–1 C.B. 634) and occurs during the period March 5, 2003, through the earlier of the last date on which the utility's rates are determined under the rate order in effect on [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], or [DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**].

Par. 3. Section 1.168(i)–3 is added to read as follows:

§ 1.168(i)–(3) Treatment of excess deferred income tax reserve upon disposition of deregulated public utility property.

(a) *Scope.* This section provides rules for the application of section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146) with respect to public utility property (within the meaning of section 168(i)(10)) that ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated public utility property).

(b) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated public utility property to which this section applies, the reduction in the taxpayer(s excess tax reserve permitted under section 203(e) of the Tax Reform Act of 1986 is equal to the amount by which the reserve could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued use of its normalization method of accounting with respect to such property.

(c) *Cross reference.* See § 1.46–6(k) for rules relating to the treatment of accumulated deferred investment tax credits when utilities dispose of regulated public utility property.

(d) *Effective dates*—(1) *In general.* This section applies to public utility property that becomes deregulated public utility property after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(2) *Application of regulation project REG–104385–01 to pre-effective date reductions of excess deferred income tax reserve.* A reduction in the taxpayer's excess deferred income tax reserve will be treated as ratable if it is consistent with the proposed rules in regulation project REG–104385–01 (2003–1 C.B. 634) and occurs during the period March 5, 2003, through the earlier of the last date on which the utility's rates are determined under the rate order in effect on [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], or [DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E5–7583 Filed 12–20–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–131]

RIN 1625–AA09

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Route 35 Bridge, at New Jersey Intracoastal Waterway (NJICW) mile 1.1, across the Manasquan River, at Brielle, New Jersey. The proposal will allow the drawbridge to provide vessel openings upon four hours advance notice from December 1 to March 31. This proposal will reduce draw tender services during the non-peak boating season while still providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before February 6, 2006.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The 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 Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

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 (CGD05–05–131), 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 8'' by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals 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 (obr), Fifth Coast Guard District 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

The New Jersey Department of Transportation (NJDOT) owns and operates the Route 35 Bridge, at NJICW mile 1.1., across the Manasquan River, at Brielle, New Jersey. The current operating regulations set out in 33 CFR 117.733(b) requires the drawbridge to open on signal except as follows: from May 15 through September 30, on Saturdays, Sundays and Federal holidays, from 8 a.m. to 10 p.m. the draw need only open 15 minutes before the hour and 15 minutes after the hour; on Mondays to Thursdays from 4 p.m. to 7 p.m., and on Fridays, except Federal holidays from 12 p.m. to 7 p.m. the draw need only open 15 minutes before the hour and 15 minutes after hour; and year-round from 11 p.m. to 8 a.m., the draw need only open if at least four hours notice is given.

The Route 35 Bridge, a bascule-type drawbridge, has a vertical clearance in the closed position to vessels of 30 feet, at mean high water.

The NJDOT has requested a change to the existing regulations for the Route 35

Bridge. This proposal would reduce draw tender services during the non-peak boating season by requiring openings of the bridge if at least four hours advance notice is given from December 1 to March 31.

We reviewed the yearly drawbridge logs provided by NJDOT for the years 2000 to 2004, which revealed that the bridge opened for vessels 970, 835, 811, 716 and 685 times, respectively. NJDOT contends that the vessel traffic through the bridge is minimal during the winter months. During the period from December 1 to March 31, from 7 a.m. to 11 p.m., the bridge data for the years 2000 to 2004 shows that the bridge opened 51, 61, 49, 48 and 47 times, respectively. The data shows a significant decrease in the number of bridge openings during the non-peak boating season.

Based on the data provided, the proposal will have minimal impact on vessel traffic.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations governing the Route 35 Bridge over the Manasquan River, at NJICW mile 1.1, at Brielle, New Jersey, set out in 33 CFR 117.733(b) by revising paragraph(b)(2).

As amended, paragraph (b)(2) would read ''Year-round from 11 p.m. to 8 a.m., and at all times from December 1 to March 31, the draw need only open if at least four hours notice is given.''

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. We reached this conclusion based on the historical data, and due to the reduced number of vessels requiring transit through the bridge during the proposed period.

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. The non-peak boating season operating rules proposed for the bridge are designed to minimize the number of small entities affected.

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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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 will 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

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.733, paragraph (b)(2) is revised to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(b)(2) Year-round from 11 p.m. to 8 a.m., and at all times from December 1 to March 31, the draw need only open if at least four hours notice is given.

* * * * *

Dated: December 5, 2005.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E5–7632 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–05–158]

RIN 1625–AA09

Drawbridge Operation Regulations; Stickney Point (SR 72) Bridge, Gulf Intracoastal Waterway Mile 68.6, Gulf Intracoastal Waterway, Sarasota County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule of the Stickney Point (SR 72) bridge across the Gulf Intracoastal Waterway, mile 68.6 in Sarasota County, Florida. This proposed rule would require the drawbridge to open on a 30-minute schedule from 6 a.m. until 10 p.m., Monday through Friday except Federal holidays. This proposed action may improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: Comments and related material must reach the Coast Guard on or before February 21, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131, who 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 are available for inspection or copying at the Seventh Coast Guard District Bridge Branch, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

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 [CGD07–05–158], 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 Bridge Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations governing the Stickney Point (SR 72) bridge, mile 68.6, at Sarasota County in 33 CFR 117.5 requires the drawbridge to open on signal.

On September 29, 2005, Sarasota County officials requested the Coast Guard review the operation of the Stickney Point bridge because they contended the regulation is not meeting the needs of vehicle traffic.

Discussion of Proposed Rule

This proposed rule would require the Stickney Point (SR 72) bridge, mile 68.6, at Sarasota County to open on the hour and half-hour, from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays. This proposed schedule will allow local vehicular traffic to plan for drawbridge openings while providing for the reasonable needs of navigation. In order to record this change in the Code of Federal Regulations, the current regulation governing the Siesta Drive bridge at 33 CFR 117.287(b–1) shall be moved to 33 CFR 117.287(c) so that the regulation governing the Stickney Point bridge can be recorded at 33 CFR 117.287(b–1).

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. This proposed rule would modify the existing bridge schedule to allow for improved vehicle traffic flow and provide scheduled openings for vessel traffic.

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 business, 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 may be small entities: the owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of Stickney Point bridge, persons intending to drive over the bridge and nearby business owners. Vehicle traffic and small business owners in the area might benefit from the increased traffic flow that regularly scheduled openings will offer this area.

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 proposed 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 person listed under **FOR FURTHER INFORMATION CONTACT**. 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 will 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

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 proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of

the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In Sec. 117.287 revise para (b–1) and (c) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b–1) The draw of the Stickney Point (SR 72) bridge, mile 68.6 at Sarasota County shall open on the hour and half-hour, from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays.

(c) The draw of the Siesta Drive bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour. On weekends and Federal holidays, from 11 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes past the hour and 40 minutes past the hour.

* * * * *

Dated: December 13, 2005.

D.B. Peterman,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E5–7631 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2005–23248]

RIN 2135–AA22

Seaway Regulations and Rules: Periodic Update, Various Categories

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The proposed changes will update the following sections of the Regulation and Rules: Condition of Vessels; Preclearance and Security for Tolls; Seaway Navigation; Toll Assessment and Payment; and Information and Reports. These proposed amendments are necessary to take account of updated procedures and/or technology and will enhance the safety of transits through the Seaway. Several of the proposed amendments are merely editorial or for clarification of existing requirements.

DATES: Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before January 20, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number SLSDC 2005–23248] by any of the following methods:

- *Web site: http://dms.dot.gov.* 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 20590–001.
- *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 or Regulatory Identification Number (RIN) for this rulemaking. 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 under Regulatory Notices.

Docket: For access to the docket to read background documents or 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.

FOR FURTHER INFORMATION CONTACT: Craig H. Middlebrook, Acting Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations by updating the Regulations and Rules in various categories. The proposed changes would update the following sections of the Regulations and Rules: Condition of Vessels; Preclearance and Security for Tolls; Seaway Navigation; Toll Assessment and Payment; and Information and Reports. These updates are necessary to take account of updated procedures and/or technology, which will enhance the safety of transits through the Seaway. Many of these proposed changes are to clarify existing requirements in the regulations. Where new requirements or regulations are being proposed, an explanation for such a change is provided below.

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

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

The SLSDC is proposing two amendments to the joint regulations pertaining to the Condition of Vessels. Under sections 401.16, ''Propeller Direction Alarms'', and 401.17, ''Pitch Indicators and Alarms'', the SLSDC is proposing additional language that would require visible and audible alarms to have a time delay of not greater than 8 seconds. In confined waters of the Seaway or while entering a lock it is important for the master/pilot to know immediately when an incorrect command is received in order to take appropriate corrective action. Currently some vessels have alarms with a 30 second delay in which time, the vessel could be outside the shipping channel or have already hit the lock bumpers.

The SLSDC is proposing to make two amendments to the joint regulations regarding the Preclearance and Security for Tolls. Under § 401.24, ''Application for Preclearance'', the SLSDC is proposing to revise the location from which a vessel can obtain a preclearance form from Cornwall, Ontario to St. Lambert, Quebec. This proposed change reflects the fact that preclearance applications are now being processed at St. Lambert, Quebec instead of at Cornwall, Ontario.

For § 401.26, ''Security for Tolls'', the SLSDC is proposing to add language that would allow the SLSMC manager to include charges for additional items as tie-up fees in the security for tolls.

The SLSDC is proposing to make one change to the joint regulations regarding Seaway Navigation. The proposed amendment to § 401.30, ''Ballast Water and Trim'', would reflect a change to the SLSDC/SLSMC joint website making it easier for Seaway users to obtain ballast water management documents. Shippers have expressed frustration regarding their difficulties in locating these documents on the website. The Seaway Corporations have inserted a direct link on the Seaway website homepage to the relevant documents.

The SLSDC is proposing to make two changes to the joint regulations regarding Toll Assessment and Payment. Under § 401.74, ''Transit Declaration'', the SLSDC is proposing to clarify that Seaway Transit Declaration Forms can be obtained from the Seaway website or the SLSMC in St. Lambert, Quebec. This function was previously performed at Cornwall, Ontario.

Additionally, the proposed amendment would remove references to specific form numbers that are no longer relevant.

The SLSDC is proposing to make one amendment to the joint regulations regarding Information and Reports. Under § 401.81, the SLSDC is proposing to require the master of a vessel involved in an accident or dangerous occurrence to notify the nearest Seaway and Canadian or U.S. Coast Guard. This proposed amendment is intended to clarify that the U.S. Coast Guard is the U.S. federal entity responsible for responding to vessel incidents and needs to be notified immediately when there is an accident or dangerous occurrence.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et reg.) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR Part 401, Regulations and Rules, as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

1. The authority citation for subpart A of part 401 continues to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a) (4), as amended; 49 CFR 1.52, unless otherwise noted.

2. In § 401.16 paragraph (b) would be revised to read as follows:

§ 401.16 Propeller direction alarms.

* * * * *

(b) Visible and audible wrong-way propeller direction alarms, with a time delay of not greater than 8 seconds, located in the wheelhouse and the engineer room, unless the vessel is fitted with a device which renders it impossible to operate engines against orders from the bridge telegraph.

* * * * *

3. In § 401.17 paragraph (b) would be revised to read as follows:

§ 401.17 Pitch indicators and alarms.

* * * * *

(b) Effective April 1, 1984, visible and audible pitch alarms, with a time delay of not greater than 8 seconds, in the wheelhouse and engine room to indicate wrong pitch.

* * * * *

4. Section 401.24 would be revised to read as follows:

§ 401.24 Application for preclearance.

The representative of a vessel may, on a preclearance form (3 copies) obtained from the Manager, St. Lambert, Quebec, or downloaded from the St. Lawrence Seaway Web site at *http://www.greatlakes-seaway.com,* apply for preclearance, giving particulars of the ownership, liability insurance and physical characteristics of the vessel and guaranteeing payment of the fees that may be incurred by the vessel.

5. In § 401.26 paragraph (b) would be revised to read as follows:

§ 401.26 Security for Tolls.

* * * * *

(b) The security for the tolls of a vessel shall be sufficient to cover the tolls established in the St. Lawrence Seaway Tariff of Tolls for the gross registered tonnage of the vessel, cargo carried, and lockage tolls as well as security for any other charges estimated by the Manager.

* * * * *

6. In § 401.30 paragraph (e) (2) would be revised to read as follows:

§ 401.30 Ballast water and trim.

* * * * *

(e) * * *

(2) Every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the ''Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping'' of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001, while operating anywhere within the Great Lakes and the Seaway. For copies of the ''Code of Best Practices for Ballast Water Management'' and of the ''Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping'' refer to the St. Lawrence Seaway Web site at *http://www.greatlakes-seaway.com.*

7. In § 401.74 paragraphs (a) and (g) are revised to read as follows:

§ 401.74 Transit declaration.

(a) Seaway Transit Declaration Form (Cargo and Passenger) shall be forwarded to the Manager by the representative of a ship, for each ship that has an approved preclearance except non-cargo ships, within fourteen days after the vessel enters the Seaway on any upbound or downbound transit. The form may be obtained from the St. Lawrence Seaway Management Corporation, 151 Ecluse Street, St. Lambert, Quebec, J4R 2V6 or from the St. Lawrence Seaway Web site at *http://www.greatlakes-seaway.com.*

* * * * *

(g) Where government aid cargo is declared, appropriate Canadian or U.S. customs form or a stamped and signed certification letter from the U.S. or Canada Customs must accompany the transit declaration form.

* * * * *

8. In § 401.81 paragraph (a) is revised to read as follows:

§ 401.81 Reporting an Accident.

(a) Where a vessel on the Seaway is involved in an accident or a dangerous occurrence, the master of the vessel shall report the accident or occurrence, pursuant to the requirements of the Transportation Safety Board Regulations, to the nearest Seaway and Canadian or U.S. Coast Guard radio or traffic stations, as soon as possible and prior to departing the Seaway system.

* * * * *

Issued at Washington, DC, on December 13, 2005

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 05–24235 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 412

[EPA–HQ–OW–2005–0036; FRL–8011–7]

RIN 2040–AE80

Revised Compliance Dates for National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend certain compliance dates in the National Pollutant Discharge Elimination System (NPDES) permitting requirements (40 CFR part 122) and Effluent Limitations Guidelines and Standards (ELGs) (40 CFR part 412) for concentrated animal feeding operations (CAFOs) in conjunction with EPA's efforts to respond to the order issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d 486 (2nd Cir. 2005). The purpose of today's proposed rule is to address timing issues associated with the Agency's response to the Waterkeeper decision.

This proposal would revise dates established in the 2003 CAFO rule, issued on February 12, 2003, by which facilities newly defined as CAFOs were required to seek permit coverage and by which all CAFOs were required to have nutrient management plans (NMPs) developed and implemented. EPA is proposing to extend the date by which operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from February 13, 2006, to March 30, 2007. EPA is also proposing to amend the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from April 13, 2006, to March 30, 2007. Finally, EPA is proposing to extend the deadline by which CAFOs are required to develop and implement NMPs, from December 31, 2006, to March 30, 2007. This proposal would revise all references to the date by which NMPs must be developed and implemented currently in the 2003 CAFO rule.

EPA will also be issuing a proposed rule to revise the 2003 CAFO regulations more broadly in order to address the Second Circuit Court of Appeals decision in a subsequent **Federal Register** Notice, which the Agency plans to propose for public comment in early 2006.

DATES: Comments on this proposed action must be received on or before January 20, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2005–0036 by one of the following methods:

(1) *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail: ow-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2005–0036.

(3) *Mail:* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2005–0036.

(4) *Hand Delivery:* Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2005–0036. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2005–0036. 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. 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, 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 Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Kawana Cohen, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2345, e-mail address: *cohen.kawana@epa.gov.*

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I. General Information

A. Does This Action Apply to Me?

This action applies to concentrated animal feeding operations (CAFOs) as defined in section 502(14) of the Clean Water Act and in the NPDES regulations at 40 CFR 122.23. The following table provides a list of standard industrial codes for operations covered under this revised rule.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
Federal, State, and Local Government:			
Industry	Operators of animal production operations that meet the definition of a CAFO.		
	Beef cattle feedlots (including veal)	112112	0211
	Beef cattle ranching and farming	112111	0212
	Hogs	11221	0213
	Sheep	11241, 11242	0214
	General livestock except dairy and poultry	11299	0219
	Dairy farms	11212	0241
	Broilers, fryers, and roaster chickens	11232	0251
	Chicken eggs	11231	0252
	Turkey and turkey eggs	11233	0253
	Poultry hatcheries	11234	0254
	Poultry and eggs	11239	0259
	Ducks	112390	0259
	Horses and other equines	11292	0272

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by

this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated under this rulemaking, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. Submitting Confidential Business Information. Do not submit this information to EPA through http://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. *Tips for Preparing Your Comments.* It will be helpful if you follow these guidelines as you prepare your written comments:

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

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

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

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

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

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

vii. Explain your views as clearly as possible.

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

II. Background

A. The Clean Water Act

Congress passed the Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters'' (33 U.S.C. 1251(a)). Among the core provisions, the CWA establishes the NPDES permit program to authorize and regulate the discharge of pollutants from point sources to waters of the U.S. 33 U.S.C. 1342. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term ''point source.'' Section 502(12) defines the term ''discharge of a pollutant'' to mean ''any addition of any pollutant to navigable waters from any point source'' (emphasis added). EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR part 122. The Act also provides for the development of technology-based and water quality-based effluent limitations that are imposed through NPDES permits to control the discharge of pollutants from point sources. CWA section 301(a) and (b).

B. History of Actions To Address CAFOs Under the NPDES Permitting Program

EPA's regulation of wastewater and manure from CAFOs dates to the 1970s. EPA initially issued national effluent limitations guidelines and standards for feedlots on February 14, 1974 (39 FR 5704), and NPDES CAFO regulations on March 18, 1976 (41 FR 11458).

In February 2003, EPA issued revisions to these regulations that focused on the 5% of the nation's animal feeding operations (AFOs) that presented the highest risk of impairing water quality and public health (68 FR 7176) (the ''2003 CAFO rule''). The 2003 CAFO rule required the owner or operators of all CAFOs [1] to seek coverage under an NPDES permit. CAFO industry organizations (American Farm Bureau Federation, National Pork Producers Council, National Chicken Council, and National Turkey Federation (NTF), although later NTF later withdrew its petition) and environmental groups (Waterkeeper Alliance, Natural Resources Defense Council, Sierra Club, and American Littoral Society) filed petitions for judicial review of certain aspects of the 2003 CAFO rule. This case was brought before the U.S. Court of Appeals for the Second Circuit. On February 28, 2005, the court ruled on these petitions and upheld most provisions of the 2003 rule but vacated and remanded others. *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d 486 (2nd Cir. 2005). The court's decision is described below.

C. Ruling by the U.S. Court of Appeals for the Second Circuit

The Second Circuit's decision in Waterkeeper upheld certain challenged provisions of the 2003 rule and vacated or remanded others. This discussion is included in the preamble to provide the reader with background information and context why this proposed action is necessary. While today's proposal deals solely with the compliance dates, EPA plans to publish a subsequent rulemaking that will address more broadly the substantive changes to the 2003 rule in response to Waterkeeper. The Agency plans to make available the more comprehensive rulemaking for public comment in early 2006.

1. Issues Upheld by the Court

This section discusses provisions of the 2003 CAFO rule that were challenged by either industry or environmental petitions, but were upheld by the Waterkeeper court and therefore remain unchanged. EPA is not proposing to revise any of these provisions in today's notice and is not soliciting comment on them.

a. Land Application Regulatory Framework and Interpretation of ''Agricultural Storm Water''. The Waterkeeper court upheld EPA's authority to regulate, through NPDES permits, the runoff of manure, litter, and process wastewater that CAFOs apply to crop or forage land. The court rejected the Industry Petitioners' claim that land application runoff at CAFOs must be channelized before it can be considered to be a point source discharge subject to permitting. The court noted that the CWA expressly defines the term ''point source'' to include ''any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged,'' and found that the Act ''not only permits, but demands'' that land application discharges be construed as discharges ''from'' a CAFO. *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d at 510.

The Waterkeeper court also upheld EPA's determination in the 2003 CAFO rule that precipitation-related discharges of manure, litter, or process wastewater from land application areas under the control of a CAFO qualify as ''agricultural storm water'' only where the CAFO has applied the manure in

[1] The Clean Water Act regulates the conduct of persons, which includes the owners and operators of CAFOs, rather than the facilities or their discharges. To improve readability in this preamble, reference is made to ''CAFOs'' as well as ''owners and operators of CAFOs.'' No change in meaning is intended.

accordance with NMPs that ensure ''appropriate agricultural utilization'' of the manure, litter, and process wastewater nutrients. EPA's interpretation of the Act in this regard was reasonable, the court found, in light of Congressional intent in excluding agricultural storm water from the meaning of the term ''point source'' and given the precedent set in an earlier Second Circuit case, *Concerned Area Residents for the Environment* v. *Southview Farm,* 34 F.3d 114 (2d Cir. 1994). *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d at 508–09.

b. Effluent Guidelines. The Waterkeeper court upheld the CAFO effluent guidelines against challenges from the litigants, except for the items remanded to EPA, as noted further below, as follows:

—Identification of best available technologies. The court rejected the environmental organizations' claim that when EPA chose the pollution control technologies on which to base effluent guidelines for CAFOs, the Agency did not meet its duty to identify the single CAFO with the best-performing technology. The court found that EPA had collected extensive data on the waste management systems at CAFOs and had considered approximately 11,000 public comments on the proposed CAFO rule, and on those bases, EPA had adequately justified its selection of ''best available technologies'' on which to base the regulations.

—Groundwater controls. The court upheld EPA's decision to leave groundwater discharges to be addressed at the state level or on a site specific basis. EPA had determined that because such discharges depend greatly on local geology and other site-specific factors, the need for controls on groundwater discharges was a matter to be evaluated at the local level rather than established in a national regulation.

—Economic methodologies. The court upheld the financial methodologies that EPA used for determining whether the technology-based permit requirements for CAFOs set in the 2003 rule would be economically achievable by the industry as a whole.

2. Issues Vacated by the Court

The following are the elements of the 2003 rule that the Waterkeeper court found to be unlawful and therefore vacated. EPA is not proposing to revise any of these provisions in today's notice and is not soliciting comment on them. As noted above, EPA intends to address the court's ruling vacating these provisions in a subsequent proposal that will follow in the coming months.

a. Duty to Apply. The CAFO industry organizations argued that the EPA exceeded its statutory authority by requiring all CAFOs to either apply for NPDES permits or otherwise demonstrate that they have no potential to discharge. The court agreed with the CAFO industry petitioners on this issue and therefore vacated the ''duty to apply'' provision of the 2003 CAFO rule.

The court found that the duty to apply, which the Agency had based on a presumption that most CAFOs have at least a potential to discharge, was invalid, because the CWA subjects only actual discharges to regulation rather than potential discharges. The court acknowledged EPA's strong policy considerations for seeking to impose a duty to apply—''EPA has marshaled evidence suggesting that such a prophylactic measure may be necessary to effectively regulate water pollution from Large CAFOs, given that Large CAFOs are important contributors to water pollution'' (399 F.3d at 506, fn.22)[2]—but found that the Agency nevertheless lacked statutory authority to do so.

b. Nutrient Management Plans. The environmental organizations argued that the 2003 CAFO rule was unlawful because: (1) The rule empowered permitting authorities to issue permits without any meaningful review of the CAFO's NMP, (2) the rule failed to require that the terms of the NMP be included in the NPDES permit, and (3) the permitting scheme established by the rule violated the Clean Water Act's public participation requirements. The court agreed with the environmental petitioners on these three issues.

The court relied on provisions of the Act that authorize point source discharges only where NPDES permits ''ensure that every discharge of pollutants will comply with all applicable effluent limitations and standards,'' citing CWA sections 402(a)(1), (a)(2), and (b). Because the 2003 CAFO rule allowed CAFOs to write their own NMPs and because those plans were not required to be reviewed by the permitting agency or made available to the public for comment before the permit was issued, the court found that the rule did not ensure that each Large CAFO will develop a satisfactory plan. The court also found that the terms of the NMPs themselves are ''effluent limitations'' as that term is defined in the Act and therefore must be included in the permit under CWA sections 301 and 402. In addition, the court found that by not making the NMPs part of the permit and available to the public for review, the 2003 CAFO rule violated public participation requirements in sections 101(e) and 402 of the Act.

3. Issues Remanded by the Court

The court also remanded other aspects of the CAFO rule to EPA ''for further clarification and analysis.'' EPA is not proposing to revise any of these provisions in today's proposal and is not soliciting comment on them. As previously noted, the agency plans to address these issues in its forthcoming proposed rule. They are as follows:

a. Water Quality-Based Effluent Limits. The court agreed with EPA that agricultural storm water is excluded from the meaning of the term ''point source'' and therefore is not subject to water quality-based effluent limitations in permits. However, the court directed EPA to ''clarify the statutory and evidentiary basis for failing to promulgate water quality-based effluent limitations for discharges other than agricultural storm water discharges as that term is defined in 40 CFR 122.23(e),'' and to ''clarify whether States may develop water quality-based effluent limitations on their own.''

b. New Source Performance Standards—100-Year Storm. Standard. The 2003 CAFO rule set the new source performance standards (NSPS) for swine, poultry, and veal CAFOs at a level of zero discharge. A CAFO in these categories could fulfill this requirement by showing that either (1) Its production area was designed to contain all manure, litter, process wastewater, and precipitation from the 100-year, 24-hour storm, or (2) it would comply with ''voluntary superior performance standards'' based on innovative technologies, under which a discharge from the production area would be allowed if it was accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media (*e.g.*, air emissions). The court found that EPA had not justified in the record nor provided adequate public participation with respect to either of these provisions. As a result, the court remanded these provisions to EPA to clarify, via a process that adequately

[2] Similarly, the United States Government Accountability Office concluded in 2003 that the measures in EPA's 2003 rule would solve the problems created by exemptions in the 1976 rule. (United States General Accounting Office. 2003. Livestock Agriculture: Increased EPA Oversight Will Improve Environmental Protection for Concentrated Animal Feeding Operations, Report to the Ranking Member, Committee on Agriculture, Nutrition and Forestry, U.S. Senate. GAO–03–285. Washington, DC)

involves the public, the statutory and evidentiary basis for their allowance.

c. BCT Effluent Guidelines for Pathogens. The court held that the 2003 CAFO rule violated the CWA because EPA had not made an affirmative finding that the BCT-based ELGs " *i.e.*, the "best conventional technology" guidelines for conventional pollutants such as fecal coliform " do in fact represent BCT technology. The court remanded this issue to EPA to make such a finding based on the best available control technology economically achievable (BAT)/best practicable control technology currently available (BPT) technologies EPA studied or to establish specific BCT limitations for pathogens based on some other technology.

D. What Requirements Still Apply to CAFOs?

The Waterkeeper decision either upheld or did not address most provisions of the 2003 CAFO rule. This section describes certain key portions of the rule that were not challenged in Waterkeeper. EPA is not proposing to revise any of these provisions and is not soliciting comment on them.

The definitions provided in 40 CFR 122.23(b) of the 2003 CAFO rule remain in effect and are unchanged. First, an operation must be defined as an animal feeding operation (AFO) before it can be defined as a concentrated animal feeding operation (CAFO). 40 CFR 122.23. The term "animal feeding operation" is defined by EPA regulation as a "lot or facility" where animals "have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period and crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility."

Whether an AFO is a CAFO depends primarily on the number of animals confined, which is also unchanged. Large CAFOs are AFOs that contain more than the threshold number of animals detailed in 40 CFR 122.23(b)(4). Medium CAFOs contain fewer animals than Large CAFOs and also: (1) Discharge pollutants into waters of the U.S. through a man-made ditch, flushing system, or other similar man-made device; or (2) discharge pollutants directly into waters of the U.S. that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the confined animals. 40 CFR 122.23(b)(6)(ii). The NPDES permitting authority also may, on a case-by-case basis, designate any AFO, including Small CAFOs, as a CAFO after conducting an on-site inspection and finding that the facility "is a significant contributor of pollutants to waters of the United States." 40 CFR 122.23(c). The permitting authority may not exercise its authority to designate a facility as a Small CAFO unless pollutants are discharged into waters of the U.S. through a man-made ditch, flushing system, or other similar man-made device, or are discharged directly into waters of the U.S. which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

The 2003 CAFO rule also eliminated the provision in the original regulations stating that a facility was not defined as a CAFO if it discharged only in the event of a 25-year, 24-hour storm. The Waterkeeper decision did not affect this aspect of the 2003 rule, under which facilities no longer have an exemption from the definition of a CAFO if they discharge only in the event of a 25-year, 24-hour storm. Likewise, the Waterkeeper decision did not affect the 2003 rule's inclusion, for the first time, of certain animal sectors within the definition of a CAFO, such as chicken operations with dry systems for handling manure.

Any discharge of manure, litter, or process wastewater from the production area of a CAFO to a water of the U.S. violates the CWA unless it is authorized by an NPDES permit. By eliminating the 25-year, 24-hour storm exemption in the 2003 rule, any overflow (see definition in § 412.2(g)), from any containment structure under any climatic condition, including chronic or catastrophic rainfall events, is an illegal discharge unless authorized by a permit. Additionally, any runoff of manure, litter, or process wastewater from a CAFO land application area to waters of the U.S. that is not agricultural storm water is illegal unless authorized by a permit. Examples include, but are not limited to, the discharge of litter, manure, or process wastewater directly to waters of the United States (*e.g.*, application of liquid manure directly to surface water); dry-weather discharges due to the land application of manure, litter, or process wastewater; or the discharge of process wastewater or liquid manure from subsurface drains during dry weather.

Nutrient management planning requirements for permitted CAFOs established in the 2003 CAFO rule also remain in place following the court's ruling. All permitted CAFOs must develop and implement an NMP that meets the requirements of 40 CFR 122.42(e) and 40 CFR 412.4, where applicable. The NMP identifies the necessary actions to ensure that runoff is eliminated or minimized through proper and effective manure, litter, and wastewater management, including compliance with the ELGs. NMPs for Large CAFOs must also contain additional provisions regarding the land application of manure. Permitted CAFOs must comply with all applicable recordkeeping and reporting requirements including those specified in 40 CFR 122.42(e).

ELG requirements for existing Large CAFOs also are largely unchanged following the court's ruling. ELG requirements ensure the appropriate storage of manure, litter, and process wastewater and proper land application practices. They vary depending upon the types of animals confined: Subpart A for horses and sheep; Subpart B for ducks; Subpart C for dairy cattle, heifers, steers, and bulls; and Subpart D for swine, poultry, and veal calves (40 CFR part 412). Additionally, New Source requirements for beef and dairy operations remain unchanged (40 CFR 412.35).

Permitted Small and Medium CAFOs are not subject to the ELGs specified in part 412. Rather, they must comply with all case-by-case technology-based requirements developed by the permitting authority (*i.e.*, Best Professional Judgment (BPJ)).

E. Status of EPA's Response to the Waterkeeper Decision

EPA is developing a rulemaking to respond to all of the issues in the 2003 CAFO rule vacated or remanded by the Second Circuit Court of Appeals. EPA plans to issue a proposed rulemaking for public comment in early 2006 and a final rulemaking as expeditiously as possible.

F. Compliance Dates in the 2003 CAFO Rule Affected by the Waterkeeper Decision

The 2003 CAFO rule required all newly defined CAFOs, as of the date of the final rule, and some new dischargers to seek permit coverage by February 13, 2006, or April 13, 2006, respectively. The rule also required all CAFOs to develop and implement an NMP by December 31, 2006. EPA is proposing to revise each of these dates in order: (1) To provide the Agency sufficient time to take final action on the regulatory revisions it plans to propose in the near future with respect to the Second Circuit's decision; and (2) To require NMPs to be submitted at the time of the permit application, consistent with the court's decision.

III. Today's Proposal

Today's proposal is intended to extend certain dates for compliance specified in the 2003 CAFO rule. EPA proposes to extend the dates for newly defined CAFOs to seek NPDES permit coverage and the date by which all CAFOs must develop and implement NMPs. Because EPA is not likely to have completed the rulemaking responding to the Waterkeeper decision prior to the dates by which newly defined CAFOs must seek permit coverage, the Agency proposes in today's notice to revise these dates to a time that is subsequent to the forthcoming CAFO rule revision.

Inasmuch as these proposed revisions precede the other regulatory revisions that EPA plans to propose to respond to the Waterkeeper decision, they are made strictly in the context of existing regulations promulgated in the 2003 CAFO rule. Today's proposal is simply a means of avoiding conflict with existing deadlines that precede EPA's upcoming revisions to the 2003 rules. Today's proposal does not, for example, address issues associated with the court's vacature of the requirement that all CAFOs seek coverage under an NPDES permit. That issue and other related issues will be addressed in the separate upcoming rulemaking. Therefore, EPA is today soliciting comment only on its proposal to revise specific dates in the 2003 rule, as described below.

A. Application Deadline for Newly Defined CAFOs

1. Proposal To Extend Deadline for Seeking Permit Coverage

EPA is proposing to extend the date by which operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from February 13, 2006, to March 30, 2007. EPA is also proposing to amend the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from April 13, 2006, to March 30, 2007.

Today's proposal would not affect the requirements applicable to new source CAFOs that discharge or propose to discharge, even those in categories that were added to the definition of a CAFO in the 2003 CAFO rule. New source CAFOs that discharge or propose to discharge are required by the 2003 CAFO rule to seek NPDES permit coverage at least 180 days prior to the time that they commence operating.

2. Background

The 2003 CAFO rule added facilities that had not been previously defined as CAFOs (in the 1976 regulations) to the definition of a CAFO. Operations newly defined as CAFOs in the 2003 CAFO rule included veal operations, chicken and layer operations using other than liquid manure handling systems, and AFOs that were previously not defined as CAFOs because they discharged only in the event of a 25-year/24-hour storm (see 40 CFR 122.23(b)). Those CAFOs in these categories that were in existence on the date the 2003 CAFO rule took effect (April 14, 2003) represent the group of CAFOs currently subject to the February 13, 2006, deadline (see 40 CFR 122.23(g)(2)). This group of CAFOs represented most of the newly defined CAFOs that were covered by the 2003 rule. In addition, other existing facilities that might become CAFOs, as a result of the revised CAFO definitions in the 2003 CAFO rule, are so-called ''new dischargers'' that might at some date subsequent to the effective date of the 2003 CAFO rule become a CAFO due to changes in their operations, where those changes would not have made the operation a CAFO prior to April 14, 2003. This second group of facilities is currently required to seek permit coverage by April 13, 2006, or 90 days after becoming defined as a CAFO (whichever date is later) (see 40 CFR 122.23(g)(3)(iii)).

Both of these groups of CAFOs were allowed three years to seek permit coverage when EPA issued the 2003 CAFO rule. In the preamble to the 2003 CAFO rule, EPA reasoned that such an approach was consistent with Congressional intent with respect to newly established point sources, in the 1972 Clean Water Act, and with Agency practice in a similar prior rulemaking. Moreover, the Agency believed that the three year delay provided other advantages, including adequate time for States to provide permit coverage for CAFOs that were not previously required to be permitted and to revise state regulatory programs (see 68 FR 7204).

3. Rationale

These newly defined CAFOs are required by the current regulations to seek NPDES permit coverage by the dates established in the 2003 CAFO rule (either in February 2006 or April 2006). Both of these dates occur before the time when EPA will be issuing the upcoming rule revisions. EPA is proposing to extend those dates to allow EPA time to complete that rulemaking. EPA believes that, under these circumstances, there are compelling reasons to provide these CAFOs, who are required to apply for an NPDES permit for the first time under the 2003 rule, an extension of time so that they need not apply for permits until after EPA has completed the forthcoming revisions to the 2003 rule. This is appropriate, for example, because among other things the revisions will address the court's ruling on which CAFOs need to apply for permits at all and, where permits are issued, the need to include terms of the NMPs in the permit.

Because today's proposed extension would add another year to the three years originally provided for these facilities to obtain NPDES permit coverage, EPA does not believe that a further extension beyond March 2007, is either necessary or appropriate at this time.

B. Deadline for Nutrient Management Plans

1. Proposal To Extend Deadline for Nutrient Management Plans

EPA is proposing to extend the deadline by which permitted CAFOs are required to develop and implement NMPs, from December 31, 2006, to March 30, 2007. This proposal would revise all references to the date by which NMPs must be developed and implemented currently in the 2003 CAFO rule. Thus the deadlines established in 40 CFR 122.21(i)(1)(x), 122.42(e)(1), 412.31(b)(3), and 412.43(b)(2) are all proposed to be revised accordingly.

Today's proposal would not affect CAFOs operating under existing permits so long as those permits remain in effect. If their existing permits require development and implementation of an NMP, currently permitted CAFOs must develop and implement their NMPs in accordance with the terms of their current permit.

2. Background

The 2003 CAFO rule required all CAFOs to develop and implement a NMP by December 31, 2006, except that CAFOs seeking to obtain coverage under a permit subsequent to that date were required to have a NMP developed and implemented upon the date of permit coverage. The same dates were established for the implementation of the land application requirements in the Effluent Limitation Guidelines (ELGs), including the NMP requirements in the ELGs. As discussed in the preamble to the 2003 CAFO rule, EPA believed that these dates were reasonable given that operations would have had three and a half years from the time the 2003 rule

was issued to employ the necessary planning and construction to implement an NMP. For Large CAFOs that are new sources (*i.e.*, those commencing construction after the effective date of the 2003 CAFO rule), the land application requirements at 40 CFR 412.4(c) applied immediately.

EPA concluded that this timeframe also allowed States to update their NPDES programs and issue permits to reflect the NMP requirements of the 2003 CAFO rule and provided flexibility for permit authorities to establish permit schedules based on specific circumstances, including prioritization of NMP development and implementation based on site-specific water quality risks and the available infrastructure for development of NMPs.

3. Rationale

The proposal to extend the date by which CAFOs must develop and implement their NMPs is consistent with today's proposal to extend the deadline for newly defined CAFOs to seek permit coverage, and would mean that CAFOs would be required to have developed and implemented an NMP as of the date they apply for an NPDES permit.

As previously discussed, EPA plans to address in a separate proposal the Second Circuit's ruling with respect to including terms of the NMP in permits issued to CAFOs. For present purposes, EPA notes that making these two deadlines coincide would be consistent with the Court's direction to include terms of the NMP in permits issued to CAFOs.

EPA does not believe that additional time beyond March 2007 is necessary at this time because the substantive NMP requirements have been in place since February 2003, and CAFOs have thus had adequate time to prepare NMPs. By extending the original deadline for NMP development by three additional months, today's proposal allows the CAFO operator time during the winter season to prepare the NMP paperwork and to begin implementing the practices in the NMP.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden. As discussed above, the purpose of today's proposed rule is solely to address timing issues associated with the Agency's response to the Waterkeeper court ruling based on litigation ensuing from the 2003 CAFO rule. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR parts 9, 122, 123, and 412 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0250. The EPA ICR number for the original set of regulations is 1989.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment on rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The effect of the proposal, if implemented is solely to extend certain compliance deadlines related to NPDES CAFO permitting. EPA believes that this will have the effect of relieving the regulatory burden for affected CAFOs.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule would not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As discussed above, the purpose of today's proposed rule is solely to address timing issues associated with the Agency's response to the Waterkeeper court ruling based on litigation ensuing from the 2003 CAFO rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA does not consider an annual impact of $2 million on States to be a substantial effect. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations would not alter the basic State-Federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249; November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications. It 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.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under E.O. 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. The benefits analysis performed for the 2003 CAFO rule determined that the rule would result in certain significant benefits to children's health. (Please refer to the Benefits Analysis in the record for the 2003 CAFO final rule.)

Since today's action would not affect the environmental benefits of the rule, these benefits are retained.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule would not be subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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) 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 standard 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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 412

Environmental protection, Feedlots, Livestock, Waste treatment and disposal, Water pollution control.

Dated: December 15, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 122 and 412 as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 122.21 by revising paragraph (i)(1)(x) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(i) * * *

(1) * * *

(x) For CAFOs that must seek coverage under a permit after March 30, 2007, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

* * * * *

3. Sections 122.23 (g)(2) and (g)(3)(iii) are revised to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

* * * * *

(g) * * *

(1) * * *

(2) Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date. For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than March 30, 2007.

(3) * * *

(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until March 30, 2007, or 90 days after becoming defined as a CAFO, whichever is later.

* * * * *

4. Section 122.42 is amended by revising the third sentence in paragraph (e)(1) introductory text to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) * * *

(1) * * * Permitted CAFOs must have their nutrient management plans developed and implemented by March 30, 2007. CAFOs that seek to obtain coverage under a permit after March 30, 2007 must have a nutrient management plan developed and implemented upon the date of permit coverage. * * *

* * * * *

PART 412—CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) POINT SOURCE CATEGORY

1. The authority citation for part 412 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, 1361.

2. Amend § 412.31 by revising paragraph (b)(3) to read as follows:

§ 412.31 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *

(3) The CAFO shall attain the limitations and requirements of this paragraph by March 30, 2007.

3. Amend § 412.43 by revising paragraph (b)(2) to read as follows:

§ 412.43 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *

(2) The CAFO shall attain the limitations and requirements of this paragraph by March 30, 2007.

[FR Doc. 05–24303 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 70, No. 244

Wednesday, December 21, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Correction to Notice of Federal Advisory Committee meeting.

SUMMARY: This document corrects Notice of Federal Advisory Committee that was published in the **Federal Register** on Tuesday, December 13, 2005 (70 FR 73720). The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on January 9 and 10, 2006.

DATES: Monday, January 9, 2006, from 9 a.m. to 5 p.m., and Tuesday, January 10, 2006, from 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notices, that was the subject of FR Doc. E5–7246, is corrected as follows:

On page 73720, column 2, third line of the second full paragraph, the language ''will commence at 1 p.m. on January 10'' is corrected to read ''will commence at 1 p.m. on January 9''.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. E5–7581 Filed 12–20–05; 8:45 am]

BILLING CODE 4830–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–NEW.

Form Number: N/A.

Title: USAID 22 CFR 226.91, Marking Requirements, ''Branding Strategy'' and ''Marking Plan''.

Type of Submission: New.

Purpose: The proposed information collection consists of the requirement for Apparent Successful Applicants to submit a Branding Strategy and Marking Plan as defined in the Final Rule (70 FR 50188, August 26, 2005). The information collected will be the Apparent Successful Applicant's proposal on how to brand and mark with the USAID Identify, the USAID funded program, project, activity, public communication or commodity. Respondents will consist of only those applicants for USAID funding who have been requested to submit a Branding Strategy and Marking Plan by the Agreement Officer.

Annual Reporting Burden:

Respondents: 500.

Total annual responses: 500.

Total annual hours requested: 1750 hours.

Dated: December 14, 2005.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 05–24287 Filed 12–20–05; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Value-Added Producer Grant Application Deadlines

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $19.475 million in competitive grant funds for fiscal year (FY) 2006 to help independent agricultural producers enter into value-added activities. Of this amount, $1.5 million is set aside for applicants requesting $25,000 or less. Awards may be made for planning activities or for working capital expenses, but not for both. The maximum grant amount for a planning grant is $100,000 and the maximum grant amount for a working capital grant is $300,000.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than March 31, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

Electronic copies must be received by March 31, 2006 to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

ADDRESSES: You may obtain application guides and materials for a VAPG at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or by contacting your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing ''1''.

Submit completed paper applications for a grant to Cooperative Programs, Attn: VAPG Program, Mail Stop 3250,

Room 4016-South, 1400 Independence Ave., SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558.

Submit electronic grant applications at *http://www.grants.gov,* following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm,* which contains application guidance, including Frequently Asked Questions and an Application Guide. Or you may contact your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing ''1'', or by selecting the State Contacts link at the above Web site. Applicants are encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Value-Added Producer Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.352.

Dates: Application Deadline: You may submit completed applications for grants on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than March 31, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

Electronic copies must be received by March 31, 2006 to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

I. Funding Opportunity Description

This solicitation is issued pursuant to section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171 (see 7 U.S.C. 1621 note)) authorizing the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants. The Secretary of Agriculture has delegated the program's administration to USDA's Rural Business-Cooperative Service.

The primary objective of this grant program is to help eligible independent producers of agricultural commodities, agriculture producer groups, farmer and rancher cooperatives, and majority-controlled producer-based business ventures develop strategies to create marketing opportunities and to help develop business plans for viable marketing opportunities. RBS will competitively award grants to fund one of the following two activities: (1) Planning activities needed to establish a viable value-added marketing opportunity for an agricultural product (*e.g.* conduct a feasibility study, develop a business plan, develop a marketing plan); or (2) acquire working capital to operate a value-added business venture that will allow producers to better compete in domestic and international markets. In order to provide program benefits to as many eligible applicants as possible, applications can only be for one or the other of these two activities, but not both. Applicants must limit their proposals to emerging markets. Grants will only be awarded if projects or ventures are determined to be economically viable and sustainable. These grants will facilitate greater participation in emerging markets and new markets for value-added products. No more than 10 percent of program funds can go to applicants that are majority-controlled producer-based business ventures.

Definitions

The definitions at 7 CFR 4284.3 and 4284.904 are incorporated by reference.

Bioenergy Project—A Renewable Energy system that produces fuel, thermal energy, or electric power from a Biomass source, other than an anaerobic digester.

Biomass—Any organic material that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fates, oils, and greases. It does not include paper that is commonly reclycled or unsegregated solid waste.

Farm or Ranch—Any place from which $1,000 or more of agricultural products (crops and livestock) were raised and sold or normally would have been raised and sold during the previous year.

Feasibility Study—An analysis of the economic, market, technical, financial, and management feasibility of a proposed Project.

Project—Includes all proposed activities to be funded by the VAPG and matching funds.

Renewable Energy—Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.

Venture—Includes the project and any other activities related to the production, processing, and marketing of the value-added product that is the subject of the VAPG request.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2006.

Approximate Total Funding: $19.475 million.

Approximate Number of Awards: 250.

Approximate Average Award: $78,000.

Floor of Award Range: None.

Ceiling of Award Range: $25,000 for set-aside grants; $100,000 for Planning Grants; and $300,000 for Working Capital Grants.

Anticipated Award Date: August 31, 2006.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be an independent producer, agriculture producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture as defined in 7 CFR 4284, subpart A. If the applicant is an unincorporated group (steering committee), it must form a legal entity before the grant agreement can be signed. Please note that a steering committee may only apply as an independent producer. Therefore, the steering committee must be composed of 100 percent independent producers and the business to be formed must be owned by 100 percent independent producers.

B. Cost Sharing or Matching

Matching funds are required. Applicants must verify in their applications that matching funds are available for the time period of the grant. Matching funds must be at least equal to the amount of grant funds requested. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Product Eligibility: The project proposed must involve a value-added product as defined in 7 CFR 4284, subpart A. There are four categories of value-added. The first category is the incremental value that is realized by the producer from an agricultural commodity or product as the result of a change in its physical state. The second category is the incremental value that is realized by the producer from an agricultural commodity or product as the result of differentiated production or marketing, as demonstrated in a business plan. The third category is the incremental value that is realized by the producer from an agricultural commodity or product as the result of product segregation. The fourth category is the economic benefit realized from the production of farm- or ranch-based renewable energy. Applicants should note that a project meeting only the second category of value-added must already have a business plan in place at the time of application. The applicant must reference this business plan in the application. Because of this requirement, projects meeting only the second category of value-added will be ineligible to apply for a planning grant. In order to be eligible under the fourth category, the project must generate energy on-farm or on-ranch.

Activity Eligibility: The project proposed must specify whether grant funds are requested for planning activities or for working capital. Applicants may not request funds for both types of activities in one application.

If the grant request is for planning activities, working capital expenses are not eligible for funding. If more than 20 percent of the total project cost (both grant and matching funds) for a planning activities application is for working capital expenses, the entire application will be determined to be ineligible and will not be considered for funding. However, if an application with 20 percent or less of working capital expenses is selected for funding, all working capital expenses must be removed from the project and replaced with eligible planning expenses or the amount of the grant award will be reduced accordingly.

If the grant request is for working capital, planning activities are not eligible for funding. If more than 20 percent of the total project cost (both grant and matching funds) for a working capital application is for planning activities, the entire application will be determined to be ineligible and will not be considered for funding. However, if an application with 20 percent or less of planning expenses is selected for funding, all planning expenses must be removed from the project and replaced with eligible working capital expenses or the amount of the grant award will be reduced accordingly.

Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible and the application will not be considered for funding. However, if an application with 10 percent or less of ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the grant award will be reduced accordingly.

Applicants other than independent producers applying for a working capital grant must demonstrate that the venture has not been in operation more than two years at the time of application in order to show that they are entering an emerging market.

Grant Period Eligibility: Applications that have a timeframe of more than 365 days will be considered ineligible and will not be considered for funding. Applications that request funds for a time period ending after December 31, 2007, will not be considered for funding.

Completeness Eligibility: Applications without sufficient information to determine eligibility will not be considered for funding. Applications that are missing any required elements (in whole or in part) will not be considered for funding, except for exceptions noted in the following paragraphs.

Multiple Grant Eligibility: An applicant may not receive more than one grant in any one funding cycle. An applicant may submit multiple applications, but if more than one application scores high enough to be funded, only the highest ranked application will be funded.

Applicants who have already received a planning grant for the proposed project cannot receive another planning grant for the same project. Applicants who have already received a working capital grant for a project cannot receive any additional grants for that project. Please note that the Agency penalizes an applicant who is applying for a planning grant when it has already received a planning grant or who is applying for a working capital grant when it has already received a working capital grant by deducting ten points from the applicant's score under Section V.1.ix. and V.2.ix.

Current Grant Eligibility: If an applicant currently has a VAPG, the grant period for that grant must be scheduled to expire by December 31, 2006.

IV. Application and Submission Information

A. Address To Request Application Package

If you plan to apply using a paper application, you can obtain the application package for this funding opportunity at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing ''1''. Application forms can be mailed to you. If you plan to apply electronically, you must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

You may submit your application in paper or in an electronic format. You may view the Application Guide at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* It is recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for a paper submission or it can be filled out electronically and submitted as an attachment through Grants.gov.

If you submit your application in paper form, you must submit one signed original of your complete application. The application must be in the following format:

Font size: 12 point unreduced.

Paper size: 8.5 by 11 inches.

Page margin size: 1 inch on the top, bottom, left, and right.

Printed on only one side of each page.

Held together only by rubber bands or metal or plastic clips; not bound in any other way.

Language: English, avoid jargon.

The submission must include all pages of the application.

It is recommended that the application is in black and white, and not color. Those evaluating the application will only receive black and white images.

If you submit your application electronically, you must follow the instructions given at *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. Form SF–424, ''Application for Federal Assistance.'' In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number (individuals and steering committees are exempt), the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN) or social security number if the applicant is an individual or steering committee, the start and end dates of the project, the federal funds requested, other funds that will be used as matching funds, an answer to the question, ''Is applicant delinquent on any Federal debt?,'' the name and signature of an authorized representative (if the signature is of anyone other than a stated owner of the proposed venture, the application should include a signed statement by either the owner(s) of the entity or the governing board stating that the signature is made by an authorized person), the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete. Please note that if the applicant applies as a steering committee, it will be required to form a legal entity and must report a DUNS number and an EIN prior to final approval of the grant agreement.

You are required to have a DUNS number to apply for a grant from RBS unless you are an individual or a steering committee. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call (866) 705–5711. Additional information on the VAPG program can be obtained at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or contact your Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing ''1''.

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both federal and matching funds.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' In order for this form to be considered complete, the form must be signed by an authorized official (if the signature is of anyone other than a stated owner of the proposed Venture, the application should include a signed statement by either the owner(s) of the entity or the governing body stating that the signature is made by an authorized person) and include the title, name of applicant, and date submitted.

4. Survey on Ensuring Equal Opportunity for Applicants. Submission of this form is voluntary for non-profit applicants only. For-profit applicants should not submit this form.

5. Title Page. The title page must include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

6. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents (TOC) immediately following the title page. The TOC must include page numbers for each component of the proposal. Pagination should begin immediately following the TOC. In order for this element to be considered complete, the TOC must include page numbers for the executive summary, an eligibility discussion, the proposal narrative and its subcomponents (project title, information sheet, goals of the project, work plan, performance evaluation criteria and proposal evaluation criteria), conflict of interest disclosure, certification of judgment, verification of matching funds and certification of matching funds.

7. Executive Summary. A summary of the proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed and other relevant information that provides a general overview of the project. In this section the applicant must clearly state whether the proposal is for a planning grant or a working capital grant and the amount requested. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

8. Eligibility Discussion. A detailed discussion, not to exceed four (4) pages, describing how the applicant meets the eligibility requirements. In the event that more than 4 pages are submitted, only the first 4 pages will be considered.

i. Applicant Eligibility. The applicant must first describe how it meets the definition of an independent producer, agriculture producer group, farmer or rancher cooperative, or a majority-controlled producer-based business venture as defined in 7 CFR 4284, subpart A. The applicant must apply as only one type of applicant.

If the applicant is an independent producer, the proposal must demonstrate that 100 percent of the owners of the business applying meet the definition of an independent producer. These owners must currently own and produce more than 50 percent of the raw commodity that will be used for the value-added product. The applicant must also demonstrate that the product is owned by the producers from its raw commodity state through the production of the value-added product. Note that farmer or rancher cooperatives that are 100 percent-owned by independent producers are not considered under the independent producer category; these applicants must apply as farmer or rancher cooperatives. Also, note that entities that contract out the production of an agricultural commodity are not considered independent producers.

If the applicant is an agriculture producer group, it must state its mission and demonstrate that its mission includes working on behalf of independent producers. The applicant must also demonstrate that the majority of its membership and board of directors are comprised of independent producers. The applicant must identify (either by name or by class) the independent producers on whose behalf the work will be done. These producers must currently own and produce more than 50 percent of the raw commodity that will be used for the value-added product. Note that applicants tentatively selected for a grant award must verify that the work will be done on behalf of the independent producers identified in the application. Also, note that entities that contract out the production of an agricultural commodity are not considered independent producers.

If the applicant is a farmer or rancher cooperative, the applicant must reference the business' good standing as a cooperative in its state of incorporation. The applicant must also explain how the cooperative is 100 percent owned and controlled by agricultural producers. If a cooperative is not 100 percent owned and controlled by agricultural producers, it may still be eligible to apply as a majority-controlled producer-based business venture, provided it meets the definition in 7 CFR 4284, subpart A. If the applicant is applying on behalf of only a portion of its membership, that portion must be identified, and the applicant must demonstrate that all members in this portion of its membership meet the definition of independent producers. The independent producers must

currently own and produce more than 50 percent of the raw commodity that will be used for the value-added product. Note that applicants tentatively selected for a grant award must verify that the work will be done on behalf of the independent producers identified in the application. Also, note that entities that contract out the production of an agricultural commodity are not considered independent producers.

If the applicant is a majority-controlled producer-based business venture, the applicant must demonstrate that more than 50 percent of the ownership and control is held by independent producers, or, partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by independent producers. It is the Agency's position that the majority ownership must exist both in terms of financial interest and in terms of the number of owners. The applicant must state number of owners who are independent producers and the number of owners who are not independent producers. The applicant must also state the independent producers' financial interest and the non-independent producers' financial interest. The applicant must also demonstrate that independent producers have majority control over the business. Majority control must be demonstrated through voting rights on the governing body of the business venture.

The majority of voting rights must belong to independent producers who currently own and produce more than 50 percent of the raw commodity that will be used for the value-added product. Also, note that entities that contract out the production of an agricultural commodity are not considered independent producers.

ii. Product Eligibility. The applicant must next describe how the value-added product to be produced meets at least one of the categories in the definition of ''value-added'' as defined in 7 CFR 4284, subpart A. Regardless of which category is met, the applicant must describe the raw commodity that will be used, the process used to add value, and the value-added product that will be marketed.

If the product meets the first category, the application must explain how the change in physical state or form of the product enhances its value. A change in physical state is only achieved if the product cannot be returned to its original state. Examples of this type of product include: Fish fillets, diced tomatoes, ethanol, bio-diesel, and wool rugs.

If the product meets the second category, the proposal must explain how the production or marketing of the commodity enhances the value-added product's value. The enhancement of value must be quantified by using a comparison with value-added products produced or marketed in the standard manner. Examples of this type of product include: Organic carrots, identity-preserved apples, and branded milk. Also, a business plan that has been developed for the applicant for the project must be referenced.

If the product meets the third category, the proposal must explain how the physical segregation of a commodity or product enhances its value. The enhancement of value should be quantified, if possible, by using a comparison with commodities marketed without segregation. An example of this type of product is non-genetically-modified corn. Applicants should note that simply sorting produce or livestock by grade is not sufficient to meet this definition. Applicants must demonstrate that a physical barrier separates the commodity from similar commodities during production, that the commodity will continue to be separated during processing, and that the value-added product produced will be separated from similar products during marketing.

If the product meets the fourth category, the proposal must explain how the renewable energy will be generated on a farm or ranch owned by the owners of the venture. Please note that the owners of the farm or ranch must currently produce an agricultural commodity and the farm or ranch must meet the definition of a farm or ranch as defined in the ''Definitions'' section of this notice. Applicants should also note that ethanol and bio-diesel do not meet this definition unless the energy is generated on a farm or ranch.

iii. Purpose Eligibility. The applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the applicant must describe how the proposed project consists of eligible planning activities or eligible working capital activities. Second, the applicant must demonstrate that the activities are directly related to the processing and/or marketing of a value-added product. If the applicant is applying for a working capital grant, it must reference a third-party, independent feasibility study and a business plan that have been completed specifically for the proposed Project. If the applicant is applying for a working capital grant and it is an agriculture producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture, it must demonstrate that its proposed venture has been in operation for less than two years at the time of application, in order to show that the applicant is entering an emerging market.

9. Proposal Narrative. The narrative, not to exceed 35 pages, must include the following information. In the event that more than 35 pages are submitted, only the first 35 pages submitted will be considered.

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF–424. The project title does not need to appear on a separate page. It can be included on the title page and/or on the information sheet.

ii. Information Sheet. A separate one page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion.

iii. Goals of the Project. A clear statement of the ultimate goals of the project. There must be an explanation of how a market will be expanded and the degree to which incremental revenue will accrue to the benefit of the agricultural producer(s).

iv. Work Plan. The narrative must contain a description of the project and set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what time frame the activity will take place, and the cost of the activity. Please note that one of the proposal evaluation criteria evaluates the work plan and budget. Applicants should only submit the work plan and budget once, either in this section or as part of the work plan/budget evaluation criterion discussion.

v. Working capital applications must also include three (3) years of pro forma financial statements, including an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for the next two years. The balance sheet should be annual for all three years. The financial statements will not count as part of the 35 page limit for the narrative section of the proposal.

vi. Performance Evaluation Criteria. Applicants applying for planning grants

must suggest at least one criterion by which their performance under a grant could be evaluated. Applicants applying for working capital grants must identify their current customer base, their current revenue accruing to independent producers, and the current number of jobs existing for the venture. Working capital projects with significant energy components must also report current capacity (e.g. gallons of ethanol produced annually, megawatt hours produced annually). Working capital grant applicants may also suggest additional performance evaluation criteria for incorporation into the grant award. Any suggested criteria are not binding on USDA. Please note that these criteria are different from the proposal evaluation criteria and are a separate requirement. Failure to address this criterion by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

vii. Proposal Evaluation Criteria. Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form. Failure to address the appropriate evaluation criteria (planning grant proposals must address planning grant evaluation criteria and working capital grant proposals must address working capital grant evaluation criteria) by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

10. Conflict of Interest Disclosure. If the applicant plans to conduct business with any family members, company owners, or other identities of interest using grant or matching funds, the nature of the business to be conducted and the nature of the relationship between the applicant and the identity of interest must be disclosed. Examples include in-kind matching funds donated by the applicant's immediate family and contracting with someone who has a financial interest in the Venture for services paid by grant or matching funds. If the applicant believes that no conflicts of interest exist with respect to its proposed project, it must state that belief.

11. Certification of Judgment. Applicants must certify that the United States has not obtained a judgment against them. No grant funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it.'' A separate signature is not required.

12. Verification of Matching Funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If matching funds are to be provided by the applicant in cash, a copy of a bank statement with an ending date within 30 days of the application submission is required. The bank statement must show an ending balance equal to or greater than the amount of cash matching funds proposed. If the matching funds will be provided through a loan or line of credit, the applicant must include a statement from the lending institution verifying the amount available, the time period of availability of the funds, and the purposes for which funds may be used. If the matching funds are to be provided by an in-kind contribution from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification for funds donated outside the proposed time period of the grant will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Verification for in-kind contributions donated outside the proposed time period of the grant will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this grant program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this grant program. The matching funds must be spent or donated during the grant period and the funds must be expended at a rate equal to or greater than the rate grant funds are expended. Some examples of acceptable uses for matching funds are: Skilled labor performing work required for the proposed Project, office supplies, and purchasing inventory. Some examples of unacceptable uses of matching funds are: Land, fixed equipment, buildings, and vehicles.

Expected program income may not be used to fulfill the matching funds requirement at the time of application. If program income is earned during the time period of the grant, it may be used to replace other sources of matching funds if prior approval is received from the Agency. Any program income earned during the grant period is subject to the requirements of 7 CFR 3015, subpart F and 3019.24.

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will be determined to be incomplete and will not be considered for funding.

13. Certification of Matching Funds. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement. Please note that this certification is a separate requirement from the verification of matching funds requirement. Applicants should include a statement for this section that reads as follows: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement.'' A separate signature is not required.

C. Submission Dates and Times

Application Deadline Date: March 31, 2006.

Explanation of Deadlines: Paper applications must be POSTMARKED by the deadline date (see Section IV.F. for the address). Final electronic applications must be RECEIVED by Grants.gov by the deadline date. If your application does not meet the deadline above, it will not be considered for funding. You will be notified that your application did not meet the submission deadline. You will also be notified by mail or by e-mail if your application is received on time.

D. Intergovernmental Review of Applications

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of states that maintain an SPOC may be obtained at *http://www.whitehouse.gov/omb/grants/spoc.html*. If your state has an SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of your application. If your state has not established an SPOC, or you do not want to submit your application, Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact your Rural Development State Office for assistance and questions on this process. You can find the Rural Development State Office in the telephone directory under the Federal government listings, by calling (202) 720–4323 and selecting option ''1'' or at *http://www.rurdev.usda.gov/*.

E. Funding Restrictions

Funding restrictions apply to both grant funds and matching funds. Funds may only be used for planning activities or working capital for projects focusing on processing and marketing a value-added product.

1. Examples of acceptable planning activities include to:

i. Obtain legal advice and assistance related to the proposed venture;

ii. Conduct a feasibility analysis of a proposed value-added venture to help determine the potential marketing success of the venture;

iii. Develop a business plan that provides comprehensive details on the management, planning, and other operational aspects of a proposed venture; and

iv. Develop a marketing plan for the proposed value-added product, including the identification of a market window, the identification of potential buyers, a description of the distribution system, and possible promotional campaigns.

2. Examples of acceptable working capital uses include to:

i. Design or purchase an accounting system for the proposed venture;

ii. Pay for salaries, utilities, and rental of office space;

iii. Purchase inventory (not including delivery of a raw commodity to the processing plant), office equipment (*e.g.* computers, printers, copiers, scanners), and office supplies (*e.g.* paper, pens, file folders); and

iv. Conduct a marketing campaign for the proposed value-added product.

3. No funds made available under this solicitation shall be used to:

i. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

ii. Purchase, rent, or install fixed equipment, including processing equipment;

iii. Purchase vehicles, including boats;

iv. Pay for the preparation of the grant application;

v. Pay expenses not directly related to the funded Venture;

vi. Fund political or lobbying activities;

vii. Fund any activities prohibited by 7 CFR parts 3015 and 3019;

viii. Fund architectural or engineering design work for a specific physical facility;

ix. Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility. The Agency considers these expenses to be ineligible because the intent of the program is to assist producers with marketing value-added products rather than producing agricultural commodities;

x. Fund research and development;

xi. Purchase land;

xii. Duplicate current services or replace or substitute support previously provided;

xiii. Pay costs of the project incurred prior to the date of grant approval;

xiv. Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence; or

xv. Pay any judgment or debt owed to the United States; or

xvi. Conduct activities on behalf of anyone other than a specific independent producer or group of independent producers. The Agency considers conducting industry-level feasibility studies and business plans that are also known as feasibility study templates or guides or business plan templates or guides to be ineligible because the assistance is not provided to a specific group of independent producers.

F. Other Submission Requirements

You may submit your paper application for a grant to Cooperative Programs, Attn: VAPG Program, Mail STOP 3250, Room 4016-South, 1400 Independence Ave. SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558. You may also choose to submit your application electronically at *http://www.grants.gov*. Final applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Each application submission must contain all required documents in one envelope, if by mail or express delivery service.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria. Failure to address any one of the following criteria by the application deadline will result in a determination of incomplete and the application will not be considered for funding. Applications for planning grants have different criteria to address than applications for working capital grants. Addressing the incorrect set of criteria will result in a determination of incomplete and the application will not be considered for funding. The total points available for each set of criteria are 73.

1. Criteria for applications for planning grants are:

i. Nature of the proposed venture (0–10 points). Projects will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. Points will be awarded based on the greatest expansion of markets and increased returns to producers.

ii. Qualifications of those doing work (0–10 points). Proposals will be

reviewed for whether the personnel who are responsible for doing proposed tasks, including those hired to do the studies, have the necessary qualifications. If a consultant or others are to be hired, more points may be awarded if the proposal includes evidence of their availability and commitment as well. If staff or consultants have not been selected at the time of application, the application should include specific descriptions of the qualifications required for the positions to be filled. Also, rather than attaching resumes at the end of the application, it is preferred that the qualifications of the personnel and consultants are discussed directly within the response to this criterion. If resumes are included, they should be contained within the narrative section of the application within the response to this criterion. If resumes are attached at the end of the application, those pages will be counted toward the page limit for the narrative.

iii. Commitments and support (0–10 points). Producer commitments will be evaluated on the basis of the number of independent producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Proposals will be reviewed for evidence that the Project enjoys third party support and endorsement, with emphasis placed on financial and in kind support as well as technical assistance. The applicant may submit up to ten letters of support with the application. Additional letters will not be considered for the purpose of evaluation this criterion. The applicant should reference all additional support in the discussion of this criterion, and have the additional support letters and commitment letters available upon request. These documents will be requested at the time of grant award. Failure to produce them shall result in the withdrawal of the grant award. Points will be awarded based on the greatest level of documented and referenced commitment.

iv. Project leadership (0–10 points). The leadership abilities of individuals who are proposing the venture will be evaluated as to whether they are sufficient to support a conclusion of likely Project success. Credit may be given for leadership evidenced in community or volunteer efforts. Also, rather than attaching resumes at the end of the application, it is preferred that the leadership abilities are discussed directly within the response to this criterion. If resumes are included, they should be contained within the narrative section of the application within the response to this criterion. If resumes are attached at the end of the application, those pages will be counted toward the page limit for the narrative.

v. Work plan/budget (0–10 points). The work plan will be reviewed to determine whether it provides specific and detailed planning task descriptions that will accomplish the Project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the planning activities. The budget must present a detailed breakdown of all estimated costs associated with the planning activities and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points. Logical, realistic, and economically efficient work plans and budgets will result in higher scores.

vi. Amount requested (0–1 points). One (1) point will be awarded for grant requests of $50,000 or less. In addressing this criterion, the applicant should simply state the amount requested.

vii. Project cost per owner-producer (0–2 points). This is calculated by dividing the amount of Federal funds requested by the total number of producers that are owners of the venture. The allocation of points for this criterion shall be as follows: $1–$25,000 equals 2 points, $25,001–$50,000 equals 1 point, $50,001–$300,000 equals 0 points. The applicant must state the number of owner-producers that are part of the venture. For independent producers, farmer and rancher cooperatives, and majority-controlled producer-based business ventures, the applicant must state the number of owners of the venture that are independent producers and are also owners of the venture. An owner cannot be considered an independent producer unless he/she is a producer of the agricultural commodity to which value will be added as part of this project. For agriculture producer groups, the number used should be the number of producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a Venture, each family member shall count as one owner-producer.

Applications without enough information to determine the number of producer-owners will receive 0 points for this criterion.

Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. Business size (10 points if the application meets the criterion or 0 points if the application does not meet the criterion). Applicants must demonstrate their amount of gross sales for their most recent complete fiscal year. Applicants that have less than $100 million in gross sales will receive 10 points. Applicants that have $100 million or more in gross sales will receive 0 points. For this criterion, applicants should simply state the amount of gross sales for their most recent fiscal year. Applicants that are start-up operations and do not yet have a complete fiscal year should state so state in their applications. These applicants will receive the maximum points allowed for this criterion. Applicants that do not provide enough information to determine gross sales will be awarded 0 points for this criterion. If an applicant is tentatively selected for funding, the applicant will need to verify the gross sales amount at the time of award. Failure to verify the amount stated in the application will be grounds for withdrawing the award.

ix. Number of grants (0 points if the application meets the criterion or negative 10 points if the application does not meet the criterion). Applicants must indicate whether they have received any previous grants under the VAPG program since its inception in 2001. Applicants who have already received a planning grant will receive negative 10 points. Applicants who have not received a planning grant will receive 0 points. Applicants that do not provide enough information to determine if they have received previous grants will receive negative 10 points for this criterion.

x. Presidential initiative of bio-energy (0 points if application does not meet the criterion or 5 points if application does meet the criterion). Those applications that have at least 51 percent of Project costs dedicated to planning activities for a qualifying bio-energy project will receive 5 points. If you believe this criterion is not applicable, you must state that in your application. Partial credit will not be given. Qualifying bio-energy projects are limited to on-Farm or on-Ranch production of energy as defined in the ''Definitions'' section of this notice. Applicants that do not provide enough information to determine if at least 51

percent of project costs are dedicated to a bio-energy component will receive 0 points for this criterion.

xi. Administrator points (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 11 criteria). The Administrator of RBS may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

2. Criteria for working capital applications are:

i. Business viability (0–10 points). Proposals will be evaluated on the basis of the technical and economic feasibility and sustainability of the venture and the efficiency of operations.

ii. Customer base/increased returns (0–10 points). Describe in detail how the customer base for the product being produced will expand because of the value-added venture. Provide documented estimates of this expansion. Describe in detail how a greater portion of the revenue derived from the venture will be returned to the producers that are owners of the venture. Applicants should also reference the financial statements submitted. Proposals that demonstrate strong growth in a market or customer base and greater value-added revenue accruing to producer-owners will receive more points than those that demonstrate less growth in markets and realized value-added returns.

iii. Commitments and support (0–10 points). Producer commitments will be evaluated on the basis of the number of independent producers currently involved as well as how many may potentially be involved, and the nature and level and quality of their contributions. End user commitments will be evaluated on the basis of identified markets, letters of intent or contracts from potential buyers and the amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in-kind support as well as technical assistance. The applicant may submit up to ten letters of support with the application. Additional letters will not be considered for the purpose of evaluation this criterion. The applicant should reference all additional support in the discussion of this criterion, and have the additional support letters and commitment letters available upon request. These documents will be requested at the time of grant award. Failure to produce them shall result in the withdrawal of the grant award. Points will be awarded based on the greatest level of documented and referenced commitment.

iv. Management team/work force (0–10 points). The education and capabilities of project managers and those who will operate the venture must reflect the skills and experience necessary to effect project success. The availability and quality of the labor force needed to operate the venture will also be evaluated. Applicants must provide the information necessary to make these determinations. Proposals that reflect successful track records managing similar projects will receive higher points for this criterion than those that do not reflect successful track records.

v. Work plan/budget (0–10 points). The work plan will be reviewed to determine whether it provides specific and detailed task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the proposed activities. The budget must present a detailed breakdown of all estimated costs associated with the venture's operations and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points. Logical, realistic, and economically efficient work plans and budgets will result in higher scores.

vi. Amount requested (0–1 points). One (1) point will be awarded for grant requests of $75,000 or less. In addressing this criterion, the applicant should simply state the amount requested.

vii. Project cost per owner-producer (0–2 points). This ratio is calculated by dividing the amount of VAPG funds requested by the total number of producers that are owners of the venture. The allocation of points for this criterion shall be as follows: $1–$50,000 equals 2 points, $50,001–$100,000 equals 1 point, and $100,001–$150,000 equals 0 points. The applicant must state the number of owner-producers that are part of the venture. For independent producers, farmer and rancher cooperatives, and Majority-controlled producer-based business ventures, the applicant must state the number of owners of the venture that are independent producers and are also owners of the venture. An owner cannot be considered an independent producer unless he/she is a producer of the agricultural commodity to which value will be added as part of this project. For agriculture producer groups, the number used should be the number of producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a venture, each family member shall count as one owner-producer.

Applications without enough information to determine the number of producer-owners will receive 0 points for this criterion.

Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. Business size (10 points if the application meets the criterion or 0 points if the application does meet the criterion). Applicants must demonstrate their amount of gross sales for their most recent complete fiscal year. Applicants that have less than $100 million in gross sales will receive 10 points. Applicants that have $100 million or more in gross sales will receive 0 points. For this criterion, applicants should simply state the amount of gross sales for their most recent fiscal year. If an applicant is tentatively selected for funding, the applicant will need to verify the gross sales amount at the time of award. Applicants that are start-up operations and do not yet have a complete fiscal year should state so state in their applications. These applicants will receive the maximum points allowed for this criterion. Applicants that do not provide enough information to determine gross sales will receive 0 points for this criterion. Failure to verify the amount stated in the application will be grounds for withdrawing the award.

ix. Number of grants (0 points if the application meets the criterion or negative 10 points if the application does not meet the criterion). Applicants must indicate whether they have received any previous grants under the VAPG program since its inception in 2001. Applicants who have already received a working capital grant will receive negative 10 points. Applicants who have not received a working capital grant will receive 0 points. Applicants that do not provide enough information to determine if they have received previous grants will receive negative 10 points for this criterion.

x. Presidential initiative of bio-energy (0 points if application does not meet

the criterion or 5 points if application does meet the criterion). Applicants must indicate whether they believe their project has a bio-energy component. If you believe this criterion is not applicable, you must state that in your application. Those applications that have at least 51 percent of Project costs dedicated to working capital for a qualifying bio-energy project will receive 5 points. Partial credit will not be given. Qualifying bio-energy projects are limited to on-Farm or on-Ranch production of energy as defined in the ''Definitions'' section of this notice. Applicants that do not provide enough information to determine if at least 51 percent of project costs are dedicated to a bio-energy component will receive 0 points for this criterion.

xi. Administrator points (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 10 criteria). The Administrator of RBS may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

B. Review and Selection Process

Each application will be assigned to a USDA Rural Development State Office, based on the address of the applicant or the location of the project. This state will be known as the servicing State Office. For example, if an applicant has an address in Kansas, the application will be assigned to the Rural Development State Office in Kansas and the Kansas State Office will be the servicing State Office. Applications will then be initially reviewed by Rural Development field office personnel from the servicing State Office for eligibility and to determine whether all required elements are complete. A list of required elements follows:

- SF–424
- SF–424A
- SF–424B
- Title Page
- Table of Contents
- Executive Summary
- Applicant Eligibility Discussion
- Product Eligibility Discussion
- Purpose Eligibility Discussion
- Project Title
- Information Sheet
- Goals of the Project
- Work Plan
- Pro-Forma Financial Statements (working capital applications only)
- Performance Evaluation Criteria
- Proposal Evaluation Criterion i
- Proposal Evaluation Criterion ii
- Proposal Evaluation Criterion iii
- Proposal Evaluation Criterion iv
- Proposal Evaluation Criterion v
- Proposal Evaluation Criterion vi
- Proposal Evaluation Criterion vii
- Proposal Evaluation Criterion viii
- Proposal Evaluation Criterion ix
- Proposal Evaluation Criterion x
- Conflict of Interest Disclosure
- Certification of Judgment
- Verification of Matching Funds
- Certification of Matching Funds.

Incomplete applications that have four or less incomplete required elements and appear to be otherwise eligible will receive a letter requesting the incomplete items be provided within 12 business days of the date the letter was sent. If the requested items are not received when requested or are not complete, the application will not be further evaluated and will not be considered for funding. Any other incomplete or ineligible applications will not be further evaluated and will not be considered for funding.

All eligible and complete proposals will be evaluated by three reviewers based on criteria i through v described in Section V.1 or V.2. One of these reviewers will be a Rural Development employee not from the servicing State Office and the other two reviewers will be non-Federal persons. All reviewers must meet the following qualifications. Reviewers must have obtained at least a bachelors degree in one or more of the following fields: agri-business, business, economics, finance, or marketing. They must also have a minimum of three years of experience in an agriculture-related field (*e.g.* farming, marketing, consulting, university professor, research, officer for trade association, government employee for an agricultural program). If the reviewer does not have a degree in one of those fields, he/she must possess at least five years of working experience in an agriculture-related field.

Once the scores for criteria i through v have been completed by the three reviewers, the scores will be statistically normalized to correct for any reviewer tendencies to score applications ''high'' or ''low.'' After the normalization is complete, the three scores will be converted to ensure compatibility with the additional scores discussed below and then averaged to obtain an independent reviewer score.

The application will also receive one score from the Rural Development servicing State Office based on criteria vi through x. This score will be added to the independent reviewer score.

The servicing State Office will also rank its top three applications according to how the proposed project is expected to benefit the State as a whole. The first-ranked application will be awarded three additional points, the second-ranked application will be awarded two additional points, and the third-ranked application will be awarded one additional point.

Finally, the Administrator of RBS will award any Administrator points based on criteria xi. These points will be added to the cumulative score for criteria i through x and any points received from the servicing State Office ranking score. A final ranking will be obtained based solely on the scores received for criteria i through xi and the servicing State Office ranking score. Eligible applications requesting $25,000 or less will be funded in rank order until $1.5 million in set-aside funds are expended. If the Agency does not receive enough applications to fully expend the set-aside amount, any remaining funds will be used to fund applications requesting more than $25,000. If the Agency receives more eligible applications requesting $25,000 or less than it can fund with the set-aside funds, the applications that rank too low to be funded from the set-aside funds will not be funded. Eligible applications requesting more than $25,000 will be funded in rank order using the non set-aside funds of approximately $17.975 and any funds remaining from the set-aside.

After the award selections are made, all applicants will be notified of the status of their applications by mail. Awardees must meet all statutory and regulatory program requirements in order to receive their award. In the event that an awardee cannot meet the requirements, the award will be withdrawn. Applicants for working capital grants must submit complete, independent third-party feasibility studies and business plans before the grant award can be finalized. All projects will be evaluated by the servicing State Office prior to finalizing the award to ensure that funded Projects are likely to be feasible in the proposed project area. Regardless of scoring, a project determined to be unlikely to be feasible by the Servicing State Office with concurrence by the National Office will not be funded.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about August 31, 2006.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and 4284. These regulations may be accessed at *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1.*

The following additional requirements apply to grantees selected for this program:

- Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants).''
- Form RD 400–1, ''Equal Opportunity Agreement.''
- Form RD 400–4, ''Assurance Agreement.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.*

Reporting Requirements: You must provide Rural Development with a hard copy original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your grant agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of your grant.

1. Form SF–269 or SF–269A. A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (1) of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

3. Final Project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds should be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent. Planning grant projects must also report the estimated increase in revenue, increase in customer base, number of jobs created, and any other relevant economic indicators generated by continuing the project into its operational phase. Working capital grants must report the increase in revenue, increase in customer base, number of jobs created, any other relevant economic indicators generated by the project during the grant period in addition to the total funds used for the Venture during the grant period. These total funds must include other federal, state, local, and other funds used for the venture. Projects with significant energy components must also report expected or actual capacity (e.g. gallons of ethanol produced annually, megawatt hours produced annually) and any emissions reductions incurred during the project. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact your USDA Rural Development State Office at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* You can also reach your State Office by calling (202) 720–4323 and pressing ''1''. If you are unable to contact your State Office, please contact a nearby State Office or you may contact the RBS National Office at Mail STOP 3250, Room 4016-South, 1400 Independence Avenue, SW., Washington, DC 20250–3250, Telephone: (202) 720–7558, e-mail: *cpgrants@wdc.usda.gov.*

VIII. Other Information

It is suggested that applicants visit the Agricultural Marketing Resource Center (AgMRC) at *http://www.agmrc.org* for additional information on value-added agriculture. AgMRC brings together experts from three of the nation's leading agricultural universities—Iowa State University, Kansas State University and the University of California—into a dynamic, electronically based center to create and present information about value-added agriculture. The center draws on the abilities, skills and knowledge of leading economists, business strategists and outreach specialists to provide reliable information needed by independent producers to achieve success and profitability in value-added agriculture. Partial support for the center is derived from a grant administered by RBS.

Dated: December 12, 2005.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. E5–7596 Filed 12–20–05; 8:45 am]

BILLING CODE 3410–XY–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC from Tuesday through Wednesday, January 10–11, 2006, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 10, 2006

9–11 a.m. Planning and Budget Committee.
11–Noon Technical Programs Committee.
1:30–3:30 p.m. Executive Committee.
3:30–5 Committee of the Whole on Rulemaking Plan (Closed Session).

Wednesday, January 11, 2006

9 a.m.–Noon Ad Hoc Committee on Passenger Vessels (Closed Session).
1:30–3 p.m. Board Meeting.

ADDRESSES: All meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the November 9, 2005 Board Meeting Minutes
- Committee of the Whole on Rulemaking Report
- Ad Hoc Committee on Passenger Vessels Report
- Technical Programs Committee Report
- Planning and Budget Committee Report
- Executive Committee Report

All meetings are accessible to persons with disabilities. An assistive listening system will be available at the Board meetings. Members of the general public who require sign language interpreters must contact the Access Board by Tuesday, January 3, 2006. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E5–7577 Filed 12–20–05; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Quarterly Survey of State and Local Government Tax Revenue

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 21, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Pece, Chief, Public Finance Analysis Branch–B, Governments Division, U.S. Census Bureau, Washington, DC 20233–6800 (301–763–7330).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request an extension of the Quarterly Survey of State and Local Tax Revenue. The Census Bureau needs state and local tax data to produce benchmark statistics on public sector taxes; to provide data to the Bureau of Economic Analysis for GDP calculations and other economic indicators; and to provide data for economic research and comparative studies of governmental finances. The Census Bureau collects data quarterly from state and local government tax collecting agencies.

Tax collection data serve as important measures of economic activity for the Nation as a whole, as well as for comparison among the various states. These data are also useful in comparing the mix of taxes employed by individual states and in determining the revenue raising capacity of different types of taxes.

The survey collects data using three forms:

- Form F–71 obtains data on local government property taxes. The Census Bureau sends this form to 5,448 local government tax-collecting agencies in 530 county areas. While some counties are served by a single county-level tax collection agency, others have a mix of county, city, township, special district, and school district collectors. The form requests that each collecting agency report the total property tax collections during the past quarter.
- Form F–72 obtains data on state government taxes. The Census Bureau sends this form to state government revenue, finance, or budget agencies to obtain tax collection data for the preceding 3-month period.
- Form F–73 obtains data on major local government non-property taxes. Currently 111 local government tax collection agencies with substantial collections of local general sales and local income taxes qualify to receive this form.

II. Method of Collection

The Census Bureau canvasses the F–71 respondents by mail. Census Bureau staff manually screen most responses and enter data via an internal Web site. We encourage governments to respond via the Internet, where they can enter data directly.

We fashion the F–72 requests according to respondents wishes, either e-mail or facsimile.

Respondents have several options for replying—e-mail, postal service, or electronically. The Census Bureau dispatches the F–73 forms by postal service, facsimile, or electronically, as requested by the governments. Respondents may use any of these formats for the returns.

In those instances when we are not able to obtain a response we conduct a follow-up.

III. Data

OMB Number: 0607–0112.
Form Number: F–71, F–72, and F–73.
Type of Review: Regular.
Affected Public: State and local governments.
Estimated Number of Respondents: 5,610.
Estimated Time Per Response: 25 minutes.
Estimated Total Annual Burden Hours: 5,661.
Estimated Total Annual Cost: The estimated cost to the respondents is $113,277.
Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

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: December 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–7586 Filed 12–20–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAF Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On December 12, 2005 the binational panel issued its decision in the review of the injury determination made by the International Trade Commission, respecting Hard Red Spring Wheat from Canada Final Injury Determination, Secretariat File No. USA–CDA–2003–1904–06. The binational panel affirmed the International Trade Commission. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The panel affirmed the International Trade Commission's final injury determination on remand respecting Hard Red Spring Wheat from Canada.

The NAFTA Secretariat was instructed to issue a Notice of Final Panel Action on the 11th day following the December 12, 2005 panel decision.

Dated: December 14, 2005.

Caratina L. Alston,

U.S. Secretary NAFTA Secretariat.

[FR Doc. E5–7628 Filed 12–20–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southern Resident Killer Whale Watching Industry Socioeconomic Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

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 February 21, 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 Suzanne M. Russell, 206–860–3274 or *suzanne.russell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Orca whales, also known as killer whales (*Orcinus orca*), are cultural icons for the human residents of the Pacific Northwest's Puget Sound. The importance of killer whales is clearly evident for the tribal cultures of the area, expressed in artwork throughout the Pacific Northwest, and for the whale watching tourism industry.

In 2003, the Southern Resident Killer Whales (SRKW) were officially listed as depleted under the Marine Mammal Protection Act (MMPA). This listing resulted in the development of a proposed conservation plan which outlines the steps to be taken to restore the population to full health. In 2005, the SRKW were selected for additional protection through an endangered species listing under the Endangered Species Act (ESA).

The presence of killer whales in the Puget Sound basin brings these animals in close proximity to humans. This unique circumstance has fostered the development of a whale watching industry that aims to provide tourists opportunities to view the whales. This industry is dependent on the healthy existence of the whales and their continued return to the Puget Sound.

Ongoing marine biological studies related to the SRKW consider many aspects of the ecosystem. Social sciences consider the human components of the ecosystem. Together, the biological and social sciences can complement one another, leading toward a more integrated understanding of the ecosystem. The link between the SRKW and the whale watching industry in the Puget Sound provides a uniquely important rational for conducting studies in both biological and social science disciplines. The main goal of this study is to describe the whale watching tourism industry as it pertains to the SRKW.

II. Method of Collection

Literature reviews, secondary sources including Internet sources, U.S. Census data, key informants, focus groups, paper surveys, electronic surveys, and in person interviews will be utilized to obtain the broadest scope of information as possible.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; not-for-profit institutions; and business or other for-profit organizations; State or Local government, Federal government.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 2 hours and 50 minutes.

Estimated Total Annual Burden Hours: 1,000.

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: December 15, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–7585 Filed 12–20–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121605A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP meeting is scheduled to begin at 8:30 a.m. on Thursday, January 5, 2006.

ADDRESSES: The meeting will be held at the SpringHill Suites Houston Hobby Airport, 7922 Mosley Road, Houston, Texas 77061.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director; telephone 813.348.1630.

SUPPLEMENTARY INFORMATION: The Shrimp AP will receive reports from the National Marine Fisheries Service (NMFS) on the status and health of the shrimp stocks as well as a report on the biological and economic aspects of the 2005 Cooperative Shrimp Closure with the state of Texas. The Shrimp AP may make recommendations for a cooperative closure with Texas for 2006. The Shrimp AP will review scoping documents for both Amendment 27 to the Reef Fish Fishery Management Plan (FMP)/Amendment 14 to the Shrimp FMP and Amendment 28 to the Reef Fish FMP/Amendment 15 to the Shrimp FMP. Joint Reef Fish Amendment 27/ Shrimp Amendment 14 proposes actions that deal with adjustments to the total allowable catch (TAC) for red snapper; size limits; bag limits; recreational season dates; and the certification of new shrimp bycatch reduction devices (BRDs). The amendment will also look at shrimp limits on trawling gear, shrimp restrictions on the transfer of vessel permits, and possible area closures for shrimp.

Joint Reef Fish Amendment 28/ Shrimp Amendment 15 will consider such issues as gear restrictions for the reef fish fishery; establishing commercial fishing seasons; further reducing bycatch; as well as other management alternatives.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813.348.1630. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least five working days prior to the meeting.

Dated: December 16, 2005.

Emily Menashes,

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

[FR Doc. E5–7594 Filed 12–20–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121605B]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Magnuson-Stevens Committee in November, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, January 10, 2006 at 10 a.m.

ADDRESSES: *Meeting address*: The meeting will be held at the New England Fishery Management Council Office, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; fax: (978) 465–3116.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will meet to review and Council positions on issues related to Magnuson-Stevens Fishery Conservation Management Act reauthorization and, if available, a new Senate staff draft of the Act. Any committee recommendations will be forwarded for approval at the Council's January 31–February 2, 2006 meeting scheduled in Portland, ME.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under

section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: December 16, 2005.

Emily Menashes,

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

[FR Doc. E5–7593 Filed 12–20–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Self-Regulation and Self-Regulatory Organizations in the Futures Industry

AGENCY: Commodity Futures Trading Commission (''Commission'').

ACTION: Extension of comment period.

SUMMARY: The Commission is extending the time for interested parties to respond to the Commission's Request for Comments on Self-Regulation and Self-Regulatory Organizations in the Futures Industry, published in the **Federal Register** on November 25, 2005.[1]

DATES: Responses must be received by January 23, 2006.

ADDRESSES: Written responses should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Responses may also be submitted via e-mail at *secretary@cftc.gov*. ''Self-Regulation and Self-Regulatory Organizations'' must be in the subject field of responses submitted via e-mail, and clearly indicated in written submissions. This document is also available for comment at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen Braverman, Deputy Director, (202) 418–5487; Rachel Berdansky, Special Counsel, (202) 418–5429; or Sebastian Pujol Schott, Attorney-Advisor, (202) 418–5641. Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On November 25, 2005, the Commission published in the **Federal Register** a Request for Comments on Self-Regulation and Self-Regulatory Organizations (''SROs''). The Request for Comments advances the Commission's review of self-regulation in the U.S. futures industry (''SRO Study'') by updating prior fact-finding, acknowledging recent industry developments, and offering interested parties an additional opportunity to comment as the SRO Study nears conclusion. Among other things, the Request for Comments addresses SRO governance; minimizing conflicts of interest within self-regulatory; the composition of SROs' boards of directors and disciplinary committees; the proper role and authority of independent, board-level regulatory oversight committees; and the impact of increasing competition, changing business models, and new ownership structures of SROs' self-regulatory responsibilities. Interested parties were invited to respond by January 9, 2006.

By letter dated December 7, 2005, the Futures Industry Association (''FIA'') requested that the original comment period be extended by 14 days. To encourage the submission of meaningful comments, the Commission has decided to grant the FIA's request. The comment period on the Request for Comments on Self-Regulation and Self-Regulatory Organizations is hereby extended to January 23, 2006.

The Commission has previously indicated that the current Request for Comments, the 2004 Request for Comments on SRO Governance,[2] and industry developments since the start of the SRO Study, would form the basis of a public Commission meeting on self-regulation and self-regulatory organizations (''SRO Hearing''). The SRO Hearing has now been scheduled. Interested parties are directed to a Notice of Public Meeting (''Notice''), also published in today's **Federal Register**, for details on the date, time, and place of the SRO Hearing. Persons wishing to address the Commission must file a request to appear and supporting materials, as explained in the Notice.

Issued in Washington, DC on December 15, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24292 Filed 12–20–05; 8:45 am]

BILLING CODE 6351–01–M

[1] 70 FR 71090 (November 25, 2005).

[2] 69 FR 32326 (June 9, 2004).

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: Notice of advisory board meeting.

SUMMARY: The Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) will hold the second public meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR). The VBDR was established at the recommendation of the National Research Council report, entitled ''Review of the Dose Reconstruction Program of the Defense Threat Reduction Agency.'' The report recommended the need to establish an advisory board that will provide suggestions for improvements in dose reconstruction and claim adjudication procedures. The goal of VBDR is to provide guidance and oversight of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist VA and DTRA in communicating with the veterans.

Radiation does reconstruction has been carried out by the Department of Defense under the Nuclear Test Personnel Review (NTPR) program since the 1970s. DTRA is the executive agent for the NTPR program which provides participation data and actual or estimated radiation dose information to veterans and the VA.

Board members were selected to fulfill the statutory requirements mandated by Congress in Section 601 of Public Law 108–183. The Board was appointed on June 3, 2005, and is comprised of 16 members. Board members were selected to provide expertise in historical dose reconstruction, radiation health matters, risk communications, radiation epidemiology, medicine, quality management, decision analysis and ethics in order to appropriately enable the VBDR to represent and address veterans' concerns.

The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, which sets forth standards for the formation and conduct of government advisory committees.

DATES: Thursday, January 12, 2006, from 8:30 a.m.–12 p.m. and 4–6 p.m. with a public comment session from 1:30–3:30 p.m., and Friday, January 13, 2006, from 8:30 a.m.–12 p.m. and 3:15–5 p.m., with a public comment session from 1:30–3 p.m.

ADDRESSES: Sheraton Gateway Hotel, Los Angeles Airport, 6101 West Century Boulevard, Los Angeles, CA 90045.

AGENDA: On Thursday, the meeting will open with a discussion of the charge and responsibilities of the advisory board, and will review and approve the minutes of the inaugural VBDR meeting conducted August 17–18, 2005 in Tampa, FL. The following briefings will be presented: ''Interactive Radio-Epidemiological Program: Future Development'' by Dr. Charles Land; ''NAS Report: Assessment of the Scientific Information for the Radiation Exposure Screening and Education Program'' by Dr. Julian Preston; ''NTPR Dose Reconstruction, Quality Assurance Manuals and Veterans Communication Activities'' by Dr. Paul Blake; and ''VA Radiation Claims Compensation Program for Veterans, and VA Quality Assurance Manuals'' by Mr. Thomas Pamperin.

On Friday, the four subcommittees established during the inaugural VBDR session will report on their activities since August 2005. The subcommittees are the ''Subcommittee on DTRA Dose Reconstruction Procdures'', the ''Subcommittee on VA Claims Adjudication Procedures'', the ''Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program'', and the ''Subcommittee on Communication and Outreach.'' The Board will close with a discussion of the Subcommittee reports, future business and meeting dates.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose Reconstruction hotline at 1–866–657–VBDR (8237).

SUPPLEMENTARY INFORMATION: May be found at *http://vbdr.org.*

Dated: December 15, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–24291 Filed 12–20–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Upper Columbia Alternative Flood Control and Fish Operations, Libby and Hungry Horse Dams, MT

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of Availability of Draft Environmental Impact Statement and Notice of Public Hearings; correction.

SUMMARY: On November 10, 2005, the Corps of Engineers and the Bureau of Reclamation, Interior, issued a Notice of Availability of a Draft Environmental Impact Statement (DEIS) and Notice of Public Hearings (see 70 CFR 68409). The due date for comments period provided in the **DATES** section of that notice was incorrectly identified as December 27, 2005. The correct due date for comments is January 3, 2006 (45 days from the November 18, 2005, **Federal Register** publication date of the EPA weekly notice of DEIS availability).

Dated: December 13, 2005.

Debra M. Lewis,

District Engineer, Seattle District, U.S. Army Corps of Engineers.

[FR Doc. E5–7610 Filed 12–20–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension of the OMB expiration date for Forms: NWPA–830 'Appendix C—Delivery Commitment Schedule', NWPA–830 'Appendix G—Standard Remittance Advice for Payment of Fees (including Annexes A and B).'

DATES: Comments must be filed by February 21, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Jim Finucane. To ensure receipt of the comments by the due date, submission by FAX (202–287–1934) or e-mail *jim.finucane@eia.doe.gov* is recommended. The mailing address is Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650. Alternatively, Mr. Finucane may be reached by telephone at 202–287–1966.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 et seq.) and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 et seq.) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under section 3507(h) of the Paperwork Reduction Act of 1995.

Appendix C, Form NWPA–830, 'Delivery Commitment Schedule, (DCS)' is designed to allow companies purchasing nuclear waste disposal services from the DOE to identify the number of assemblies, including their initial uranium loading, the range of discharge dates, and the mode of transportation, along with the year that the purchaser proposes that the DOE take delivery. This information is required at a point in time at least 63 months before expected transfer to the DOE. The DCS provides purchasers with the opportunity to inform DOE of their plans for utilizing their allocations of projected Federal Waste Management

System capacity. NWPA–830 'Appendix G—Standard Remittance Advice for Payment of Fees', and 'Annex A and Annex B to Appendix G—Standard Remittance Advice for Payment of Fees' are designed to serve as the source document for entries into DOE accounting records to transmit data from Purchasers to the DOE concerning payment of their fees for spent nuclear fuel and high-level waste disposal into the Nuclear Waste Fund. The Remittance Advice (RA) must be submitted by Purchasers who signed the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the DOE.

II. Current Actions

The current proposed action is a three-year extension of two existing data collections. This is a request for comments on EIA's proposal to request this three-year extension of approval to continue collecting information with Forms NWPA–830, the 'Appendix C—Delivery Commitment Schedule,' and the NWPA–830 'Appendix G—Standard Remittance Advice for Payment of Fees' with no change to the existing collections.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden to complete Form NWPA–830C, the estimated burden per response is 2 hours. To complete Form NWPA–830G the average time per response is five and one half hours. The data for the Form NWPA–830G is collected quarterly. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential Data User of the Information To Be Collected:

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Sections 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, December 14, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E5–7611 Filed 12–20–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Form ERA–766R ''Recordkeeping Requirements of DOE's General Allocation and Price Rules,'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq.).

DATES: Comments must be filed by January 20, 2006. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to John Asalone, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*John_A._Asalone@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mrs. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or

reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. ERA–766R.
2. General Counsel.
3. OMB Number 1903–0073.
4. Three-year approval requested.
5. Mandatory.
6. The ERA–766R is the recordkeeping requirements contained in 10 CFR 210.1 of DOE's General Allocation and Price Rules. The data are used to help DOE's General Counsel in its efforts to complete the enforcement program with respect to prior petroleum price and allocation regulations. No data are submitted; only maintenance of records is required.
7. Business or other for-profit.
8. 4 hours.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, December 13, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E5–7612 Filed 12–20–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8011–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Environmental Defense: *Environmental Defense* v. *EPA*, No. C 05–2090 SC (N.D. CA). On June 6, 2005, Environmental Defense filed a complaint alleging that EPA had failed to perform a non-discretionary duty by not granting or denying within 18 months Environmental Defense's Petition asking the Administrator to add diesel engine exhaust to the list of hazardous air pollutants contained in section 112(b)(3) of the Clean Air Act (''CAA''). Under the terms of the proposed consent decree, by June 12, 2006, EPA shall either deny or propose to grant Environmental Defense's petition to list diesel exhaust as a hazardous air pollutant. If EPA proposes to grant the petition, then by May, 2007, EPA shall either grant or deny the petition.

DATES: Written comments on the proposed consent decree must be received by January 20, 2006.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2005–0473, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Michael Horowitz, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5583; fax number (202) 564–5603; e-mail address: *horowitz.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This consent decree would establish deadlines by which EPA must either grant or deny Environmental Defense petition to list diesel exhaust as a hazardous air pollutant under section 112 of the CAA. Under the proposed consent decree no later than June 12, 2006, EPA shall sign a notice for publication in the **Federal Register** a proposal to grant or a final determination that denies the petition with written explanation of the reasons for EPA's decision. If the petition is granted, then no later than May 1, 2007, EPA shall sign a final notice for publication in the **Federal Register** either granting or denying the Environmental Defense petition to list diesel engine exhaust as a hazardous air pollutant.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–0473 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''advance search,'' then key in the appropriate docket identification number. It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public

docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 15, 2005.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E5–7626 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0253– FRL–7752–6]

Propylene Oxide Risk Assessment; Notice of Availability and Risk Reduction Options; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of November 9, 2005, concerning propylene oxide (PPO). This document is extending the comment period for 30 days, from January 9, 2006, to February 8, 2006, in response to a request by the Almond Board of California.

DATES: Comments must be received on or before February 8, 2006.

ADDRESSES: Comments, identified by docket identification (ID) EPA–HQ–OPP–2005–0253– may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 9, 2005 **Federal Register** document.

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?

The Agency included in the November 9, 2005 **Federal Register** document notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0253–. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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 online instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 9, 2005 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** document of November 9, 2005 (70 FR 68031) (FRL–7740–2). In that document, EPA made available the human health risk assessment for PPO. 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. EPA developed the risk assessment and risk characterization for PPO through a modified version 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). The Agency received a request from the Almond Board of California to extend the comment period. EPA is hereby extending the comment period, which was set to end on January 9, 2006, to February 8, 2006. This extension is being given based on the request to have additional time to address data gaps identified in the preliminary human health risk assessment. In particular, the Almond Board plans to gather and submit survey information on worker exposure during fumigation and post fumigation, the time between fumigation and consumption by the public, and to prepare and present residue dissipation data on almonds. Since this is the only public comment period, the Agency is allowing a 30 day extension.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E5–7625 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0495; FRL–7752–7]

Imazapyr Risk Assessments, Notice of Availability, and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, related documents for the imidazolinone pesticide imazapyr, and opens a 60 day public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for imazapyr through a modified, 4-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, identified by docket identification (ID) number EPA–HQ–OPP–2005–0495, must be received on or before February 21, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sherrie Kinard, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–0563; fax number: 703–308–8014; e-mail address:*Kinard.Sherrie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0495. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website: 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.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the publicdocket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. 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 docket ID number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0495. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0495. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2005–0495.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), 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–2005–0495. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI.) Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental

fate and effects risk assessments and related documents for imazapyr, a imidazolinone pesticide, and soliciting public comment on risk management ideas or proposals. Imazapyr is a herbicide that provides residual control of a wide variety of annual and perennial weeds. EPA developed the risk assessments and risk characterization for imazapyr through a modified version 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).

Imazapyr is a systemic, non-selective, pre- and post-emergent herbicide used for the control of terrestrial annual and perennial grasses, broad-leaved herbs, woody species, and riparian and emergent aquatic species. It is registered for use on a variety of agricultural, commercial, and residential use sites, including corn, forestry sites, rights-of-way, fence rows, hedge rows, drainage systems, outdoor industrial areas, outdoor buildings and structures, domestic dwellings, paved areas, driveways, patios, parking areas, walkways, various water bodies (including ponds, lakes, streams, swamps, wetlands, and stagnant water), and urban areas.

Imazapyr is formulated as a liquid, a wettable powder (including water soluble bags), and a granular. Application methods include aerial, groundboom, boat, and tractor-drawn spreader. Applications to smaller areas may be made with handheld equipment, including low-pressure handwand sprayers, backpack sprayers, sprinkling cans, and handgun sprayers. Application rates range from 0.014 pound active ingredient/acre (lb ai/acre) on corn, to 1.5 lb ai/acre on non-cropped areas and aquatic sites.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for imazapyr. Such comments and input could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

For example, the availability of additional data to further refine the risk assessments, such as: Toxicity data for marine/estuarine fish and invertebrates following chronic exposure and reproductive effects to avian species.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for imazapyr. Risks of concern associated with the use of imazapyr are to non-target terrestrial plants and aquatic vascular plants, and potential risks to endangered species (aquatic vascular plants, terrestrial and semi-aquatic monocots and dicots). In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to imazapyr, compared to the general population.

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 the issues, and degree of public concern associated with each pesticide. For imazapyr, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its few complex issues. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for imazapyr. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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: December 14, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E5–7633 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0162; FRL–7747–9]

Napropamide Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide napropamide, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the napropamide Docket. Napropamide is a pre-emergent herbicide that is used on a number of fruits and vegetables. EPA has reviewed napropamide 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 February 21, 2006.

ADDRESSES: Comments, identified by docket ID number EPA–HQ–OPP–2004–0162, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: *fuller.demson@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPP–2004–0162. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. 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 docket ID number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the

system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2004–0162. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2004–0162. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2004–0162.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), 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–2004–0162. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, napropamide under section 4(g)(2)(A) of FIFRA. Napropamide is an herbicide registered to control broadleaf weeds and annual grasses on numerous food/feed and non-food/feed use sites, including fruits and nuts, vegetables, ornamentals, turf/lawns, forestry sites and tobacco. EPA has determined that the data base to support reregistration is substantially complete and that products containing napropamide are eligible for reregistration provided the risks are mitigated in the manner described in the RED or by any other 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 napropamide.

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 napropamide tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, napropamide was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for napropamide.

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 napropamide RED 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 Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for napropamide. 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 electronic EDOCKET. 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 napropamide 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: December 9, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E5–7501 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2004–0388; FRL–7749–5]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Sipcam Agro, USA Inc. to conditionally register the pesticide products, Tetraconazole Technical, EPA Registration Number 60063–11 and Eminent 125 SL Fungicide, EPA Registration Number 60063–12, containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9424; e-mail address: *jones.lisa@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. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number EPA-HQ-OPP–2004–0388. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

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/*.

Agency Website. 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 online instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk

criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of tetraconazole, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of tetraconazole during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of October 20, 1999 (64 FR 56500) [OPP–30482; FRL–6382–8] which announced that Sipcam Agro, USA Inc., 70 Mansell Court, Suite 230, Roswell, GA 30076 submitted an application to register the following two pesticide products:

1. Tetraconazole Technical, (EPA File Symbol: 60063–RR). *Active ingredient:* Tetraconazole: at 97.0%. The application for the product Tetraconazole Technical was approved for manufacturing or formulating purposes on April 14, 2005, to use for formulation into end-use products for use on sugar beets (EPA Registration Number 60063–11).

2. Eminent 125SL Fungicide, (EPA File Symbol: 60063-RE). *Active ingredient:* Tetraconazole: at 11.6%. The application for the product Eminent 125SL was approved on April 14, 2005 for the control of Cercospora leaf spot and powdery mildew disease of sugar beets (EPA Registration Number 60063–12).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 5, 2005.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E5–7500 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0268; FRL–7745–8]

Notice of Filing of a Pesticide Petition for Establishment of a Regulation for Residues of Poly(hexamethylenebiguaanide) Hydrochloride (PHMB) in or on all Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for an exemption from the requirement of a tolerance for residues of the antimicrobial poly(hexamethylenebiguaanide) hydrochloride (PHMB) in or on all food commodities when the residues are the result of the lawful application of a food contact surface sanitizer containing PHMB at 550 parts per million (ppm).

DATES: Comments must be received on or before January 20, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0268 and pesticide petition (PP) number PP 5F6975, may be submitted electronically, by mail, or through hand delivery or courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail: *heyward.adam@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. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0268. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2.*Electronic access*. You may access this document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

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.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. 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 docket ID number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0268. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0268. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2005–0268.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), 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–2005–0268. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the pesticide petition number in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of a regulation in 40 CFR part 180 for residues of the antimicrobial poly(hexamethylenebiguaanide) hydrochloride (PHMB) in or on all food commodities when the residues are the result of the lawful application of a food contact surface sanitizer containing PHMB at 550 ppm. EPA has determined that the 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 the pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition prepared by the petitioner 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 ''EPA–HQ–OPP–2005–0268'' in the search field. 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.

Exemption from the Requirement of a Tolerance

PP 5F6975. Arch Chemicals, Inc., 1955 Lake Park Drive, Suite 100, Smyrna, GA 30080, proposes to establish an exemption from the requirement of a tolerance for residues of the antimicrobial PHMB in or on all food commodities when the residues are the result of the lawful application of a food contact surface sanitizer containing PHMB at 550 ppm. Because this petition is a request for an exemption from the requirement of a tolerance, an analytical method is not required at this time.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 29, 2005.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 05–24261 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0314; FRL–7748–3]

Notice of Filing of a Pesticide Petition for Amendment to a Regulation for Residues of Copper Sulfate Pentahydrate in or on Various Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the amendment of a regulation for residues of the antimicrobial and/or fungicide copper sulfate pentahydrate in or on various food and feed commodities.

DATES: Comments must be received on or before January 20, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0314 and pesticide petition (PP) number 4E6934, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *E-mail*: *opp.ncic@epa.gov*.
- *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–2005–0314. 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–2005–0314. 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 *www.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 through *www.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 *http://www.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 in 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: Marshall Swindell, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6341; e-mail: *swindell.marshall@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. How Can I Get Copies of this Document and Other Related Information?

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:

- Identify this document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- 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 a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the amendment of a regulation in 40 CFR 180.1021(c) for residues of the antimicrobial and/or fungicide copper sulfate pentahydrate in or on various food and feed commodities. EPA has determined that the 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 the pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition prepared by the petitioner 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 ''EPA–HQ–OPP–2005–0314'' in the search field. 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.

Amendment to an Existing Tolerance

PP 5F6982. ArchAngel, LLC, 636 Hampshire St., Suite 208, Quincy, IL 62301, proposes to amend the exemption from the requirement of a tolerance in 40 CFR 180.1021(c) for residues of the antimicrobial and/or fungicide copper sulfate pentahydrate when applied as a fungicide to growing crops or to raw agricultural commodities after harvest and for residues in or on meat, fat and meat by-products of cattle, sheep, hogs, goats, horses, poultry, milk and eggs when applied as a bactericide/fungicide to animal premises and bedding. Because this petition is a request for an exemption from the requirement of a tolerance, an analytical method is not required at this time.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2005.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E5–7640 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0301; FRL–7751–5]

Notice of Filing of a Pesticide Petition for the Amendment of Regulations for Residues of Glufosinate-ammonium and its Metabolite, 3–Methylphosphinicopropionic Acid in or on Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the amendment of regulations in 40 CFR 180.473(d) for the indirect or inadvertent residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-,

monoammonium salt) and its metabolite, 3-methylphosphinicopropionic acid expressed as2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on forage, hay, and straw of small grains (Crop Group 16).

DATES: Comments must be received on or before January 20, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0301 and pesticide petition (PP) number 5F6954, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *E-mail*: *opp-docket@epa.gov*.
- *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–2005–0301. 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–2005–0301. 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 *www.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 through *http://www.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 *www.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 in *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: James Stone, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7391; e-mail address:*stone.james@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 *http://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:

- Identify this document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- 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 a pesticide petition received under

section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the amendment of regulations in 40 CFR 180.473(d) for the indirect or inadvertent residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinicopropionic acid expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on forage, hay, and straw of small grains (Crop Group 16). 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 ''EPA–HQ–OPP–2005–0301'' in the search field. 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.

Amendment to an Existing Tolerance

PP 5F6954. Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend the tolerances in 40 CFR 180.473(d) for the indirect or inadvertent residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinicopropionic acid expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the food and feed commodities forage, hay and straw of small grains (Crop Group 16) at 0.2 parts per million (ppm). The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and its metabolites with a general limit of quantification of 0.05 ppm. This method 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: December 13, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E5–7636 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0315; FRL–7748–2]

Notice of Filing of a Pesticide Petition for an Amendment to a Regulation for Residues of Listeria Specific Bacteriophages in or on Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the amendment of a regulation for residues of the antimicrobial, LMP–102, *Listeria* specific bacteriophages in or on food commodities when used in accordance with good manufacturing practices as the active ingredient in an antimicrobial pesticide formulation provided that the substance is applied on a semi-permanent or permanent food contact surface (other than being applied on food packaging) with adequate draining before contact with food.

DATES: Comments must be received on or before January 20, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0315 and pesticide petition (PP) number PP 4G6938, may be submitted electronically, by mail, or through hand delivery or courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Velma Noble, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6233; e-mail:*noble.velma@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. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0315 The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. (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.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. 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 docket ID number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0314. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number EPA–HQ–OPP–2005–0314. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2005–0314.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0314. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the pesticide petition number in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the amendment of a regulation in 40 CFR part 180 for residues of the antimicrobial *Listeria* in or on food commodities when used in accordance with good manufacturing practices as the active ingredient in an antimicrobial pesticide formulation provided that the substance is applied on a semi-permanent or permanent food contact surface (other than being applied on food packaging) with adequate draining before contact with food. EPA has determined that the 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 the pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition prepared by the petitioner 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 ''EPA–HQ–OPP–2005–0315'' in the search field. 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.

Amendment to an Existing Exemption from the Requirement of a Tolerance

PP 4G6938. Intralytix, Inc., 323 W. Camden St., Baltimore, MD 21201, proposes to establish a temporary exemption from the requirement of a tolerance for residues of the antimicrobial, LMP–102*, Listeria* specific bacteriophages, in or on food commodities when used in accordance with good manufacturing practices as the active ingredient in an antimicrobial pesticide formulation provided that the substance is applied on a semi-permanent or permanent food contact surface (other than being applied on food packaging) with adequate draining before contact with food. Because this petition is a request for a temporary exemption from the requirement of a tolerance, an analytical method is not required at this time.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 23, 2005.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E5–7638 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0504; FRL–8011–9]

Notice of Availability of the Nanotechnology White Paper External Review Draft

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: The U.S. Environmental Protection Agency is submitting the Nanotechnology White Paper External Review Draft for independent external peer review, which will be conducted in the February timeframe. Public comments will be accepted prior to the meeting of the external peer review panel. All comments received by January 31, 2006 will be shared with the external peer review panel for their consideration. Comments received beyond that time will be considered by EPA. The public release of this draft document is solely for the purpose of seeking public comment and peer review. This draft white paper does not represent and should not be construed to represent any EPA policy, viewpoint, or determination. Members of the public may obtain the draft white paper from *http://www.regulations.gov;* or *http://www.epa.gov/osa/nanotech.htm;* or from Dr. Kathryn Gallagher via the contact information below.

The Nanotechnology White Paper External Review Draft identifies data gaps that need to be filled and recommends research for both environmental applications and implications of nanotechnology that would inform the appropriate regulatory safeguards for nanotechnology. The draft white paper describes the technology and provides a discussion of potential environmental benefits of nanotechnology. Risk management issues and the Agency's statutory mandates are outlined, following an extensive discussion of risk assessment issues. The draft white paper concludes with recommendations on next steps for addressing science policy issues and research needs. Supplemental information is provided in a number of appendices.

Following the expert review, EPA will issue a final white paper on nanotechnology in early 2006. To obtain additional information, visit: *http://www.epa.gov/osa/nanotech.htm.*

DATES: All comments received by January 31, 2006 will be shared with the external peer review panel for their consideration. Comments received beyond that time will be considered by EPA.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2005–0504, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Mail:* ORD Docket, Environmental Protection Agency, Mailcode: 28221T,

1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2005–0504. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2005–0504. 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 docket are listed in the http://www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Dr. Kathryn Gallagher, Office of the Science Advisor, Mail Code 8105–R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–1398; fax number: (202) 564–2070, E-mail: *Gallagher.kathryn@epa.gov*.

Dated: December 16, 2005.

William H. Farland,

Acting Chair, Science Policy Council.

[FR Doc. 05–24304 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0462; FRL–7754–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 8, 2005 to November 16, 2005, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number EPA–HQ–OPPT–2005–0462 and the specific PMN number or TME number, must be received on or before January 20, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0462. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. 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 docket ID number and specific PMN number or TME number 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPPT–2005–0462. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number EPA–HQ–OPPT–2005–0462 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0462 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 8, 2005 to November 16, 2005, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 15 PREMANUFACTURE NOTICES RECEIVED FROM: 11/08/05 TO 11/16/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0121	11/08/05	02/06/06	Zeon Chemicals L.P.	(S) automotive timing belts; oilfield wellhead seals, blow out preventers	(G) modified acrylonitrile butadiene polymer
P–06–0122	11/08/05	02/05/06	CBI	(G) Destructive use	(G) Base oil
P–06–0123	11/08/05	02/05/06	CBI	(G) Open, non-dispersive use	(G) Cuprate[[[[[[(substituted) sulfonaphtalenyl]-azo]-substitutedphenyl]- sulfonyl] -ethyl]-glycinato], sodium salts
P–06–0124	11/08/05	02/05/06	Cytec Industries Inc.	(G) Sulfide mineral processing reagent	(G) Modified thionocarbamate
P–06–0125	11/08/05	02/05/06	CBI	(G) Surfactant	(G) Benzoic acid (substituted)-, akyl vegetable oil derivatives
P–06–0127	11/14/05	02/11/06	Esprix Technologies	(G) Polymer reactant	(G) Modified butyl acrylate
P–06–0128	11/15/05	02/12/06	CBI	(G) Fuel additive	(G) Iron-based organic complex
P–06–0129	11/15/05	02/12/06	CBI	(G) Open-non-dispersive use	(G) Alkylpolysulfide
P–06–0130	11/15/05	02/04/06	CBI	(G) Open-non-dispersive use	(G) Alkylpolysulfide
P–06–0131	11/15/05	02/12/06	Shin-Etsu Silicones of America Inc.	(S) Additive of adhesives for building materials	(S) Siloxanes and silicones, hydroxy me, 3-hydroxypropyl me, me (1-oxooctyl)oxy, esters with C_{12-20} fatty acids, ethers with poly-ethylene-polypropylene glycol mono-bu ether
P–06–0132	11/15/05	02/12/06	CBI	(G) Polymer for waterborne paints	(G) 2-propenoic acid, aklyl-, polymer with ethenylbenzene, alkyl propenoates, 2-hydroxyalkyl propenoate, alkylperoxoate-initiated, compounds with aminoalkanol

I. 15 PREMANUFACTURE NOTICES RECEIVED FROM: 11/08/05 TO 11/16/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0133	11/15/05	02/12/06	CBI	(G) Polymer for waterborne paints	(G) 2-propenoic acid, alkyl-, alkyl ester, polymer with alkyl propenoate and oxiranylalkyl propenoate
P–06–0134	11/15/05	02/12/06	Degussa Corporation	(S) Hotmelts for the automotive industry; hotmelts for the wood-working industry	(G) Polyester of aliphatic/aromatic dicarboxylic acid, alkane diol and ester diol
P–06–0135	11/14/05	02/11/06	Eliokem, Inc.	(G) Resin for imaging application	(S) Tert-dodecanethiol, telomer with 2-propenoic acid, 2-ethylhexyl ester and ethenylbenzene
P–06–0136	11/16/05	02/13/06	PPG Industries, Inc.	(G) Component of an industrial coating	(G) Cycloaliphatic acid, alkyl substituted-, mixed esters with cycloaliphatic acid and 2-alkane substituted bis(alkanediol)

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICE RECEIVED FROM: 11/08/05 TO 11/16/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–06–0002	11/16/05	12/30/05	PPG Industries, Inc.	(G) Component of an industrial coating	(G) Cycloaliphatic acid, alkyl substituted-, mixed esters with cycloaliphatic acid and 2-alkane substituted bis(alkanediol)

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 16 NOTICES OF COMMENCEMENT FROM: 11/08/05 TO 11/16/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0650	11/09/05	11/04/05	(S) Reaction catalyzed: Aryl dialkyl phosphate + H2O odialkyl phosphate + an aryl acohol acts on organophosphorus compounds (such as paraoxon) including esters of phosphonic and phosphinic acid
P–04–0781	11/08/05	10/31/05	(G) Acrylic polymer
P–05–0348	11/08/05	10/19/05	(G) Dialkyldiallylsodium halide with unsaturated phosphonic acid, acrylamido alkyl propane sulfonic acid sodium salt, and two substituted monomers.
P–05–0349	11/08/05	10/19/05	(G) Dialkyldiallylsodium halide with unsaturated phosphonic acid, acrylamido alkyl propane sulfonic acid sodium salt, and two substituted monomers.
P–05–0527	11/08/05	10/10/05	(G) Polymer of formaldehyde and substituted phenols
P–05–0578	11/10/05	10/15/05	(G) Isocyanate functional poly carbomoyl (polyalkylene oxide)
P–05–0600	11/09/05	10/24/05	(G) Sulfato cycohexene aliphatic sulfo substituted imidazole napthyl salt
P–05–0614	11/15/05	10/11/05	(S) 1-octanethiol, manufacturer of, distn. residues, high-boiling fraction.
P–05–0615	11/15/05	10/11/05	(S) 1-octanethiol, manufacturer of, distn. residues, low-boiling fraction.
P–05–0626	11/15/05	10/11/05	(S) Thiols, C_{11-13}-tertiary, C_{12}-rich, manufacturer of, C_{12}-rich C_{11-13} alkene-based, distn. residues, high-boiling fraction.
P–05–0627	11/15/05	10/11/05	(S)Thiols, C_{11-13}-tertiary, C_{12}-rich, manufacturer of, propylene tetramer-based, distn. residues, high-boiling fraction
P–05–0628	11/15/05	10/11/05	(S) Thiols, C_{11-13}-tertiary, C_{12}-rich, manufacturer of, C_{12-13} alkenes-based, distn. residues, middle-boiling fraction.
P–05–0629	11/15/05	10/11/05	(S)Definition: Thiols, C_{11-13}-tertiary, C_{12}-rich, manufacture of, propylene tertramer-based, distn, residues, middle-boiling fraction.
P–05–0630	11/15/05	10/11/05	(S)Thiols, C_{11-13}-tertiary, C_{12}-rich, manfacturer of, C_{12}-rich C_{11-13} alkenes-based, distn. residues, low boiling fraction.
P–05–0631	11/15/05	10/11/05	(S) Thiols, C_{11-13}-tertiary, C_{12}-rich, manufacturer of, propylene tetramer-based, distn. residues, low boiling fraction.
P–05–0649	11/09/05	10/12/05	(G) Benzene,1,1′-methylenebis[isocyanato-, polymer with 2-propenoic acid, 2-hydroxyethyl ester and lexorez 1180-35 and lexorez 1640-35

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: December 13, 2005

Carolyn Thorton,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–24197 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 2, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 21, 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 e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0718.

Title: Part 101 Governing the Terrestrial Microwave Fixed Radio Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 10,000 (2,500 reporting respondents; 10,000 recordkeepers).

Estimated Time Per Response: .5 to 1.77 hours.

Frequency of Response: On occasion and every 10 years reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 36,905 hours.

Total Annual Cost: $177,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Part 101 requires various information to be filed and maintained by the respondent in order to determine the technical, legal and other qualifications of applications to operate a station in the public and private operational fixed services. The information is also used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309. The Commission staff also uses this information to ensure that applicants and licensees comply with ownership and transfer restrictions imposed by 47 U.S.C. 310.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–24153 Filed 12–20–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

December 12, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 21, 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 all 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 them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0157.

Title: Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 0.25 hours.

Frequency of Response: On occasion reporting requirement; Annual reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: $10,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.99(e) requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. Upon submission of this information, operation may begin without further authority. The FCC staff uses the letter to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations.

OMB Control Number: 3060–0474.

Title: Section 74.1263, Time of Operation.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 75.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 38 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 74.1263(c) requires licensees of FM translator or booster station's to notify the Commission of its intent to discontinue operations for 30 or more consecutive days. In addition, licensees must notify the Commission within 48 hours of the station's return to operation. 47 CFR 74.1263(d) requires FM translator or booster station licensees to notify the Commission of its intent to permanently discontinue operations and to forward the station license to the FCC for cancellation. FCC staff uses this data to keep records up-to-date. These notifications inform FCC staff that frequencies are not being used for a specified amount of time and that frequencies have become available for other users.

OMB Control Number: 3060–0546.

Title: Section 76.59, Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 150.

Estimated Time per Response: 4–80 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,880 hours.

Total Annual Cost: $1,920,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.59 states the Commission, following a written request from a broadcast station or a cable system, may deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

On May 26, 1999, the Commission released an Order on Reconsideration and Second Report and Order (''Order''), which, among other things, established final rules for procedures for refining the market modification process by adopting a standardized evidence approach to the market modification process. The Order also made various changes to 47 CFR part 76, which concern the definitions applicable to the must carry rules and the specific information submission requirements for the market modification process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–24264 Filed 12–20–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 12, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, 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: Written comments should be submitted on or before January 20, 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 comments by e-mail or U.S. mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail send them to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLMENTARY INFORMATION:

OMB Control Number: 3060–0029.

Title: Application for TV Broadcast Station License; Application for Construction Permit for Reserved Channel Noncommercial Educational (NCE) Broadcast Station; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC Form 302–TV, FCC Form 340 and FCC Form 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 2,655.

Estimated Time per Response: 0.5–4 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 8,110 hours.

Total Annual Cost: $17,840.000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 302–TV is used by licensees and permittees of TV broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of these stations. FCC staff use the data to confirm that the station has been built to terms specified in the outstanding construction permit.

FCC Form 340 is used to apply for authority to construct a new noncommercial educational FM and TV stations or to make changes in the existing facilities of such a station. The FCC Form 340 is to be used for channels that are reserved exclusively for noncommercial educational use and on non-reserved channels if the applicant proposes to build and operate a Noncommercial Educational Broadcast Station.

Existing authorized noncommercial educational analog stations seeking to receive authorization for commencement of Digital TV (DTV) operation must file FCC Form 340 for a construction permit. This application may be filed anytime after receiving the initial DTV channel allotment, but must be filed before the mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applicants do not have to supply full legal or financial qualification information. In addition, applicants for a newly allotted DTV channel reserved for noncommercial educational use(s) must also file the FCC Form 340.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This form also includes the third party disclosure requirement of 47 CFR 73.3580. Section 73.3580 requires local public notice in a newspaper of general circulation of all application filings for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–24265 Filed 12–20–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 05–276; DA 05–3165]

Access Charges for IP-Transported Calls

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on a petition for declaratory ruling filed by Frontier. Frontier seeks a declaratory ruling that carriers must pay tariffed originating interstate access charges for Feature Group A calls from Frontier's end users.

DATES: Comments are due January 9, 2006, and reply comments are due January 24, 2006.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–276, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs*. Follow the instructions for submitting comments.
- E-mail: Include the docket number in the subject line of the message.
- Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

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

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530, *jennifer.mckee@fcc.gov.*

SUPPLEMENTARY INFORMATION: On November 23, 2005, Frontier Telephone of Rochester, Inc. (Frontier) filed a petition for declaratory ruling that USA Datanet (Datanet) and any similarly situated carriers must pay tariffed originating interstate access charges for Feature Group A calls from Frontier's end users. Frontier filed its petition after the United States District Court for the Western District of New York stayed Frontier's case seeking payment of access charges from Datanet for originating Feature Group A access services. The court found it appropriate to stay the case pending the FCC's resolution of the issues raised by Frontier. In its petition, Frontier seeks a declaratory ruling that it is owed originating access charges for IP-transported Feature Group A calls for the following interstate access rate elements: (1) End office common trunk port; (2) end office local switching; (3) local transport tandem transmission—fixed; and (4) local transport tandem transmission facility. Frontier asks for consolidation of its petition with existing WC Docket No. 05–276, which is examining petitions for declaratory rulings filed by SBC and VarTec on similar IP access charge issues. We will include Frontier's petition in WC Docket No. 05–276 due to the similarity of the issues raised in the petition and in that docket.

Interested parties may file comments on or before January 9, 2006, and reply comments on or before January 24, 2006. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case WC Docket No. 05–276. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's Electronic Comment Filing System (ECFS).

The Commission's contractor, Natek, Inc., will receive hand-delivered or

messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.

—All hand deliveries must be held together with rubber bands or fasteners.

—Any envelopes must be disposed of before entering the building.

—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

—U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A263, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *jennifer.mckee@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Documents in WC Docket No. 05–276, including the Frontier Petition, are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 05–24263 Filed 12–20–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011834–003.

Title: Maersk Sealand/Hapag-Lloyd Mediterranean U.S. East Coast Slot Charter Agreement.

Parties: A.P. Moller Maersk A/S and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment expands the geographic scope of the agreement to include ports on the U.S. Gulf and in Egypt, Israel, and Turkey; revises the amount of space to be chartered; clarifies the treatment of U.S. preference cargoes, amends the duration of the agreement and the conditions under which a party may resign; and changes the governing law and location of arbitration.

Agreement No.: 201130–001.

Title: Broward County/Discovery Wharfage Agreement.

Parties: Broward County and Discovery Cruise Services, Inc.

Filing Party: Ms. Candace McCann; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The amendment updates the parties' respective financial, operational, and economic interests and obligations under the agreement.

Dated: December 16, 2005.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E5–7624 Filed 12–20–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Hanjin Transportation Company Limited, 21th Fl. Marine Center 118, Namdaemunro, 2–GA, Jung-GU, Seoul Korea, *Officers:* Ki Young Lee, Secretary, (Qualifying Individual) Won Young Lee, CEO

America Pak Agency, Inc., 3111 Waters Way Drive, Sugar Land, TX 77478. *Officer:* Jun Kang Ping, President, (Qualifying Individual)

S.R. International, Inc. dba Sea-Road International, Inc., 5300 W. 83rd Street, Los Angeles, CA 90045. *Officers:* Lindsey Hwang, Secretary, (Qualifying Individual), Han K. Kim, CEO

Hi-Tek Moving, Inc. dba Hi Tek Transportation, 16928 S. Main Street, Gardenia, CA 90248. *Officers:* Byung In Kwak, Secretary, (Qualifying Individual) Sang H. Cho, President

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants: Speedway Transport Inc., 731 S. Garfield Avenue, Suite #B, Alhambra, CA 91801. *Officers:* Scott S.F. Wang, President, (Qualifying Individual) Darren T.J. Hsu, Director

Princess Cargo, 140 E. Spring Street, #7, Long Beach, CA 90806. *Officers:* Odon Manalo Belen, Vice President, (Qualifying Individual) Ellen Flores Belen, President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

A Arnold World Class Relocation, 5200 Interchange Way, Louisville, KY 40229. *Officers:* Douglas Finke, President, (Qualifying Individual) Richard Russell, Manager

Unipak Global Relocation, Inc., 5355

Avenida Encinas, Suite 106, Carlsbad, CA 92008. *Officers:* Christoper Ramey, Asst. Vice President, (Qualifying Individual) James Kinyon, President

Berklay Air Services, 181 East Jamaica Avenue, Valley Stream, NY 11580. *Officers:* Greg Klainberg, Manager Exports, (Qualifying Individual) Bernard Klainberg, CEO

Dated: December 16, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E5–7618 Filed 12–20–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 January 17, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. CenterState Banks of Florida, Inc., Winter Haven, Florida; to acquire 100 percent of the voting shares of CenterState Bank Mid Florida, Leesburg, Florida.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Pawhuska Financial Corp., Pawhuska, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Pawhuska, Pawhuska, Oklahoma.

Board of Governors of the Federal Reserve System, December 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7623 Filed 12–20–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Intelligence Reform and Terrorism Prevention Act of 2004 Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention (CDC), with authority to redelegate, the authorities vested in the Secretary of Health and Human Services, under Section 7211, Minimum Standards for Birth Certificates (5 U.S.C. 301 note), of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, as amended hereafter.

This delegation excludes the authority to submit reports to the Congress, but should be exercised under the Department's existing delegation of authority and policy on regulations.

This delegation is effective upon signature. In addition, I hereby affirm and ratify any actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective day of the delegation.

Dated: December 15, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–24312 Filed 12–21–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Native American Programs

AGENCY: Administration for Native Americans (ANA).

ACTION: Notice of Final Issuance ANA Program Policies and Procedures.

SUMMARY: Pursuant to section 814 of the Native American Programs Act of 1974 (the Act) as amended by 42 U.S.C. 2991 *et seq.,* ANA herein describes its issuance of final interpretive rules, general statements of policy and rules of agency procedure or practice in relation to the Social and Economic Development Strategies (SEDS), Native Language Preservation and Maintenance (hereinafter referred to as Native Language), Environmental Regulatory Enhancement (hereinafter referred to as Environmental), Environmental Mitigation (hereinafter referred to as Mitigation) programs and any Special Initiatives. Under the statute, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, statements of general policy and rules of agency procedure or practice and to give notice of the final adoption of such changes at least thirty (30) days before the changes become effective. The notice also provides additional information about ANA's plan for administering the programs.

FOR FURTHER INFORMATION CONTACT: Sheila K. Cooper, Director of Program Operations, toll-free at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs Act of 1974, as amended, requires ANA to provide notice of its proposed interpretive rules, statements of policy and rules of agency organization, procedure or practice. In accordance with statute, these clarifications, modifications and new text will appear in the ANA FY06 Program Announcements (PAs) for SEDS, Native Language, Environmental, Mitigation and SEDS Special Initiatives. This notice serves to fulfill this requirement.

Additional Information: ANA received one public comment from a Federally recognized Tribe. The commenter provided a comment on the electronic application submission topic and general comments that ANA will respond to under separate correspondence that do not address the Notice of Public Comment (NOPC). The following NOPC items will be considered as the final FY06 ANA

interpretive rules, statements of policy and rules of agency organization, procedure or practice.

I. Environmental Regulatory Enhancement

ANA Evaluation Criteria

Project Approach: In an effort to adhere to the Congressional intent of the legislation and to clarify the program purpose that has historically prompted numerous questions and created application and project development inconsistencies, ANA will now request the following information from applicants to be addressed within the ANA evaluation criterion:

Applicants are required to describe a land base or other resource, i.e., river or body of water, over which they exercise jurisdiction to implement Tribal regulation of environmental quality.

II. Definitions

The following definition will be used in the appropriate program-specific FY06 PAs. ANA has clarified many areas that applicants have historically found difficult to understand and that have previously prompted numerous questions and created application and project development inconsistencies. The ANA PAs will now include an additional definition for the following term:

Logic Model: A logic model is a systematic and visual way to present and share your understanding of the relationships among the resources you have to operate your program, the activities you plan and the changes or results you hope to achieve.

III. Impact Monitoring

Section 811(a)(1) of the Act requires that the Commissioner provide for the evaluation of projects assisted under this title, including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs and their structure and mechanisms for delivery of services. Section 811(a)2 of the Act requires that ANA evaluate projects awarded under the Act not less frequently than once every third year. ANA will consider (1) geographic location; (2) grant award amount; and (3) length of project period, when selecting projects for evaluation. Grantees will be given a notification of ANA's intent to review thirty (30) days prior to the on-site evaluation. Evaluations shall be conducted by persons not directly involved in the administration of the project evaluated.

In FY03 ANA began a process to enhance its capacity to conduct program monitoring and evaluation. This process allows ANA to monitor the completion of applicant project goals, the use of Federal funds, and the applicant's success in accomplishing its project mission. The process includes improving ANA's capacity through enhanced information technology systems to track performance-based indicators such as jobs, project outcomes and community impacts. Each applicant for ANA funding must propose a stand-alone project that will be completed or self-sustained by the end of the grant term, and must have measurable results. (*See Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures:* 68 FR 64686; November 14, 2003.)

Performance indicators have been introduced as application criteria and are measurement descriptions used to identify outcomes or results of the project. Outcomes or results must be measurable to determine that the project achieved its desired objective and can be independently verified through monitoring and evaluation. (*Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974 as amended by 42 U.S.C. 2991b and 2991b–3.) (See Notice of Public Comment on the Adoption of Impact Indicators: 70 FR 6686 February 8, 2005.)*

In addition, ANA Training and Technical Assistance (T/TA) providers will be performing on-site technical assistance visits for those grantees identified as potentially at-risk for project implementation.

IV. Training and Technical Assistance On-Site Activity

45 CFR 74.51(g) and 92.40(e) allow Department of Health and Human Services staff or representatives to conduct on-site monitoring of grantees as warranted by program needs. Based on the authority provided, on-site monitoring and evaluation is necessary to determine if the amount awarded is a productive and effective use of funds and serves the community's needs. When determined as appropriate, ANA's T/TA providers will conduct an on-site visit to validate progress and outcomes proposed by the grantee to ensure project integrity and to offer technical assistance and guidance to support project activities. Such instances when an on-site visit is deemed appropriate are: Non-submission or untimely progress reporting; delayed start in project implementation; inconsistent Federal funds draw-downs in relation to approved work plan; or other grant/project management concerns.

In the case of a multi-year grant, this activity will help ANA determine if continued funding is justified. In addition, 45 CFR 1336.40 requires that progress reports and continuation applications from ANA grantees contain sufficient information for ANA to determine the extent to which the recipient satisfies ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the grantee's approved work plan and with ANA project evaluation criteria. Grantees identified as potentially at-risk for project implementation will receive an on-site visit by one of ANA's T/TA providers. In collaboration, the T/TA provider and the grantee will identify challenges or barriers to the project and develop a plan to bring the project into compliance with its approved Objective Work Plan. On-site visits shall be conducted by persons not directly involved in the administration of the project.

V. Electronic Application Submission

Pursuant to the Federal Financial Assistance Management Improvement Act (Pub. L. 106–107), HHS is improving the efficiency and coordination of its grant-making processes by participating in the Federal Government's Grant Streamlining Initiative. For all FY06 competitions, ANA will participate in the Grants.gov process, which allows applicants the opportunity to submit applications electronically. Applicants are not required to submit electronically and can still submit hard copy applications. The applicant is responsible for ensuring on-time electronic submission is fully achieved. The following activities and application submission requirements will become effective in FY06:

- ANA will no longer publish PAs in the **Federal Register.** Official ANA PAs will be posted on the Grants.gov Web site. PAs will also be posted on the ANA Web site and on the ANA T/TA providers' Web sites.
- Due to limitations on the number of times the Objective Work Plan form can be replicated within the Grants.gov system, applicants will be limited to no more than six (6) project objectives per budget period. This limitation applies to all applicants regardless of type of submission format: Hard copy or electronic submission.

Comment and Response

Discussion on Comment: The commenter recommended that ANA

monitor the electronic grants process of another Federal agency in order to ensure that the ACF process proceeds in an efficient and timely manner.

Response: ANA, in compliance with Public Law 106–107, must offer an electronic grants submission venue; however, the public is not required to submit grant applications via the Grants.gov system. ANA will monitor the electronic submission process for ANA grant applications through the Grants.gov system throughout the upcoming fiscal year.

VI. Environmental Mitigation

ANA received pass-through funds from the Department of Defense for Tribes and Tribal organizations to offset the effects of military actions at Formerly Used Defense Sites (FUDS). ANA will announce the availability of these funds in FY06. A request for financial assistance in this program area does not require a non-Federal share match requirement.

VII. SEDS Special Initiatives

ANA has the discretionary authority to make awards in support of special initiatives, including but not limited to, healthy marriage and relationships, fatherhood, positive youth development and emergency support to Native communities affected by man-made or natural disasters. In FY06, ANA will announce the availability of funding for special initiatives when practicable. A request for financial assistance for any of the special initiatives will require a non-Federal share match requirement.

VIII. Post Award Training

ANA, through contracted services, conducts regional post award training. Past practice has been to provide funding to new grantees for attendance at this training in order to provide additional assistance and information on managing a Federal award. In FY06, ANA will require all applicants to include in their Federal budget request the costs associated for the proposed project's finance person and the project manager to attend this regional training. It is determined that due to many reasons, largely grantee staff turnover, every grantee receiving an ANA award will benefit from the information provided at post award training; therefore, the expense is considered reasonable for all applicants to include in their budget request and also reflect in the activity in their Objective Work Plans.

IX. ANA Administrative Policy

The following policy will be used in all FY06 PAs. ANA has clarified many areas that applicants have historically found difficult to understand and that have previously prompted numerous questions and created application and project development inconsistencies. The ANA PAs will now include this clarified policy:

- If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An applicant's governing board will be considered representative of the community to be served if the applicant demonstrates that at least a majority of the board individuals fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; (3) have experience working with the community to be served by the project; or (4) have a cultural relationship with the community be to served.

Dated: December 14, 2005.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. E5–7592 Filed 12–20–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; A Process/Outcome Evaluation of Parkinson's Disease Research Centers

SUMMARY: 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 National Institute of Neurological Disorders and Stroke (NINDS) Office of Science Policy and Planning, the National Institute of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: A Process/Outcome Evaluation of Parkinson's Disease Research Centers. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study is primarily an outcome evaluation, designed to assess the extent to which the NINDS-funded Morris K. Udall Centers for Excellence in Parkinson's Disease Research have achieved the program's short-term and long-term goals. The study also includes elements of a process evaluation in its examination of the major activities conducted by the Udall Centers, the relationship between Center activities and the achievement of program goals, and the NINDS management of the program. The results of the full-scale evaluation should be very helpful to NINDS in identifying the most relevant measures for tracking the future progress of the Centers, developing strategies to enhance the program's effectiveness, and improving program management. NINDS will also use the findings to inform its National Advisory Neurological Disorders and Stroke Council, and to address inquiries from the public regarding the impact of the Udall Centers Program. Lastly, Udall Center awardees will be able to use the evaluation results to improve the performance of their Centers; and other NIH Institutes and Centers may use the methodology and results of this evaluation to guide their own centers assessments. *Frequency of Response:* Once or twice. *Affected Public:* Researchers, Not-for-profit institutions; Federal Government; individuals or households. *Type of Respondents:* Adult professionals.

The annual reporting burden is represented in the following table:

Type of respondents	Number of respondents	Frequency of response	Average time per response (hour)	Annual hour burden
Center Directors	13	2	1.5	39
Project/Core Directors	54	1	1.5	81
Comparison Group	54	1	1.0	54
Totals	121			174

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Melinda Kelley, Office of Science Policy and Planning, National Institute of Neurological Disorders and Stroke, NIH, Building 31, 31 Center Drive, Room 8A–03, Bethesda, MD 20892; call non-toll-free (301) 496–9271; or E-mail your request, including your address to: *ospp@ninds.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: December 9, 2005.

Story C. Landis,

Director, NINDS, National Institutes of Health.

[FR Doc. 05–24306 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. SBIR Topics 206, 221, & 224.

Date: February 27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PhD., Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405. (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24316 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel SPORE in Prostate and Skin Cancers.

Date: February 15–17, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hamilton Crowne Plaza, 1201 14th Street NW., Washington, DC 20005.

Contact Person: Shamala K. Srinivas, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8133, Bethesda, MD 20892, 301–594–1224.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24317 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–38, Review R21.

Date: December 19, 2005.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD., Scientific Review Administrator, Scientific

Review Branch, Division of Extramural Activities, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–28, Review T32s.

Date: January 25, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard BWI Airport Hotel, 1671 West Nursery Road, Linthicum, MD 21090.

Contact Person: Lynn M. King, PhD., Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN—32F, National Institution of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–39, Review of R21s (Perio/Micro).

Date: March 22, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Yujing Liu, MD, PhD., Scientific Review Administrator, National Institute of Dental & Craniofacial Research, 45 Center Drive, Natcher Building, Room. 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 12, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24308 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, R21—Innovative Grants on Immune Tolerance.

Date: January 9–10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Amstad, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 12, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24309 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited R01 Application.

Date: January 11, 2006.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Leyla S. Diaz, PhD., Scientific Review Administrator, Scientific Review Program, NIH/NIAID/DEAS/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *diazl@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 12, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24310 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Research Project (R01).

Date: January 9, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yan Z. Wang, PhD., MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892. (301) 594–4957. *wangy1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis,

Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24313 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 20–21, 2005.

Time: 8:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric H. Brown, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, Suite 824, Bethesda, MD 20892, (301) 594–4955. *browneri@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24315 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract propsals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Contracts Small Business Innovation Research.

Date: January 9, 2006.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD., RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301/443–1606, *mcarey@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 13, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24318 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Automatic Delineation and Quantification of WMSH.

Date: December 20, 2005.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Multi-focal Cortex Thinning in Drug/Alcohol Abuse.

Date: December 20, 2005.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 12, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24311 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Clinical Trial Planning Grant (R34).

Date: January 3, 2006.

Time: 4:50 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yan Z. Wang, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957. *wang1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 14, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24314 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oncogenic Cooperation by Ets and AP1.

Date: December 19, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 12, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24307 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Plans for Future Expert Panel Evaluations of Bisphenol A and Hydroxyurea; Request for Comments and Nominations of Scientists Qualified To Serve on These Expert Panels

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for comments, nominations of scientific experts.

SUMMARY: The CERHR plans to convene two expert panels to evaluate the scientific evidence regarding the potential reproductive and developmental toxicities of bisphenol A and hydroxyurea. Each expert panel will consist of approximately 12 scientists, selected for their expertise in various aspects of reproductive and developmental toxicology and other relevant areas of science. The CERHR invites the submission of public comments on these chemicals and the nomination of scientists to serve on the expert panels for their evaluation (see **SUPPLEMENTARY INFORMATION** below). These meetings are tentatively scheduled for late 2006, although the exact dates and locations have not yet been established. As plans are finalized, they will be announced in the **Federal Register** and posted on the NTP Web site (*http://ntp-server.niehs.nih.gov*). CERHR expert panel meetings are open to the public with time scheduled for oral public comment.

DATES: Comments received by February 6, 2006 will be made available to the CERHR staff and the expert panels and posted on the CERHR Web site. Nominations of scientists received by February 6, 2006 will be considered for these panels and for inclusion in the CERHR Expert Registry.

ADDRESSES: Correspondence should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 541–3455 (telephone), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Evaluation of Bisphenol A

Bisphenol A (CAS RN: 80–05–7) is a high production volume chemical used in the production of epoxy resins, polyester resins, polysulfone resins, polyacrylate resins, polycarbonate plastics, and flame retardants. Polycarbonate plastics are used in food and drink packaging; the resins are used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes. Some polymers used in dental sealants and tooth coatings contain bisphenol A. Exposure to the general population can occur through direct contact or by exposure to food or drink that has been in contact with a material containing bisphenol A. CERHR selected this chemical for evaluation because of (1) High production volume, (2) widespread human exposure, (3) evidence of reproductive toxicity in laboratory animal studies, and (4) public concern.

Evaluation of Hydroxyurea

Hydroxyurea (CAS RN: 127–07–1) is used in the treatment of cancer, sickle cell disease, and thalassemia. It is the only treatment for sickle cell disease used in children aside from blood transfusion. Hydroxyurea may be used in the treatment of children and adults with sickle cell disease for an extended period of time or for repeated cycles of therapy. Treatment with hydroxyurea may be associated with cytotoxic and myelosuppressive effects and hydroxyurea is mutagenic. This drug is used to treat sickle cell disease only if there is an indication of significant disease complications. CERHR selected this chemical for evaluation because of (1) increasing use in the treatment of sickle cell disease in children and adults, (2) knowledge that it inhibits DNA synthesis and is cytotoxic, and (3) published evidence of reproductive and developmental toxicity in rodents and humans.

Request for Comments

CERHR invites the public and other interested parties to submit information and comments on bisphenol A and hydroxyurea including toxicology information from completed and ongoing studies, information on planned studies, and information about current production levels, human exposure, use patterns, and environmental occurrence.

Request for the Nomination of Scientists for Expert Panels

CERHR invites nominations of qualified scientists to serve on the individual expert panels for (1) bisphenol A and (2) hydroxyurea. Panelists are primarily drawn from the CERHR Expert Registry and/or the nomination of other scientists who meet the criteria for listing in that registry which include: formal academic training and experience in a relevant scientific field, publications in peer-reviewed journals, membership in relevant professional societies, and certification by an appropriate scientific board or other entities. Expert panel members are subject to applicable guidelines for conflict of interest in accordance with Federal Advisory Committee Act (5 U.S.C. Appendix 2).

All panel members serve as individual experts and not as representatives of their employers or other organizations. Scientists on the expert panel will be selected to represent a wide range of expertise including, but not limited to, developmental toxicology, reproductive toxicology, epidemiology, general toxicology, pharmacokinetics, exposure assessment, and biostatistics. Nominations should include contact information and a current curriculum vitae (if possible) and be forwarded to the CERHR at the address given above.

Background Information on the CERHR

The NTP established CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and developmental health effects associated with environmental and/or occupational exposures. Expert panels conduct scientific evaluations of environmental chemicals, drugs, physical agents, or mixtures selected by CERHR in public forums.

CERHR invites the nomination of substances for expert panel evaluation or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **ADDRESSES** above). CERHR selects substances for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** on July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from the CERHR.

Dated: December 13, 2005.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and the National Toxicology Program.

[FR Doc. E5–7617 Filed 12–20–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Notice of Appeal of Decision under section 210 or 245A of the Immigration and Nationality Act; Form I–694.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 21, 2005, at 70 FR 61296, allowing for a 60-day public comment period. No comments were received by the USCIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0034 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision under section 210 or 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–694, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used by the USCIS in considering appeals of denials of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,192 responses at 30 minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 596 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

FOR FURTHER INFORMATION CONTACT: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: December 15, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–24237 Filed 12–20–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; Form I–612.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 21, 2005, at 70 FR 61296, allowing for a 60-day public comment period; no comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0030 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–612. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Section 212(e) of the Immigration and Nationality Act provides for a waiver of the foreign residence requirement in certain instances. This information will be used by the USCIS to determine eligibility for a waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300 respondents at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 433 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: December 15, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–24238 Filed 12–20–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plan for the North Mississippi National Wildlife Refuge Complex, Which Consists of Three National Wildlife Refuges (Coldwater River, Dahomey, and Tallahatchie), as Well as a Number of Farm Service Agency Tracts in the Northern Section of the Mississippi Delta

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan for the North Mississippi National Wildlife Refuge Complex is available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the Complex will be managed for the next 15 years. The compatibility determinations for hunting, fishing, wildlife observation, wildlife photography, environmental education and interpretation, off-road vehicle use, and resource research studies on each refuge, as well as bicycle use and farming on Dahomey and Tallahatchie refuges, are also available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to the Project Leader, North Mississippi National Wildlife Refuge Complex, 2776 Sunset Drive, Grenada, Mississippi 38901; or by calling the Project Leader at 662/226–8286. The plan may also be accessed and downloaded from the Service's Web site *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: The North Mississippi National Wildlife Refuge Complex, formerly the Mississippi Wetland Management District, is composed of three distinct work areas. Each contains a national wildlife refuge and all Farm Service Agency tracts within that area. The three refuges plus the 128 Farm Service Agency properties total 33,746 acres, with the Complex headquartered in Grenada. Since the Complex was established in 1989, and assigned administrative responsibility for Coldwater River, Dahomey, and Tallahatchie refuges, the overriding collective thrust has been the creation, restoration, and enhancement of wetlands on public and private lands. The Complex provides habitat for large concentrations of wintering waterfowl and numerous species of neotropical migratory birds.

Implementing the comprehensive conservation plan will enable the Complex to fulfill its role of conserving and managing fish and wildlife resources in the northern section of the Mississippi Delta, and of providing quality environmental education and wildlife-dependent recreation opportunities for visitors. The Service analyzed four alternatives for managing the Complex and selected Alternative D to guide management direction over the next 15 years.

Alternative D represents a combination and/or compromise between Alternative B (Public Use Emphasis) and Alternative C (Wildlife Management Emphasis). Whereas these two alternatives seek to maximize either expanded public use or expanded wildlife management opportunities, Alternative D seeks to optimize the benefits of the Complex to both wildlife and people. Under Alternative D, refuge lands will be more intensively managed than at present to provide quality habitat for wildlife, particularly migratory birds. Additional areas on the refuges with pumping capability (wells) and a water control structure will be managed for moist-soil vegetation or force-account farmed (with 100 percent of crops left standing) to benefit migratory waterfowl. Cooperative farming fields will be farmed in rice, milo, corn, or soybeans (in order of preference) and flooded during the late fall and winter.

Increased emphasis will be placed on meeting objectives of various step-down plans, providing habitat for waterfowl and shorebirds. These habitats and their use will be monitored on the refuges to ensure that goals and objectives are being met. Population and habitat surveys will be conducted throughout the refuges to develop baseline data to determine initial population levels and habitat conditions.

The alternative will encourage more public recreational uses even while intensifying current habitat management. Additional staff, emphasis, and resources will be more or less evenly divided between enhancing public use opportunities and wildlife habitat management. Hunting and fishing opportunities will be increased as funding and personnel allow. Moist-soil, cropland, forest, and wetland management will also intensify, to the extent permitted by funding and staffing limits. One auto tour, one canoe trail, one or more foot trail(s) and/or interpretive trail(s), one observation tower, and one or more blinds will be added for environmental education, photography, and watchable wildlife programs. Staff may be added to develop and present both on- and off-site environmental education and interpretation programs.

Under Alternative D, the Complex will continue to seek acquisition of all willing-seller inholdings within the acquisition boundaries, expanding Complex acreage by up to an additional 10 percent of the current boundaries. Highest priority will be given to those lands adjacent to existing refuge tracts and those lands supporting unique habitats or offering compatible public use opportunities. Additionally, the Complex will concentrate future off-refuge partnerships on promoting more intensive wildlife management on privately owned lands.

Public comments were requested, considered, and incorporated throughout the planning process. Public outreach included open houses, public meetings, technical workgroups, planning update mailings, and **Federal Register** notices. During the comment period on the draft document, the Service received a total of 25 comments. All substantive issues raised have been addressed either through revisions of the final comprehensive conservation plan or in responses contained in the appendix dealing with public comments.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 24, 2005.

Jeffrey M. Fleming,

Acting Regional Director.

[FR Doc. 05–24282 Filed 12–20–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–06–1220–PA]

Notice of Availability of the Sheep Complex, Big Springs and Owyhee Grazing Allotments Sensitive Bird Species Draft Environmental Impact Statement, Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Sheep Complex, Big Springs and Owyhee Grazing Allotments Sensitive Bird Species Draft Environmental Impact Statement (EIS).

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 and regulations at 40

CFR Parts 1500–1508, the Bureau of Land Management, Elko Field Office, has prepared a Draft EIS on the effects of three multiple use decisions on sensitive avian species in Elko County, Nevada.

DATES: This notice initiates the public review period. Written comments on the Draft EIS will be accepted for 45 days following the date this Notice of Availability is published in the **Federal Register**. An Open-House Public Meeting will be held at the Bureau of Land Management Elko Field Office at 3900 E. Idaho Street, Elko, Nevada. The date and time of this public meeting will be announced through public notices, media news releases and/or mailing. This meeting will be scheduled no sooner than 15 days following the publication of this notice.

ADDRESSES: You may submit comments by any of the following methods:

—E-mail: *lwest@nv.blm.gov*

—Fax: (775) 753–0255

—Mail: Send to the attention of the Sensitive Species EIS Project Manager, BLM Elko Field Office, 3900 East Idaho Street, Elko, NV 89801. For those desiring a copy of the draft, a limited number of copies can be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Lorrie West, EIS Team Co-Lead, at the Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0200. E-mail: *lwest@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: The BLM is preparing this EIS to comply with a minute order issued by the Honorable Howard D. McKibben, U.S. District Judge, District of Nevada, on August 18, 2004 (CV–N–03–197–HDM(VPC)). The order followed a hearing on a complaint against three final multiple use decisions (Western Watersheds Project and Committee for the High Desert vs. Clinton R. Oke, Assistant Field Manager, Elko Field Office, et al.). The final decisions, which were left intact by the judge, are for the Sheep Complex Allotment, Big Springs Allotment and Owyhee Allotment. The Sheep Complex Allotment and Big Springs grazing allotments are located in the southeastern portion of Elko County, NV, and the Owyhee Allotment is in the northwest portion of Elko County.

The order was to prepare the EIS with respect to burrowing owls, raptors and sage grouse on the Sheep Complex and the Owyhee Allotment, and sage grouse on the Big Springs Allotment. The issues analyzed included the impacts of livestock grazing proposed by the multiple use decisions and alternatives to the extent applicable to these sensitive bird species and considering springs, seeps, riparian areas and upland habitat.

A range of alternatives (including the no-action alternative) was developed to address the issues.

Comments received on the Draft EIS, including names and street addresses of respondents, will be available for public review at the Elko Field Office during regular business hours, 7:30 a.m. to 4:30 p.m. Monday through Friday except holidays, and will be published as part of the Final EIS. Individual respondents may request confidentiality. If you wish to withhold your name 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 and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Dated: November 3, 2005.

Helen Hankins,

Field Office Manager.

[FR Doc. E5–7578 Filed 12–20–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2006 is 5.125 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2005, through and including September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Karl J. Stock, Economist, Contract Services Office, Denver, Colorado 80225; telephone: 303–445–2929.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 5.125 percent for fiscal year 2006.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88.Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 4.6434 percent. This average value is then rounded to the nearest one-eighth of a point, resulting in 4.625 percent. This exceeds the permissible one-quarter of 1 percent change from the fiscal year 2005 rate of 5.375 percent. Therefore, the change is limited to a one-quarter percent decrease.

The rate of 5.125 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: November 8, 2005.

Roseann Gonzales,

Director, Office of Program and Policy Services.

[FR Doc. E5–7627 Filed 12–20–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of extension of approved data collection.

SUMMARY: The U.S. Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Office

of Disability Employment Policy (ODEP) is soliciting comments concerning an already approved data collection for the following Employer Assistance Referral Network (EARN) forms: EARN Provider Enrollment Form; EARN Employer Enrollment Form; EARN Employer and Provider Surveys. A copy of the approved information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office shown in the address section below on or before February 21, 2006.

ADDRESSES: Richard Horne, U.S. Department of Labor, Office of Disability Employment Policy, 200 Constitution Avenue, NW., Suite S–1303, Washington, DC 20210. Telephone: (202) 693–7880. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Richard Horne, telephone: (202) 693–7880, e-mail: *horne.richard@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Employer Assistance Referral Network (EARN) is a nationwide service designed to provide employers with a technical, educational, and informational resource to simplify and encourage the hiring of qualified workers. Historically, disability programs required employers to do much of the work in the finding and hiring of people with disabilities. The Office of Disability Employment Policy (ODEP) of the Department of Labor has designed EARN to alleviate these barriers and do much of the work for the employer.

EARN is a service from the Office of Disability Employment Policy (ODEP) of the Department of Labor. This referral service links employers with providers who refer appropriate candidates with disabilities. The service is provided by means of a nationwide toll-free Call Center.

EARN is a service of the Office of Disability Employment Policy which was established pursuant to section 1(a)(1) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) H.R. 5656, see Title I, (''Departmental Management'') 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; and Executive Order 13187, ''The President's Disability Employment Partnership Board (PDEPB)'' (January 10, 2001).

This service, and the data collection component is authorized pursuant to Public Law 106–554 which direct the Office of Disability Policy to provide initiatives such as EARN to ''further the objective of eliminating employment barriers to the training and employment of people with disabilities''.

II. Desired Focus of Comments

The Department is particularly interested in comments which:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

This extended ICR covers four forms: EARN Provider Enrollment Form, EARN Employer Enrollment Form, EARN Employer Survey and EARN Provider Survey. The enrollment forms (Employer Enrollment and Provider Enrollment) will be used to enroll provider and employers who wish to participate and use this service. The surveys (Employer Survey and Provider Survey) will collect quantitative data on participants' levels of satisfaction with individual service elements and their satisfaction with the service as a whole. The surveys will also solicit free-text comments from participants regarding the service.

Agency: Office of Disability Employment Policy.

Titles: EARN Provider Enrollment Form, EARN Employer Enrollment Form, EARN Employer Survey, EARN Provider Survey.

OMB Number: 1230–0003.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Farms; Government; and State, local, or tribal government.

Number of Respondents: 13,500.

Form	Estimated number of annual responses	Average response time (hours)	Estimated burden hours
EARN Provider Enrollment Form	6,000	0.33	1,980
EARN Employer Enrollment Form	7,500	0.33	2,475
EARN Employer Survey	300	0.33	99
EARN Provider Survey	300	0.33	99
Total	14,100		4,653

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: These surveys are designed to collect data from service providers and employers. For each provider, we will collect Point of Contact (POC) information and information about the types of clients the provider serves. We also request information about the size of the provider organization, whether a fee is charged for placement services, and employer references. For each employer, we will collect information about the number of employees, geographic location, industry, specific jobs offered, and Point of Contact (POC) information. The Employer Survey and Provider Survey will collect quantitative data on participants' levels of satisfaction with individual service elements and their satisfaction with the service as a whole. The surveys will also solicit free-text comments from participants regarding the service. We will present survey data in the aggregate for all Employers and Providers. We will combine survey data with system-generated data reports containing demographic data for the sample groups as well as performance data for the Call Center.

Signed at Washington, DC, this December 14, 2005.

Roy Grizzard,

Assistant Secretary.

[FR Doc. 05–24277 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–CX–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 13, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-mail: *Mills.Ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of currently approved collection.

Title: Workforce Investment Act (WIA) Information and Reporting System.

OMB Number: 1205–0420.

Frequency: Quarterly and Annually.

Affected Public: State, Local or Tribal Government.

Type of Response: Recordkeeping; Reporting.

Number of Respondents: 53.

Annual Responses: 265.

Average Response time: 1,040 hours per State.

Total Annual Burden Hours: 709,145.

Total Annualized Capital/Startup Costs: $1,791.

Total Annual Costs (operating/maintaining systems or purchasing services): $23,047.

Description: Respondents are State governments. Selected standardized information pertaining to participants in WIA Title IB programs will be collected and reported for the purposes of general program oversight, evaluation and performance assessment.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E5–7575 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 13, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Number: 1215–0024.

Form Number: LS–208.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 500.

Annual Responses: 22,722.

Average Response Time: 15 minutes.

Estimated Annual Burden Hours: 5,681.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $16,140.00.

Description: The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. Under section 914(g) of the Longshore Act, the employer or its insurance carrier must file a report of the compensation paid to a claimant at the time final payment is made. The Act requires that the form must be filed within 16 days of the final payment of compensation with the District Director in the compensation district in which the injury occurred. Form LS–208 requests information regarding the beginning and ending dates of compensation payments, compensation rates, reason payments were terminated and types and amounts of compensation payments.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Work Experience and Career Exploration Programs (29 CFR Part 570.35a).

OMB Number: 1215–0121.

Form Number: None.

Frequency: Biannually.

Type of Response: Reporting; Recordkeeping; and Third party disclosure.

Affected Public: Individuals or households and State, Local, or Tribal Government.

Number of Respondents: 14,014.

Annual Responses: 14,014.

Average Response Time: 2 hours for state application; 1 hour for written training agreement; and one-half minute to file a record.

Estimated Annual Burden Hours: 14,145.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq., section (3)(l) establishes a minimum age of 16 years for most nonagricultural employment but allows the employment of 14- and 15 year olds in occupations other than manufacturing and mining, if the Secretary of Labor determines such employment is confined to (1) periods that will not interfere with the minor's schooling and (2) conditions that will not interfere with the minor's health and well-being. FLSA section 11(c) requires all employers covered by the FLSA to make, keep and preserve records of their employees' wages, hours and other conditions and practices of employment. Regulations issued by the Secretary of Labor prescribe the recordkeeping and reporting requirements for these records. Subpart C of Regulations, 29 CFR part 570, Child Labor Regulations, Orders and Statements of Interpretation, sets forth the employment standards for 14- and 15-year olds (CL Reg. 3). Regulations 29 CFR 570.35a contains the requirements describing the criteria for use, occupations permitted and conditions of employment that allow employment of 14- and 15-year olds-pursuant to a school-supervised and school administered Work Experience and Career Exploration Program (WECEP)—under the conditions CL Reg. 3 otherwise prohibits. In order to utilize the CL Reg. 3 WECEP provisions, regulations 29 CFR 570.35(b)(2) requires a state educational agency to file an application for approval of a state WECEP program as one not interfering with schooling or with the health and well-being of the minors involved. Regulations 29 CFR 570.35a(b)(3)(vi) requires preparation of a written training agreement for each student participating in a WECEP and that such agreement be signed by the teacher, coordinator, employer and student. The regulation also requires the student's parent or guardian to sign or otherwise consent to the agreement, in order for it to be valid. Regulations 29 CFR 570.35a(b)(4)(ii) requires state education agencies to keep a record of the names and addresses of each school enrolling WECEP students and the number of enrollees in each unit. The state or local educational agency office must keep a copy of the written training agreement for each student participating in the program and maintain these records for 3 years from the date of enrollment in the program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E5–7576 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request Settlement Agreements Between a Plan and Party in Interest

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Department of Labor (the Department) conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

By this notice, the Department is soliciting comments concerning the information collection provisions of two similar prohibited transaction class exemptions, PTE 94–71 and PTE 03–39. Both of these class exemptions concern transactions undertaken pursuant to settlement agreements between an employee benefit plan and a party in interest to that plan. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before February 21, 2006.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: Susan G. Lahne, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 94–71, entitled Class Exemption to Permit Certain Transactions Authorized Pursuant to Settlement Agreements Between the U.S. Department of Labor and Plans, which was published in final form on October 7, 1994 (59 FR 60837), exempts from the prohibitions of sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA) transactions that are specifically authorized by a settlement agreement resulting from an investigation of an employee benefit plan by the Department pursuant to the authority of section 504(a) of ERISA. The availability of the exemption is conditioned on providing certain notices and disclosures. Specifically, the person seeking to rely on the exemption must provide notice to the affected participants and beneficiaries, at least 30 days prior to entering into the settlement agreement with the Department, in a manner approved by the Department that is reasonably calculated to result in actual receipt. The notice must include an objective description of the transaction, the approximate date on which it will occur, the address of the office of the Department that negotiated the settlement, and a statement apprising participants and beneficiaries of their right to provide comments to that office.

Prohibited Transaction Class Exemption 03–39, entitled Class Exemption For Release of Claims and Extensions of Credit in Connection With Litigation, which was published in final form on December 31, 2003 (68 FR 75632), exempts from the prohibitions of sections 406 and 407(a) of ERISA certain transactions engaged in by a

plan in connection with the settlement of litigation. Exempted transactions must involve either release by the plan or by a plan fiduciary of a legal or equitable claim against a party in interest in exchange for consideration given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's or the fiduciary's claim, or an extension of credit by the plan or by a plan fiduciary to a party in interest in connection with a settlement whereby the party in interest agrees to repay, over time, an amount owed to the plan in settlement of a legal or equitable claim by the plan or a plan fiduciary against the party in interest. Among other conditions, the exemption requires that the terms of the settlement be specifically described in a written agreement or consent degree and that the fiduciary entering into the settlement on behalf of the plan acknowledge in writing its fiduciary status. The exemption also requires the plan to maintain, for a period of six years, the records necessary to enable specified interested person to determine whether the exemption's conditions were met.

Because of the similarity of these two exemptions, the Department submitted a combined ICR for the information collections in both exemptions to the Office of Management and Budget (OMB) for review and clearance at the time that PTE 03–39 was published as a proposal in the **Federal Register** (February 11, 2003, 68 FR 6953). The ICR for the information collections in both class exemptions was approved under OMB control number 1210–0091. The approval for the ICRs included in the two exemptions will expire on April 30, 2006.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

The Department is requesting an extension of the currently approved ICR for Settlement Agreements Between a Plan and Party in Interest. The Department is not proposing or implementing changes to the two exemptions or to the existing ICR. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Settlement Agreements Between a Plan and Party in Interest.

OMB Number: 1210–0091.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 4.

Frequency of Response: One-time.

Responses: 1080.

Estimated Total Burden Hours: 40.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: December 14, 2005.

Susan G. Lahne,

Senior Pension Law Specialist, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 05–24278 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Public Comment ERISA Advisory Opinion Procedure 76–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning an extension of the information collection provisions incorporated in ERISA Advisory Opinion Procedure 76–1. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section of this notice on or before February 21, 2006.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers). Comments may also be submitted electronically to *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Employee Retirement Income Security Act of 1974, as amended (ERISA), the Secretary of Labor is responsible for administration and enforcement of reporting, disclosure, fiduciary, and other standards established for pension and welfare benefit plans. These responsibilities have been delegated within the Department to EBSA. ERISA Advisory Opinion Procedure 76–1 describes the administrative procedures through which the public may request a written interpretation of ERISA from EBSA to resolve issues arising out of specific actual transactions or circumstances. The procedure is designed to promote efficient handling of such inquiries and to facilitate prompt responses. The Procedure requires requesters seeking advisory opinions or information letters to submit certain information that EBSA has determined is essential for determining the nature of a request for interpretation and EBSA's response. EBSA has previously submitted the information collection provisions of Advisory Opinion Procedure 76–1 to the Office of Management and Budget (OMB) for review in an ICR and

received approval from OMB under OMB Control No. 1210–0066. The current ICR approval is scheduled to expire on February 28, 2006.

II. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submissions of responses.

III. Current Action

This notice requests comments on an extension of the information collection provisions included in ERISA Advisory Opinion Procedure 76–1. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Advisory Opinion Procedure 76–1.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0066.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 115.

Responses: 115.

Average Response time: 14 hours.

Estimated Total Burden Hours: 161.

Estimated Total Burden Cost (Operating and Maintenance): $108,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the extension of this information collection request; they will also become a matter of public record.

Dated: December 14, 2005.

Susan G. Lahne,

Senior Pension Law Specialist, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 05–24279 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request Final Rule Relating To Notice of Blackout Periods to Participants and Beneficiaries

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Department of Labor (the Department) conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

By this notice, the Department is soliciting comments concerning the information collection provisions of the regulation under section 101(i) of the Sarbanes-Oxley Act of 2002 (the SOA), which requires written notice to be provided to affected participants and beneficiaries of individual account plans of any ''blackout period'' during which their right to direct or diversify investments, obtain a loan, or obtain a distribution under the plan may be temporarily suspended. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before February 21, 2006.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: Susan G. Lahne, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1) of the SOA amended section 101 of ERISA to add a new subsection (i), requiring that administrators of individual account plans provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. For purposes of this notice requirement, a blackout period generally includes any period during which the ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan or to obtain distributions from the plan will be temporarily suspended, limited or restricted. As required by section 306(b)(2) of SOA, the Department of Labor (Department) issued rules necessary to implement the SOA amendments. The Department's regulation at 29 CFR 2520.101–3 specifies when, how, and to whom a blackout notice must be provided and provides model notices to meet the requirements of the regulation.

The Department submitted the information collection provisions of § 2520.101–3 in an ICR to the Office of Management and Budget (OMB) for review and clearance at the time of publication of the interim final rule, which was published in the **Federal Register** on October 21, 2002 (67 FR 64766). OMB approved the ICR under its emergency clearance procedures on December 5, 2002. The Department requested continuing approval of the information collection, with burdens unchanged, in connection with promulgation of the final regulation on January 24, 2003 (68 FR 3716). The ICR for the information collection was approved under OMB control number 1210–0122. This approval is scheduled to expire on April 30, 2006.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

The Department is requesting an extension of the currently approved ICR for the Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries. The Department is not proposing or implementing changes to the regulation or to the existing ICR. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Final Rule Relating to Blackout Notices to Participants and Beneficiaries.

OMB Number: 1210–0122.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 85,150.

Frequency of Response: On occasion.

Responses: 11,956,000.

Estimated Total Burden Hours: 166,129.

Total Annual Cost (Operating and Maintenance): $9,351,400.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: December 14, 2005.

Susan G. Lahne,

Senior Pension Law Specialist, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 05–24280 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,377]

E.I. Dupont Victoria, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 18, 2005 in response to a worker petition filed by the Texas Work Force Commission on behalf of workers at E.I. DuPont, Victoria, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 5th day of December, 2005

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7608 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,129 and TA–W–50,129A]

IBM Corporation, Global Services Division, Piscataway, NJ; IBM Corporation, Global Services Division, Middletown, NJ; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor (Labor) for further investigation *Former Employees of IBM Corporation, Global Services Division* v. *U.S. Secretary of Labor,* Court No. 03–00656. The USCIT's Order was issued on August 1, 2005.

A petition for Trade Adjustment Assistance (TAA), dated November 13, 2002, was filed on behalf of workers at IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey (the subject firm). The petitioning workers had been employed by AT&T and had handled the same responsibilities for IBM, after being outsourced by AT&T to IBM in 2000.

In the petition, the workers alleged that the subject firm was shifting computer software production to Canada and importing those products from Canada. Upon institution of the petition on November 19, 2002, the Department conducted an investigation to determine whether the subject workers were eligible to apply for TAA. The relevant period for purposes of the investigation was determined to be November 2001 through November 2002.

For workers of the subject firm to be certified as eligible to apply for TAA, the following criteria must be met:

(1) 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; *and*

(2) The sales or production, or both, of such firm or subdivision have decreased absolutely, imports of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; *or*

(3) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and 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, is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act or 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.

29 U.S.C. Section 222

The investigation revealed that the workers were engaged in the analysis and maintenance of computer software and information systems (identifying product requirements, developing network solutions, and writing software). The Department determined that the workers did not produce an article within the meaning of Section 222 of the Trade Act. The Department's determination was issued on March 26, 2003. The Notice of determination was published in the **Federal Register** on April 7, 2003 (68 FR 16834).

By application of April 29, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for TAA. In the request for reconsideration, the petitioner alleged that the workers did produce an article and argued that the denial was the result of an overly narrow and antiquated interpretation of production by the Department.

The Department reviewed the petitioner's request for reconsideration and affirmed that the workers did not produce an article within the meaning of Section 222 of the Trade Act. Prior to making the determination, the Department reviewed the legislative intent of the TAA program as well as the language of the Trade Act. The Department also reviewed the Harmonized Tariff Schedule of the United States (HTSUS) and the North American Industry Classification System (NAICS), and sought guidance from the U.S. Customs Service (Customs). On June 26, 2003, the Department issued a Notice of Negative Determination Regarding Application

for Reconsideration. The Department's Notice of determination was published in the **Federal Register** on July 15, 2003 (68 FR 41845).

By letter dated September 11, 2003, the Plaintiffs requested judicial review by the USCIT, asserting that the workers of the subject firm produced an article within the meaning of the Trade Act and characterizing the Department's basis for denying certification for the subject workers as irrational.

The USCIT's August 1, 2005 Order directed the Department to (1) further investigate the nature of the software produced by the Plaintiffs, including whether the software was embodied in any kind of physical medium, (2) explain the differences between the activities performed by the Plaintiffs and those performed by other petitioners involved in developing software who had received TAA benefits in the past, and (3) explain and support the Department's position with respect to the characterization of the software at issue as an article or a service.

Remand Investigation Findings

During the remand investigation, the Department obtained additional information and clarification, from two subject firm officials, SAR 1, 2–6, 19–42, 48–50, 57–59, 62–67, 70–73, and Plaintiffs, SAR 1, 7–18, 42–47, 51–56, 60–61, 68–69 and position descriptions of the petitioning workers. SAR 22–42. The Department also conducted a conference call with subject firm officials to clarify a technical matter regarding the software. SAR 1. Further, the Department took action to reconcile conflicting information. SAR 73.

In order to determine whether the Plaintiffs engaged in activities which constitute production, the Department requested that the Plaintiffs and the subject firm provide the Department with information about the workers' functions, and copies of the workers position descriptions. SAR 4, 8. Information regarding the workers' functions was received from all three Plaintiffs. SAR 17, 43, 53.

According to the Plaintiffs, the separated workers were Information Technology (IT) Specialists, SAR 17, 43, 53, who identified software program specifications, created source code, generated unit and string testing, and ensured that system input and processing were accurate. SAR 17, 18, 43, 52, 53. The software and source code were stored in disk drives (also known as a Direct Access Storage Device) at a mainframe data center located at the client's facility and were ''viewable on remote terminals.'' Workers could access the software and code regardless of where they were stored. Corrections were made by ''changing the source code and compiled software that reside on the Direct Access Storage Devices.'' SAR 54, 55. ''Back-ups of programs were also kept on tapes and CDs * * * Code was delivered on the shared directories of hard drives, where it could be accessed by those who needed to view or test. CDs were also used in some instances.'' SAR 66.

Information provided by the subject firm, including the various position descriptions which account for a significant majority of the displaced workers, confirms that the workers were IT Specialists, with various levels of expertise, who provided services and assisted in the construction, implementation, and integration of software systems. More senior workers may also have identified new IT services opportunities and developed tools and methods for managing, analyzing, designing and implementing IT solutions. SAR 22–42.

Nature of the Software Produced by the Plaintiffs

Software consists of source code (text written by software developers commanding the computer to do a certain task) and object code (text written in the language of the computer which enables the computer to execute the command, hence, also known as the execution file). The object code operates as a ciphering key because, without the proper object code, the source code cannot be executed. In some instances where computers cannot interface, an object code may be required to read or translate another object code before the source code can be executed.

The software at issue is client (AT&T) legacy (old, pre-existing) mainframe software and midrange software for network applications and systems (software used to run and repair the client's older systems), SAR 1, 20, and was designed to operate on the client's mainframe computers. SAR 17, 52, 53, 55. The software could be accessed remotely by the workers. SAR 55, 66, 73. The source code at issue was not provided to the client on a physical medium.

The information initially provided regarding whether the software was embodied on a physical medium appeared to be inconsistent. According to a Plaintiff, Mr. Plumeri, ''[t]he code was stored on either mainframe, Windows or Unix based servers. Backups of programs were also kept on tapes and CDs * * * Code was delivered on the shared directories of hard drives, where it could be accessed by those who needed to view or test. CDs were also used in some instances.'' SAR 66. The other two Plaintiffs, Mr. Fusco and Ms. Berger, stated that the ''software, since it was designed to run on mainframe computers, was embodied on the disk drives'' in the client's off-site data center. SAR 17, 52, 54. The subject firm, moreover, stated that the software was electronically stored and delivered to the client's internal servers and the software is not embodied or delivered to AT&T in any kind of physical medium. SAR 20, 71.

In order to reconcile the apparent conflict, the Department contacted the subject firm for an explanation. SAR 1, 73. According to the subject firm, source code and documentation related to the development of the software at issue is stored in and shared through an internal server, and while back-up copies are saved on CD, the CDs are not shared with the client. SAR 73.

The subject firm officials also explained that the CDs presented to the client contained only those documents, such as billing invoices and work schedules, generated for contract administration purposes, along with the object code the client needed to access the business documents. In that very narrow regard, there was software sent from the subject firm to the client through a physical medium. However, that software was not source code and was not related to the software that was produced by the former employees and transmitted electronically to the client. There was no software reduced to a physical medium for the purpose of serving the *client.* SAR 73.

Differences Between Activities Performed by the Plaintiffs and Those Performed by Software Development Petitioners Who Received TAA Benefits in the Past

Information provided for the record by the Plaintiffs and the subject firm substantiated that the workers were IT Specialists performing software design and implementation activities (software architecture, systems engineering, design, development, coding, testing, installing and product support). SAR 17, 21, 43, 52, 53. The record evidence does not indicate that the workers were engaged in production or the support of production of an article at an affiliated facility.

The Department's practice of certifying non-production workers who support an affiliated domestic production facility has been consistent. In past cases where petitioners involved in developing software were certified as eligible to apply for TAA, the workers supported an affiliated domestic

production facility. For example, recently, the Department certified software writers in *Former Workers of Ericsson, Inc.* v. *Elaine Chao, United States Secretary of Labor* (Court No. 02–00809). In *Ericsson*, the workers wrote software code which was embodied on a physical medium (CD-Rom). The CD-Rom was mass-produced at an affiliated, domestic facility and then distributed to customers. The workers of the subject firm were certified because they supported an affiliated domestic production facility whose workers independently qualified for TAA (mass-production of the CD-Rom shifted to a qualifying country).

The record, as fully developed on remand, strongly supports the conclusion that the Plaintiffs did not meet the criteria satisfied in *Ericsson* and related software cases. Therefore, the Department properly determined that the plaintiffs were not eligible to apply for TAA benefits.

Department's Position With Respect to the Characterization of the Software at Issue as an Article or as a Service

While the Trade Act does not include a definition of ''article'' among the definitions applicable to the TAA program, the term is integral to making TAA determinations and, as such, the Department has given the meaning of ''article'' considerable thought. The USCIT has recognized that, as used in the Trade Act, the term ''article'' embraces a tangible commodity. *See Nagy* v. *Donovan*, 571 F. Supp 1261, 1263 (CIT 1983). This position was recently supported in *Former Employees of Gale Group, Inc.* v. *U.S. Secretary of Labor*, Court No. 04–00374, 2005 WL 3088605 * 5 (November 18, 2005) and *Former Employees of Merrill Corp.* v. *U.S. Department of Labor*, 389 F. Supp.2d 1326, 1342–1343 (CIT 2005).

In Gale Group, the USCIT held that workers who ''performed electronic indexing services'' were not eligible for TAA benefits, because they did not produce an article for the purposes of 19 U.S.C. 2272(a)(2)(B). *Gale Group* * 4. Further, the USCIT held that the denial of TAA benefits was a reasonable interpretation supported by substantial evidence and in accordance with law, notwithstanding plaintiffs' arguments that other sources of law (i.e., the American Job Creation Act of 2004; various state tax cases; and determinations by the International Trade Commission (ITC) under the ITC's Trade Act § 337 authority to protect intellectual property) could support a ruling in their favor.

Trade Act § 337 was amended in 1988, for the express purpose making it ''broad enough to prevent every type and form of unfair practice.'' S. Rep. 595, 67th Congress, 2d Session, at 3. Therefore, it was foreseeable that the ITC, applying that expanded remedial authority, would find that it was not limited to acts that occur during the physical process of importation. For example, the ITC has held that, while the Commission ''accommodates, where possible, the policies and views of [the U.S.] Customs [Service] (which ''has determined not to regulate electronic transmissions''),'' there were circumstances where it was ''appropriate to reach such importations.'' *In Re Certain Hardware Logic Emulation Systems and Components Thereof*, USITC Inv. No. 337–TA–383, 1998 WL 307240, page 11 (March 1998).

Trade Act § 222, which controls the present proceeding, has not undergone any such amendment. Indeed, there have been several recent legislative efforts (most recently in June 2005) to amend the Trade Act so that it does cover service workers as well as production workers. However, those efforts, to date, have been unsuccessful. Thus, the Department's disposition of the present case is properly controlled by existing Trade Act § 222, under which the Department applies the HTSUS to require that an ''article'' be a tangible object, not by the ITC's application of its broad Trade Act § 337 authority in intellectual property cases.

Throughout the Trade Act, an ''article'' is referenced as something that can be subject to a duty. Telecommunications transmissions (including electronically transmitted software code) are specifically exempted from duty as they are not goods subject to the provisions of the HTSUS General Note 3(I). Because the software code at issue is electronically manipulated and delivered to the client only in an electronic form, the Plaintiffs do not produce an article. *See, e.g., Former Employees of Dendrite International*, 70 FR 21247–3 (April 25, 2005).

Plaintiffs Argue That the Department's Interpretation of ''article'' is Overly Narrow

The Department's interpretation of ''article'' to require a tangible state is consistent with Congressional intent and supported by legislative history of the Trade Act. The Trade Act was designed to counteract the effects of imports upon the manufacturing sector and other labor-intensive industries. *See* S. Rep. No. 1298, 93rd Cong. (1974), reprinted in 1974 U.S.C.A.N. 7186. Since Congress took explicit legislative action to set criteria for TAA eligibility, any expansion of Trade Act's scope should be the result of legislation. Further, the Department is obligated to be faithful to the legislative will and is bound to the language of the statute. *See Machine Printers and Engravers Ass'n* v. *Marshall*, 595 F.2d 860, (D.C. Cir. 1979). As already noted, while legislation has been proposed that would expand the scope of the Trade Act to include service workers such as the plaintiffs, to date, no such amendment has been adopted.

The Department's reliance on the HTSUS to exclude the plaintiffs from eligibility is appropriate. *See Former Employees of Murray Engineering* v. *Chao*, 358 F. Supp.2d 1269, 1272 n.7 (CIT 2005) (''the language of the Act clearly indicates that the HTSUS governs the definition of articles, as it repeatedly refers to ''articles'' as ''items subject to a duty''); HTS, General Note 3(I) (exempting ''telecommunications transmissions'' from ''goods subject to the provisions of the [HTSUS]''). For the Department to abandon the use of the HTSUS and abrogate its current practice would be inappropriate unless the Department had an adequate substitute, such as one contained in the Code of Federal Regulations.

The Department's treatment of service (including software) cases and its requirement that articles be tangible has been consistent. Service workers may be certified only if they directly support production of an article. Under the Department's methodology, non-production workers may be eligible for TAA certification as ''support service workers'' if:

(1) Their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control;

(2) The reduction in the demand for their services originated at a production facility whose workers independently met the statutory criteria for certification; and

(3) The reduction directly related to the product impacted by imports.

Former Employees of Henderson Sewing Mach. v. *United States*, 265 F. Supp. 2d 1346, 1359 (CIT 2003) (citing *Former Employees of Chevron Prods. Co.* v. *United States Sec'y of Labor*, 245 F. Supp. 2d 1312, 1328–29 (CIT 2002) (citing *Bennett* v. *U.S. Sec'y of Labor*, 20 CIT 788, 792 (1996); *Abbott* v. *Donovan*, 570 F. Supp. 41, 49 (1983))).

The Court in *Henderson Sewing* sustained the Department's interpretation of the statute to preclude certification of petitioners as support service workers in the instance where no production employee independently

qualified for certification. *Id.* at n.16. (citing *Abbott*, 570 F. Supp. at 49 (citing *Woodrum*, 564 F. Supp. 826) (''the Court must accord substantial deference to the interpretation of the statute [19 U.S.C. 2272(a)] by the agency [Labor] charged with its administration''); *Bennett*, 20 CIT at 792 (stating in pertinent part that ''plaintiff[s] are eligible for certification [as support service workers] when * * * their separation is caused by a reduced demand for their services from a production department whose workers independently meet the statutory criteria for certification'' and holding that ''Labor permissibly and reasonably interpreted [19 U.S.C. 2272(a)] in formulating the test for certifying support service workers'').

The Department has consistently determined that workers engaged in the design and development of software may be certified if they support an affiliated, domestic firm at which workers are engaged in producing a trade-impacted ''article.'' *See*, *e.g.*, *Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance* in: *Ericsson, Inc., Messaging Group, Woodbury, N.Y.*, 68 FR 8619–8621 (TA-W–50,446) (Feb. 24, 2003); *Computer Sciences Corporation at Dupont Corporation*, 67 FR 10767 (TA–W–39,535) (March 8, 2002); *e-Gain Communications Corporation, Novato California*, 68 FR 50195 (TA–W–51,001) (Aug. 20, 2003).

Workers in these cases were certified based, in part, upon a finding that the subject facilities produced hardware or software embodied in some tangible format. Workers in the case at hand, however, do not directly support certifiable production workers eligible for TAA benefits, and this distinction explains the different results in cases involving workers engaged in similar activity. While the case results may differ, based on the particular facts of each case, the Department's application of the statute has been consistent.

The Department has carefully investigated the matter on remand and has found no basis to support finding that workers of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey are engaged in the production of an article or support for the production of an article. Consequently, they are not eligible for certification.

Conclusion

In the case of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey, it has been clearly established that the workers of the subject facility did not produce an article or support the production of an article within the meaning of the Trade Act and that they are not eligible for certification.

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey.

Signed at Washington, DC, this 9th day of December, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7600 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,043]

Intermark Fabric Corp., Plainfield, CT; Notice of Revised Determination on Reconsideration

By application of November 29, 2005 a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA).

The initial investigation resulted in a negative determination signed on November 2, 2005 was based on the finding that imports of imitation suede and velvets for upholstery, drapery and apparel did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on November 23, 2005 (70 FR 70882).

In the request for reconsideration, the petitioner provided additional information regarding subject firm's customers and requested to investigate a secondary impact on the subject firm as an upstream supplier in the textile industry. A review of the new facts determined that the workers of the subject firm may qualify eligible for TAA on the basis of a secondary upstream supplier impact.

Having conducted an investigation of subject firm workers on the basis of secondary impact, it was revealed that Intermark Fabric Corp, Plainfield, Connecticut supplied imitation suede and velvets that were used in the production of upholstery fabrics, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Intermark Fabric Corp, Plainfield, Connecticut engaged in production of imitation suede and velvets qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Intermark Fabric Corp, Plainfield, Connecticut, who became totally or partially separated from employment on or after September 28, 2004, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of December, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7606 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,241]

Maitlen and Benson, Inc. Long Beach, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2005 in response to a petition filed by a State agency representative on behalf of workers at Maitlen and Benson, Inc., Long Beach, California (TA–W–58,241).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 6th day of December, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7607 Filed 12–20–05; 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 November and December 2005.

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–58,002; Mid Continent Nail, Keystone Fasteners, Springdale, AR, September 21, 2004.

TA–W–58,073; Motion Control Engineering, Inc., Schindler Elevator Corp., DBA O'Thompson Co., Glendale, NY, October 5, 2004.

TA–W–58,143; Gunderson LLC, Portland, OR, October 14, 2004.

TA–W–58,152; Native Textiles, Inc., Glens Falls, NY, October 17, 2004.

TA–W–58,163; V.C. Originals, Ridgeland, MS, September 20, 2004.

TA–W–58,165; Crane Plumbing, L.L.C., Ferguson, KY, October 6, 2004.

TA–W–58,167; Galgon Industries, Inc., Building 5, Fremont, CA, October 6, 2004.

TA–W–58,178; Bassett Furniture Industries, Inc., Workforce Carolina and Ablest Staffing, Mt. Airy, NC, October 20, 2004.

TA–W–58,179; Oakwood Furniture Mfg., Inc., New Tazewell, TN, October 20, 2004.

TA–W–58,182; Meridian Beartrack Company, Div. of Meridan Gold Company, Salmon, ID, August 25, 2005.

TA–W–58,192; Kim Bo Sewing Co., San Francisco, CA, October 7, 2004.

TA–W–58,194; Springs Industries, Inc., Customer Service Center, Lancaster, SC, October 20, 2004.

TA–W–58,198; Carpostan Yarn, Inc., Lake View, SC, October 18, 2004.

TA–W–58,199; Carpostan Industries, Inc., Lake View, SC, October 18, 2004.

TA–W–58,200; Lake View Finishing, Inc., Lake View, SC, October 18, 2004.

TA–W–58,206; B and J Knits, Inc., Statesville, NC, October 20, 2004.

TA–W–58,212; Wright Products Co., Truth Hardware Division, A Subsidiary of FKI Industries, Rice Lake, WI, February 27, 2005.

TA–W–58,215; Bespak, Inc., Apex, NC, October 25, 2004.

TA–W–58,234; Hearthstone Enterprises, Charleston Forge Main Plant (Plant 1), Boone, NC, October 28, 2004.
TA–W–58,234A; Hearthstone Enterprises, Charleston Forge (Plant 2), Boone, NC, October 28, 2004.
TA–W–58,234B; Hearthstone Enterprises, Charleston Forge (Plant 5), Boone, NC, October 28, 2004.
TA–W–58,246; Fibrex, LLC, Formerly Wellington Cordage, LLC, Madison, GA, November 27, 2005.
TA–W–58,312; Gilbert Hose, Hickory, NC, November 9, 2004.
TA–W–58,387; Koret of California, Inc., A Subsidiary of Kellwood Co., Sample Production Workers, Oakland, CA, November 4, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–58,068; Photocircuits Corporation, Peachtree City, GA, August 8, 2005.
TA–W–58,191; Brown Jordan Co., Buff and Grind Dept. & Painting Line Dept, El Monte, CA, October 11, 2004.
TA–W–58,214; Quincrafts Corporation, A Subsidiary of Colorbook, Including On-Site Leased Workers of QRI, Pawtucket, RI, October 20, 2004.
TA–W–58,303; Ciba Specialty Chemicals Corp., Textile Effects, Including On-Site Leased Workers of Aerotek and WSI, Charlotte, NC, November 8, 2004.
TA–W–58,350; Raytheon Aircraft Company, Wire Harness Assembly Operations, Wichita, KS, December 23, 2005.
TA–W–58,350A; Raytheon Aircraft Company, Wire Harness Assembly Operations, Salina, KS, December 23, 2005.

The following certification has been issued.

The requirement of supplier to a trade certified firm has been met.

TA–W–58,278; Bangor Electronics Co., Bangor, MI, November 1, 2004.

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–58,320; Johnson Hosiery Mills, Inc., Fort Payne, AL.
TA–W–58,322; Pioneer Knitting Mills, Fort Payne, AL.
TA–W–58,325; Capstone Hosiery, LLC, Fort Payne, AL.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,065; Keebler Company, Kellogg's Snacks, Macon, GA.

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–58,058; Wizard Textiles, Inc., Newark, NJ.
TA–W–58,172; Pioneer Americas LLC, Tacoma Plant, Tacoma, WA.
TA–W–58,173; Cargill, Inc., Jefferson, WI.
TA–W–58,242; Visteon Systems LLC, North Penn Electronics Facility, Lansdale, PA.
TA–W–58,279; Jones Apparel Group, AM–1 Room, Bristol, PA.
TA–W–58,279A; Jones Apparel Group, Bristol Distribution Center, Bristol, PA.
TA–W–58,161; Maxi Seal Harness Systems, Inc., Garland, TX.

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–58,114; Alcatel USA, Plano, TX.
TA–W–58,243; SavaJe Technologies, Chelmsford, MA.
TA–W–58,261; Alliance Consulting Group Associates, Corporate Office and Operations Group, Philadelphia, PA.

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 Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue 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–58,178; Bassett Furniture Industries, Inc., Workforce Carolina and Ablest Staffing, Mt. Airy, NC, October 20, 2004.
TA–W–58,194; Springs Industries, Inc., Customer Service Center, Lancaster, SC, October 20, 2004.
TA–W–58,215; Bespak, Inc., Apex, NC, October 25, 2004.
TA–W–58,246; Fibrex, LLC, Formerly Wellington Cordage, LLC, Madison, GA, November 27, 2005.
TA–W–58,387; Koret of California, Inc., A Subsidiary of Kellwood Co., Sample Production Workers, Oakland, CA, November 4, 2004.
TA–W–58,002; Mid Continent Nail, Keystone Fasteners, Springdale, AR, September 21, 2004.
TA–W–58,073; Motion Control Engineering, Inc., Schindler Elevator Corp., DBA O'Thompson Co., Glendale, NY, October 5, 2004.
TA–W–58,152; Native Textiles, Inc., Glens Falls, NY, October 17, 2004.
TA–W–58,165; Crane Plumbing, L.L.C., Ferguson, KY, October 6, 2004.
TA–W–58,179; Oakwood Furniture Mfg., Inc., New Tazewell, TN, October 20, 2004.
TA–W–58,198; Carpostan Yarn, Inc., Lake View, SC, October 18, 2004.
TA–W–58,199; Carpostan Industries, Inc., Lake View, SC, October 18, 2004.
TA–W–58,200; Lake View Finishing, Inc., Lake View, SC, October 18, 2004.
TA–W–58,234; Hearthstone Enterprises, Charleston Forge Main Plant (Plant 1), Boone, NC, October 28, 2004.
TA–W–58,234A; Hearthstone Enterprises, Charleston Forge (Plant 2), Boone, NC, October 28, 2004.
TA–W–58,234B; Hearthstone Enterprises, Charleston Forge (Plant 5), Boone, NC, October 28, 2004.

TA–W–58,312; Gilbert Hose, Hickory, NC, November 9, 2004.
TA–W–58,192; Kim Bo Sewing Co., San Francisco, CA, October 7, 2004.
TA–W–58,191; Brown Jordan Co., Buff and Grind Dept. & Painting Line Dept, El Monte, CA, October 11, 2004.
TA–W–58,303; Ciba Specialty Chemicals Corp., Textile Effects, Including On-Site Leased Workers of Aerotek and WSI, Charlotte, NC, November 8, 2004.
TA–W–58,350; Raytheon Aircraft Company, Wire Harness Assembly Operations, Wichita, KS, December 23, 2005.
TA–W–58,350A; Raytheon Aircraft Company, Wire Harness Assembly Operations, Salina, KS, December 23, 2005.
TA–W–58,068; Photocircuits Corporation, Peachtree City, GA, August 8, 2005.
TA–W–58,278; Bangor Electronics Co., Bangor, MI, November 1, 2004.

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–58,320; Johnson Hosiery Mills, Inc., Fort Payne, AL.
TA–W–58,322; Pioneer Knitting Mills, Fort Payne, AL.
TA–W–58,325; Capstone Hosiery, LLC, Fort Payne, AL.
TA–W–58,065; Keebler Company, Kellogg's Snacks, Macon, GA.
TA–W–58,058; Wizard Textiles, Inc., Newark, NJ.
TA–W–58,172; Pioneer Americas LLC, Tacoma Plant, Tacoma, WA.
TA–W–58,173; Cargill, Inc., Jefferson, WI.
TA–W–58,242; Visteon Systems LLC, North Penn Electronics Facility, Lansdale, PA.
TA–W–58,279; Jones Apparel Group, AM–1 Room, Bristol, PA.
TA–W–58,279A; Jones Apparel Group, Bristol Distribution Center, Bristol, PA.
TA–W–58,161; Maxi Seal Harness Systems, Inc., Garland, TX.

The Department has determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–58,214; Quincrafts Corporation, A Subsidiary of Colorbook, Including On-Site Leased Workers of QRI, Pawtucket, RI.
TA–W–58,163; V.C. Originals, Ridgeland, MS.
TA–W–58,206; B and J Knits, Inc., Statesville, NC.

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,143; Gunderson LLC, Portland, OR.
TA–W–58,212; Wright Products Co., Truth Hardware Division, A Subsidiary of FKI Industries, Rice Lake, WI.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

I hereby certify that the aforementioned determinations were issued during the month of November and December 2005. 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: December 14, 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–7604 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of December 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 11/28/05 and 12/2/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58411	Phibro-Tech, Inc. (Comp)	Sumter, SC	11/28/05	11/22/05
58412	F. Schumacher and Company (State)	Newark, DE	11/28/05	11/28/05
58413	Badger Paper Flexible Package (Wkrs)	Oconton Falls, WI	11/28/05	11/18/05
58414	Quantum Corporation (Comp)	Colorado Springs, CO	11/29/05	11/22/05
58415	El Paso Garment Contractors, Inc. (Comp)	El Paso, TX	11/29/05	11/28/05

APPENDIX—Continued

[TAA petitions instituted between 11/28/05 and 12/2/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58416	Gold Toe Brands, Inc. (Comp)	Burlington, NC	11/29/05	11/23/05
58417	MacLean-ESNA (State)	Pocahontas, AR	11/29/05	11/22/05
58418	Nichols Stone Company (Comp)	Rural Hall, NC	11/30/05	11/23/05
58419	Dean Company (The) (Comp)	Princeton, WV	11/30/05	11/29/05
58420	Stoneridge Alphabet Division (Comp)	Orwell, OH	11/30/05	11/29/05
58421	Sony Electronics (Wkrs)	Mt. Pleasant, PA	11/30/05	11/29/05
58422	Western Forge (Comp)	Murphy, NC	11/30/05	11/29/05
58423	Unifi, Inc. (Comp)	Mayodan, NC	11/30/05	11/29/05
58424	Quality Manufacturing, Inc. (Comp)	Winchester, KY	11/30/05	11/22/05
58425	Carolina Mills, Inc. (Comp)	Maiden, NC	11/30/05	11/30/05
58426	Laird Technologies (State)	Schaumburg, IL	11/30/05	11/17/05
58427	Pure-Flo Precision (IBT)	Springfield, MO	11/30/05	11/21/05
58428	Apple Computer, Inc. (Wkrs)	Cupertine, CA	11/30/05	11/22/05
58429	Agilent Technologies, Inc. (Wkrs)	Colorado Springs, CO	11/30/05	11/09/05
58430	Ford Motor Company (Wkrs)	Mt. Laurel, NJ	11/30/05	11/21/05
58431	Clarion Sintered Metals (Comp)	Ridgway, PA	11/30/05	11/30/05
58432	R.J. Reynolds Tobacco Company (Comp)	Macon, GA	11/30/05	11/30/05
58433	Consolidated Metco, Inc. (State)	Portland, OR	11/30/05	11/22/05
58434	Burlen Corporation (State)	Tifton, GA	11/30/05	11/23/05
58435	Paxar Americas (IAMAW)	Sayre, PA	12/01/05	11/22/05
58436	Occidental Chemical Corp. (State)	LaPorte, TX	12/01/05	11/28/05
58437	Pall Medical (MEDSEP) (State)	Covina, CA	12/01/05	11/30/05
58438	Palliser Furniture Corp. (Comp)	Troutman, NC	12/01/05	11/30/05
58439	Hart and Cooley—Milcor (IBSORI)	Lima, OH	12/01/05	11/20/05
58440	American Apparel Corporation (State)	Knoxville, TN	12/01/05	11/30/05
58441	Caldwell Manufacturing Company (Comp)	Jackson, MS	12/01/05	11/22/05
58442	Weyerhaeuser (IAM)	Aberdeen, WA	12/01/05	11/21/05
58443	Amorim Industrial Solutions, Inc. (Comp)	Trevor, WI	12/01/05	11/23/05
58444	Johnson Controls, Inc. (UAW)	Earth City, MO	12/01/05	11/21/05
58445	Christiana Floral, Inc. (Comp)	Christiana, PA	12/02/05	12/01/05
58446	Boise, LLC (Wkrs)	Cascade, ID	12/02/05	11/18/05
58447	May and Scofield, LLC (Comp)	Madison, SD	12/02/05	12/01/05
58448	Exopack, LLC (State)	Monticello, AR	12/02/05	12/01/05
58449	Mississippi Polymers, Inc. (Wkrs)	Corinth, MS	12/02/05	11/30/05
58450	Bay Engineered Castings (Wkrs)	DePere, WI	12/02/05	11/30/05
58451	Textron Fastening Systems (TFS) (Comp)	Greenville, MS	12/02/05	11/10/05
58452	Ishikawa Gasket America, Inc. (Wkrs)	Bowling Green, OH	12/02/05	12/02/05

[FR Doc. E5–7609 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,417]

Pride Manufacturing Company LLC Currently Known as American Pride Including Leased Workers of BDL/Allies Guilford, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 3, 2005, applicable to workers of Pride Manufacturing Company LLC, including leased workers of BDL/Allies, Guilford, Maine. The notice was published in the **Federal Register** on April 1, 2005 (70 FR 16848).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood products, including shapes, knobs, and gallery rail spindles; workers are not separately identifiable by specific products.

New information provided by the state shows that in October, 2005, American Pride purchased the Guilford, Maine facility of Pride Manufacturing Company LLC and is currently known as American Pride. The State agency also reports that workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for American Pride, Guilford, Maine. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Pride Manufacturing Company LLC who were adversely affected by increased company imports.

The amended notice applicable to TA–W–56,417 is hereby issued as follows:

All workers of Pride Manufacturing Company LLC, currently known as American Pride, including leased workers of BDL/Allies, Guilford, Maine, who became totally or partially separated from employment on or after January 19, 2004, through March 3, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of December 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7601 Filed 12–20–05; 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 December 2005.

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–57,929; Sappi Fine Paper, N.A., S.D. Warren Company, Muskegon, MI: September 14, 2004.

TA–W–58,045; Lexel Company, A Division of Mamco Corporation, Including Leased Workers of Westaff, Inc., Hutsonville, IL: August 8, 2005.

TA–W–58,111; Fashion Dye Works, Inc., Ridgewood, NY: September 28, 2004.

TA–W–58,126; GDX Automotive, Adecco and Ablest, Salisbury, NC: October 12, 2004.

TA–W–58,169; Motorola, Inc., Schaumburg, IL: September 21, 2004.

TA–W–58,193; Goodman Veneer and Lumber, A Subsidiary of Besse Forest Products, Goodman, WI: October 21, 2004.

TA–W–58,197; Flynn Enterprises, LLC, Elkton Div., Elkton, KY: October 20, 2004.

TA–W–58,210; Tooling Science, Maple Grove, MN: October 25, 2004.

TA–W–58,218; Encad, Inc., A Kodak Company, San Diego, CA: October 26, 2004.

TA–W–58,219; Woodline Productions, Medford, OR: October 25, 2004.

TA–W–58,222; Ansonia Copper and Brass, Inc., Ansonia, CT: October 26, 2004.

TA–W–58,222A; Ansonia Copper and Brass, Inc., Waterbury, CT: October 26, 2004.

TA–W–58,231; Peak Oilfield Services, Workers at Agrium U.S., Kenai, AK: October 27, 2004.

TA–W–58,232; Farris Fashions, Inc., Brinkley, AR: October 28, 2004.

TA–W–58,254; WestPoint Home (formerly Westpoint Stevens, Inc.), Basic Bedding Div., Biddeford, ME: October 26, 2004.

TA–W–58,259; U.S. Union Tool, Inc., Buena Park, CA:November 2, 2004.

TA–W–58,262; Shuford Mills, LLC., Shurspun, Hudson, NC: November 2, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–57,889; Telex Communications, Inc., Blue Earth Manufacturing Facility, Blue Earth, MN: September 6, 2004.

TA–W–58,209; Carolina Steele Products, Inc., Gastonia, NC: October 22, 2004.

TA–W–58,239; Savcor Coatings, Ltd., Fort Worth Div., Westaff, Prostaff, Verion & V & S, Ft. Worth, TX: October 27, 2004.

TA–W–58,240; GST AutoLeather, Hagerstown, MD: October 31, 2004.

TA–W–58,271; Cargill Sweeteners North America, Div. of Cargill, Inc., Decatur, AL: November 2, 2004.

TA–W–58,297; Revcor Molded Products, Revcor Companies, Haltom City, TX: November 3, 2004.

TA–W–58,365; Phoenix Mecano, Inc., Romney, WV: November 15, 2004.

TA–W–58,410; SKF Sealing Solutions, SKF Automotive Div., Springfield, SD: November 23, 2004.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

TA–W–58,204; Bethel Furniture Stock, Inc., Bethel, ME: September 26, 2004.

TA–W–58,290; Collins and Aikman, Lowell, MA: November 7, 2004.

TA–W–58,337; Cone Denim, LLC, Cone Rutherford County Div., Cliffside, NC: December 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–58,267; G and G Hosiery, Fort Payne, AL.

TA–W–58,323; Lala Ellen Knitting, Fort Payne, AL.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,224; Eaton Hydraulics, Inc., Fluid Power-Hydraulics Div., Jackson, MI.

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–58,217; Carolina Mills, Inc., Plant No. 9, Valdese, NC.

TA–W–58,238; Eaton Corporation, Automotive-Engine Air Management Operations Division, Saginaw, MI.

TA–W–58,255; DRS Signal Solutions West, DRS Technologies, Inc., Morgan Hill, CA.

TA–W–58,269; Easthampton Dye Works, Inc., Easthampton, MA.

TA–W–58,132; Tibbetts Industries, Inc., Camden, ME.

TA–W–58230; IBM—Integrated Supply Chain, 3605 Highway 52 North, Rochester, MN.

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.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–58,316; Prewett Mills Distribution Center, Fort Payne, AL.

TA–W–58,317; Prewett Hosiery Sales Corporation, Fort Payne, AL.

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.

TA–W–58,223; Alsco American Industrial Service, Portland, OR.

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–57,929; Sappi Fine Paper, N.A., S.D. Warren Company, Muskegon, MI: September 14, 2004.

TA–W–58,231; Peak Oilfield Services, Workers at Agrium U.S., Kenai, AK: October 27, 2004.

TA–W–58,259; U.S. Union Tool, Inc., Buena Park, CA: November 2, 2004.

TA–W–58,045; Lexel Company, A Division of Mamco Corporation, Including Leased Workers of Westaff, Inc., Hutsonville, IL: August 8, 2005.

TA–W–58,126; GDX Automotive, Adecco and Ablest, Salisbury, NC: October 12, 2004.

TA–W–58,197; Flynn Enterprises, LLC, Elkton Div., Elkton, KY: October 20, 2004.

TA–W–58,210; Tooling Science, Maple Grove, MN: October 25, 2004.

TA–W–58,218; Encad, Inc., A Kodak Company, San Diego, CA: October 26, 2004.

TA–W–58,222; Ansonia Copper and Brass, Inc., Ansonia, CT: October 26, 2004.

TA–W–58,222A; Ansonia Copper and Brass, Inc., Waterbury, CT: October 26, 2004.

TA–W–58,232; Farris Fashions, Inc., Brinkley, AR: October 28, 2004.

TA–W–58,254; WestPoint Home (formerly Westpoint Stevens, Inc.), Basic Bedding Div., Biddeford, ME: October 26, 2004.

TA–W–58,262; Shuford Mills, LLC., Shurspun, Hudson, NC: November 2, 2004.

TA–W–58,111; Fashion Dye Works, Inc., Ridgewood, NY: September 28, 2004.

TA–W–58,219; Woodline Productions, Medford, OR: October 25, 2004.

TA–W–58,239; Savcor Coatings, Ltd., Fort Worth Div., Westaff, Prostaff, Verion & V & S, Ft. Worth, TX: October 27, 2004.

TA–W–58,240; GST AutoLeather, Hagerstown, MD: October 31, 2004.

TA–W–58,271; Cargill Sweeteners North America, Div. of Cargill, Inc., Decatur, AL: November 2, 2004.

TA–W–58,410; SKF Sealing Solutions, SKF Automotive Div., Springfield, SD: November 23, 2004.

TA–W–57,889; Telex Communications, Inc., Blue Earth Manufacturing Facility, Blue Earth, MN: September 6, 2004.

TA–W–58,365; Phoenix Mecano, Inc., Romney, WV: November 15, 2004.

TA–W–58,209; Carolina Steele Products, Inc., Gastonia, NC: October 22, 2004.

TA–W–58,204; Bethel Furniture Stock, Inc., Bethel, ME: September 26, 2004.

TA–W–58,290; Collins and Aikman, Lowell, MA: November 7, 2004.

TA–W–58,337; Cone Denim, LLC, Cone Rutherford County Div., Cliffside, NC: December 4, 2005.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue 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–58,253; G and H Custom Cabinets, Seagrove, NC.

TA–W–58,267; G and G Hosiery, Fort Payne, AL.

TA–W–58,224; Eaton Hydraulics, Inc., Fluid Power-Hydraulics Div., Jackson, MI.

TA–W–58,217; Carolina Mills, Inc., Plant No. 9, Valdese, NC.

TA–W–58,238; Eaton Corporation, Automotive-Engine Air Management Operations Division, Saginaw, MI.

TA–W–58,255; DRS Signal Solutions West, DRS Technologies, Inc., Morgan Hill, CA.

TA–W–58,269; Easthampton Dye Works, Inc., Easthampton, MA.

TA–W–58,132; Tibbetts Industries, Inc., Camden, ME.

TA–W–58,316; Prewett Mills Distribution Center, Fort Payne, AL.

TA–W–58,317; Prewett Hosiery Sales Corporation, Fort Payne, AL.

TA–W–58,223; Alsco American Industrial Service, Portland, OR.

TA–W–58,193; Goodman Veneer and Lumber, A Subsidiary of Besse Forest Products, Goodman, WI:

TA–W–58,361; Sheet Metal Workers Union Local 483, Morrison, TN.

The Department has 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–58,297; Revcor Molded Products, Revcor Companies, Haltom City, TX.

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 December 2005. 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: December 15, 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–7603 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,013]

Spectrum Yarns, Inc., Kings Mountain, NC; Notice of Revised Determination on Reconsideration

By application of November 8, 2005 a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on October 21, 2005 and published in the **Federal Register** on November 9, 2005 (70 FR 68099).

The TAA petition, filed on behalf of workers at Spectrum Yarns, Inc., Kings Mountain, North Carolina, engaged in production of dyed yarns was denied because criteria 3(A) and 3(B) were not met. The negative determination was based on the findings that job losses at the subject firm were not attributed to the subject firm losing business as a supplier to a firm that shifted production abroad or was affected by increased imports.

In the request for reconsideration, the petitioner provided additional information regarding the products manufactured at the subject facility. Upon further investigation on reconsideration, it was revealed that workers of the subject firm produce the spun polyester poly blend dyed yarn; they are separately identifiable from other workers of the subject firm. It was further revealed that employment and sales of the spun polyester poly blend dyed yarn decreased during the relevant time period.

The company official provided a list of the subject firm's customers, and requested an investigation of a secondary impact on the subject firm as an upstream supplier in the textile industry. A review of the new facts has determined that the workers of the subject firm may qualify as eligible for TAA on the basis of a secondary upstream supplier impact.

Having conducted an investigation of subject firm workers on the basis of secondary impact, it was revealed that Spectrum Yarns, Inc., Kings Mountain, North Carolina, supplied spun polyester poly blend dyed yarn that were used in the production of textile fabrics and other textile products, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Spectrum Yarns, Inc., Kings Mountain, North Carolina, engaged in production of spun polyester poly blend dyed yarn qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Spectrum Yarns, Inc., Kings Mountain, North Carolina, engaged in production of spun polyester poly blend dyed yarn, who became totally or partially separated from employment on or after July 30, 2005, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and

All workers of Spectrum Yarns, Inc., Kings Mountain, North Carolina, who became totally or partially separated from employment on or after September 19, 2004, through two years from the date of this certification, are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of December, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7605 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,729]

Teleflex Medical Pilling Weck, Incorporated Including Leased Workers of Adecco Research Triangle Park, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 30, 2005, applicable to workers of Teleflex Medical, including leased workers of Adecco, Research Triangle Park, North Carolina. The notice was published in the **Federal Register** on October 6, 2005 (70 FR 58478).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of medical devices.

New information shows that that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Pilling Weck, Incorporated.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Teleflex Medical, Research Triangle Park, North Carolina who was adversely affected increased imports.

The amended notice applicable to TA–W–57,729 is hereby issued as follows:

All workers of Teleflex Medical, Pilling Weck, Incorporated, including leased workers of Adecco, Research Triangle Park, North Carolina, who became totally or partially separated from employment on or after August 12, 2004, through August 30, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of December 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7602 Filed 12–20–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–170)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the inventions described and claimed in Foreign Patent No. 0423277, JSC Docket No. MSC–21293–1–EP, ''Bio-Reactor Cell Culture Process'', Foreign Patent No. 1987294, JSC Docket No. MSC–21293–1–JP, ''Bio-Reactor Cell Culture Process'', International Application No. PCT/US98/06826, JSC Docket No. MSC–22859–1–EP, European Application No. 98915320.0 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, JSC Docket No. MSC–22859–1–JP, Japanese Application No. 10–540983 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, JSC Docket No. MSC–22859–1–CA, Canadian Application No. 2286349 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, JSC Docket No. MSC–22859–1–IL, Israeli Application No. 132264 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, JSC Docket No. MSC–22859–1–MX, Mexican Application No. 999265 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', and International Application No. PCT/US98/06826, JSC Docket No. MSC–22859–1–BR, Brazilian Application No. 98915320.0 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'' to Renautus Bio Therapeutics, LLC, having its principal place of business in Baton Rouge, LA. The patent rights in the inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, Texas 77058.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, NASA Johnson Space Center, Mail Stop AL, Houston, TX 77058–8452, Telephone: (281) 483–1001, Facsimile: (281) 483–6936. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Dated: December 15, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E5–7635 Filed 12–20–05; 8:45 am]

BILLING CODE 7510–13–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Form SE; OMB Control No. 3235–0327; SEC File No. 270–289.

Form ID; OMB Control No. 3235–0328; SEC File No. 270–291.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form SE is used by registrants to file paper copies of exhibits that would be difficult or impossible to submit electronically. The information contained in Form SE is used by the Commission to identify paper copies of exhibits. Form SE is filed by individuals, companies or other for-profit organizations that are required to file electronically. Approximately 782 registrants file Form SE and it takes an estimated .10 hours per response for a total annual burden of 78 hours.

Form ID (OMB Control No. 3235–0328; SEC File No. 270–291) is used by companies to apply for identification numbers and passwords used in conjunction with the EDGAR electronic filing system. The information provided on Form ID is essential to the security of the EDGAR system. Form ID must be filed every time a registrant or other person obtains or changes an identification number. Form ID is filed by individuals, companies or other for-profit organizations that are required to file electronically. Approximately 196,800 registrants file Form ID and it takes an estimated .15 hours per response for a total annual burden of 29,520 hours.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7588 Filed 12–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form TH; OMB Control No. 3235–0425; SEC File No. 270–377.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form TH is used by registrants to notify the Commission that an electronic filer is relying on the temporary hardship exemption for the filing of a document in paper format that would otherwise be required to be filed electronically as prescribed by Rule 201(a) of Regulation S–T. Form TH must be filed every time an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of a required electronic filing. Approximately 70 registrants file Form TH and it takes an estimated .33 hours per response for a total annual burden of 23 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: December 15, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7589 Filed 12–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation FD; OMB Control No. 3235–0536; SEC File No. 270–475.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for extension and approval.

Regulation FD—Other Disclosure Materials requires public disclosure of material information from issuers of publicly traded securities so that investors have current information upon which to base investment decisions. The purpose of the regulation is to require that: (1) When an issuer intentionally discloses material information, it do so through public disclosure, not selective disclosure; and (2) whenever an issuer learns that it has made a non-intentional material selective disclosure, the issuer make prompt public disclosure of that information. Regulation FD was adopted due to a concern that the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets. We estimate that approximately 13,000 issuers make Regulation FD disclosures approximately five times a year for a total of 58,000 submissions annually, not including an estimated 7,000 issuers who file Form 8–K to comply with under Regulation FD. We estimate that it takes approximately 5 hours per response (58,000 × 5 hours) for a total burden of 290,000 hours annually. The filer prepares 25% of the 290,000

annual burden hours for a total of 72,500 burden hours.

Written 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7590 Filed 12–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12a–5; SEC File No. 270–85; OMB Control No. 3235–0079.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 12a–5—Temporary Exemption of Substituted or Additional Securities

Section 12(a) of the Securities Exchange Act of 1934 (the ''Act'') generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a–5 (the ''Rule'') under the Act and Form 26 (the ''Form'') were adopted by the Commission in 1936 and 1955, respectively, pursuant to Sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, Rule 12a–5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of Section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of Rule 12a–5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the Rule, the exchange is required to file with the Commission a notification on Form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to Rule 12a–5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally oversees the national securities exchanges. This mission requires that, under Section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under Rule 12a–5. Without the Rule and the Form, the Commission would be unable fully to implement these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12a–5. While the Commission staff estimates that there could be as many as 40 Forms 26 filed annually, the reporting burdens are not typically spread evenly among the exchanges.[1] For purposes of this analysis of burden, however, the staff has assumed that each exchange files an equal number (five) of Form 26 notifications. Each notification requires approximately 20 minutes to complete. Each respondent's compliance burden, then, in a given year would be approximately 100 minutes (20 minutes/report × 5 reports = 100 minutes), which translates to just over 13 hours in the aggregate for all respondents (8 respondents × 100 minutes/respondent = 800 minutes, or 13⅓ hours).

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on Form 26 is, on average, $14.35 per response. The staff estimates that the total annual related reporting cost per respondent is $71.75 (5 responses/respondent × $14.35 cost/response), for a total annual related cost to all respondents of $574 ($71.75 cost/respondent × 8 respondents).

Written 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 Commission'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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

Dated: December 14, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7591 Filed 12–20–05; 8:45 am]

BILLING CODE 8010–01–P

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[1] In fact, some exchanges do not file any notifications on Form 26 with the Commission in a given year.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52955; File No. SR–PCX–2005–102]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Elimination of Obsolete Rules Related to the Pacific Options Exchange Trading System

December 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2005, 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 PCX. PCX filed Amendment No. 1 to the proposed rule change on November 22, 2005.[3] 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 is proposing to amend various PCX Rules to eliminate obsolete rules related to the Pacific Options Exchange Trading System (''POETS'') and Order Book Officials (''OBOs''). The Exchange has also proposed to make a number of corresponding changes to rules related thereto.

The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the PCX Rules to eliminate obsolete rules with respect to POETS and OBOs and make corresponding changes to related rules. As of March 2005, the Exchange completed its rollout of the PCX Plus System.[4] As such, options issues no longer trade on the POETS platform at the Exchange. Therefore, the Exchange proposes to eliminate rules related to POETS, including rules regarding OBOs, and to generally modify the rules as applicable in the current PCX Plus market structure.

a. Order Book Officials/Trading Officials

The Exchange proposes to modify or delete PCX Rules 6.51 through 6.59 to eliminate the term and general functionality of OBOs.

Currently, PCX Rule 6.51 defines OBOs as Exchange employees who are responsible for maintaining the book with respect to the classes of options assigned to him, effecting proper executions of orders placed in the book, displaying bids and offers pursuant to PCX Rule 6.55, and monitoring the market for the classes of options assigned to him. Due to the elimination of the Order Book and full implementation of PCX Plus (and the fully electronic Consolidated Book), the order handling functionality of OBOs is no longer applicable. Also, many of the administrative duties of the OBO, such as tracking market maker appointments (as set forth in PCX Rule 6.51(b)) are now performed within the PCX Plus system. Certain PCX personnel, however, will continue to oversee trading crowds and otherwise assist in maintaining a fair and orderly market, similar to the current Trading Official and Exchange Official.[5] Therefore, the Exchange proposes to eliminate the definitions of OBO (as set forth in PCX Rule 6.51(a)) and Exchange Official (as set forth in PCX Rule 6.1(b)(41)) and combine their remaining functionality of maintaining a fair and orderly market with the functionality of the Trading Official. The Exchange proposes to modify the definition of Trading Official in PCX Rule 6.1(b)(34) to provide that a Trading Official will be an Exchange employee or officer who is appointed by the Chief Executive Officer or its designee or by the Chief Regulatory Officer or its designee. OTP Holders will no longer be designated as Trading Officials or involved in making decisions on regulatory matters. The Exchange believes that by restricting these decisions to qualified Exchange employees, the potential for partiality or conflicts of interest is removed from the process. An Exchange employee or officer designated as a Trading Official will from time to time as provided in the rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, health, safety and welfare on the Options Trading Floor.

In addition, the Exchange proposes to delete PCX Rule 6.52 in its entirety. PCX Rule 6.52 sets forth the procedures for OBOs to accept and execute orders. This provision is obsolete as the OBOs no longer accept and execute orders on behalf of OTP Holders and OTP Firms on PCX Plus. PCX Rule 10.13(c)(2), which deals with the issuance of a summary sanction related to PCX Rule 6.52(a), will also be eliminated. The Exchange proposes to reserve PCX Rule number 6.52 for future use.

Current PCX Rule 6.53 provides for the OBO's obligation to maintain a fair, orderly and competitive market. Specifically, the provision allows an OBO to call upon Market Makers appointed to act as such in a class of option contracts to make bids and/or offers if, in the OBO's opinion, the interests of a fair and orderly market would be best served by such action. The Exchange proposes to modify this provision to provide that a Trading Official could call upon Market Makers for bids and/or offers in such circumstances, as Trading Officials would retain the responsibility to maintain a fair and orderly market.

The Exchange proposes to delete PCX Rules 6.54 through 6.59. These rules are related to an OBO's duty to report unusual conditions, an OBO's duty to display bids and offers in the book, transactions outside the OBO's last quoted range, the OBO's duty not to disclose orders, designation of OBOs by the Exchange, and the liability of the Exchange for actions of OBOs. The Exchange proposes to delete these rules because they are directly related to an OBO's order handling responsibilities (and implications of order handling responsibilities) and therefore they are obsolete in the current PCX Plus market structure.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment, submitted by Glenn H. Gsell, Director of Regulation, PCX (''Amendment No. 1''). In Amendment No. 1, PCX corrected a typographical error in the rule text. Because Amendment No. 1 is a technical amendment, it is not subject to notice and comment.

[4] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order Approving Proposal for PCX Plus).

[5] *See* PCX Rule 6.1(b)(34) and (41).

b. Elimination of POETS and Auto-Ex Functions

Current PCX Rule 6.87 sets forth the rules with respect to the Automated Execution System (''Auto-Ex'') feature of POETS. The Exchange proposes to delete PCX Rules 6.87(a)–(f) and (h)–(p) in order to delete the Auto-Ex provisions due to the elimination of POETS. All options issues are currently trading on the PCX Plus platform, therefore the POETS and Auto-Ex rules are obsolete.

In addition, the Exchange proposes to retain PCX Rule 6.87(g), which relates to trade nullification and price adjustment procedures (''Obvious Error Rule''), and renumber the rule as PCX Rule 6.87(a). The Obvious Error Rule is an options industry-wide set of procedures that was put into place to handle trade nullifications and price adjustments in a fair and consistent manner. These procedures are applicable to all trades executed on PCX Plus. The Exchange also proposes to rename PCX Rule 6.87 ''Obvious Errors,'' as appropriate for the modified rule.

c. Modification of Fast Markets and Unusual Market Conditions

The Exchange proposes to modify PCX Rule 6.28, Fast Markets and Unusual Market Conditions, as the procedures set forth therein with respect to ''fast markets'' are inapplicable in the PCX Plus market structure. The current rule sets forth specific procedures that are obsolete in the current trading structure. Prior to the introduction of the all-electronic PCX Plus trading system, when a market was declared ''fast'' due to unusual market conditions certain modifications to standard trading practices were often needed in order to maintain a fair and orderly market. Both systemic and physical limitations that were commonplace in a non-automated trading environment are no longer applicable. Therefore the procedures presently in place to deal with these circumstances are no longer applicable (*e.g.*, moving certain issues or series of options to other posts, or modifying the parameters of Auto-Ex). Market Makers will still be required to trade a minimum of one contract based on their quoted markets pursuant to PCX Rule 6.37, Commentary .05. With regard to the aforementioned changes, however, the Exchange believes it would be prudent to retain a level of basic and flexible procedures to be followed during unusual market conditions. Therefore, the Exchange proposes to modify the provision to enable the Exchange to respond to unusual market conditions. The proposed unusual market condition provisions are based on the rules of the International Securities Exchange (''ISE''),[6] and provide for the Exchange to determine the existence of unusual market conditions. The proposed rule will also allow for the Exchange to employ trading rotations or take such other actions as are deemed in the interest of maintaining a fair and orderly market.

d. Modification of Trading Rotations

The Exchange proposes to amend PCX Rule 6.64(a) and delete subsections (b)–(c) and Commentary .01 in order to delete references to opening rotations and automated opening rotations on POETS as these provisions are no longer applicable. Prior to the PCX Plus market structure a trading rotation was a time-consuming procedure, requiring manual processing by OBOs, Floor Brokers and LMMs. Trading rotations are now a fully automated process, overseen by a Trading Official. The PCX Plus Automated Opening Rotation provision set forth in PCX Rule 6.64(d) will remain unchanged.

The Exchange also proposes to modify the closing rotations rule as provided in PCX Rule 6.64(e)–(f). Currently, PCX Rule 6.64(e)–(f) sets forth time frames and parameters for conducting closing rotations. These procedures are antiquated and inapplicable in the current PCX Plus market structure. Therefore, the Exchange proposes to modify the closing rotations provisions to provide that closing rotations may be utilized when the Exchange concludes that such action is appropriate in the interest of a fair and orderly market. The factors that may be considered include, but are not limited to, whether there has been a recent opening or reopening of trading in the underlying security, a declaration of an unusual market condition pursuant to PCX Rule 6.28, or a need for a rotation in connection with expiring individual stock options or index options, an end of the year rotation, or the restart of a rotation which is already in progress.

Finally, the Exchange proposes to modify PCX Rule 6.64(h) in order to eliminate the provision related to OBOs representing orders during rotations. Such procedures are no longer applicable in the current PCX Plus market structure.

e. Modification of Priority and Allocation

Currently, PCX Rule 6.75 sets forth priority and order allocation procedures with respect to options issues designated for trading on POETS (including those that result in execution via open outcry). PCX Rule 6.76 sets forth priority and order allocation procedures with respect to options issues designated for trading on PCX Plus. Due to the elimination of the POETS system, the Exchange proposes to modify PCX Rule 6.75(a) and (e)–(f) to apply only to orders executed by open outcry. In making this modification, the Exchange proposes to delete PCX Rule 6.75(d) as it relates to opening rotations, which is no longer applicable in the PCX Plus market structure. The Exchange also proposes to delete Commentary .01–.03 as these commentaries relate to OBOs handling orders for purposes of priority and order allocation, which is no longer applicable.

Finally, the Exchange proposes to modify PCX Rule 6.76 and retain its provisions regarding priority and allocation procedures for orders executed on PCX Plus only.

f. Maximum Order Size

Currently, in addition to provisions regarding priority and allocation procedures, PCX Rule 6.76 states that a maximum size of an inbound order that may be eligible for execution on PCX Plus will be initially established by the Lead Market Maker (''LMM'') in the issue, subject to the approval of the Exchange. Further, the rule states that any request by the LMM for changes to the Maximum Order Size must be accompanied by a verified statement indicating the business reason for the change and the estimated duration of such change. In addition, PCX Rule 6.90 sets forth a prohibition against unbundling an order to circumvent the maximum order size requirement. PCX Rules 10.12(h)(33) and (k)(i)(33) establishes minor rule plan violations for such prohibited actions.

In POETS, the Exchange was unable to disseminate the size associated with the quote. Therefore, the only way to limit the number of contracts executed electronically was to limit the size of the order for each options issue. As a result of the conversion to PCX Plus, the Market Makers (including LMMs) are able to disseminate a size that they are willing to trade on each individual series. Therefore, a maximum order size that covers an entire issue is no longer necessary in the current PCX Plus market structure. As such, the Exchange proposes to delete the requirement for a maximum order size in PCX Rule 6.76. In addition, the related provisions in PCX Rules 6.90 and 10.12 with respect to the prohibition on unbundling an order to circumvent the maximum order

[6] *See* ISE Rule 703(c).

size and the minor rule plan violation are ineffectual and should be deleted.

g. Miscellaneous

The Exchange also proposes to make various corresponding modifications, including typographical and terminology changes, to its rules in order to update the rules applicable to the current PCX Plus market structure.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received any 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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–102. 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–PCX–2005–102 and should be submitted on or before January 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7587 Filed 12–20–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IX Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Wednesday, January 18, 2006, at 9 a.m. The meeting will take place at the U.S. Small Business Administration, Entrepreneur Center Training Room, 455 Market Street, 6th Floor, San Francisco, CA to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Gary Marshall, in writing or by fax, in order to be put on the agenda. Gary Marshall, Public Information Officer, SBA, San Francisco District Office, 455 Market Street, 6th Floor, San Francisco, CA 94105, phone (415) 744–6771, fax (415) 744–6812, e-mail: *Gary.marshall@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E5–7595 Filed 12–20–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5252]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dada''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Dada,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of

Art, Washington, DC from on or about February 19, 2006, to on or about May 14, 2006, and the Museum of Modern Art, New York, NY, from on or about June 18, 2006, to on or about September 11, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 12, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–7616 Filed 12–20–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5219]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: The International Telecommunication Advisory Committee announces meetings to prepare for the 2006 International Telecommunication Union (ITU) Plenipotentiary Conference and the 2006 ITU World Telecommunication Development Conference.

The International Telecommunication Advisory Committee (ITAC) will meet on each Tuesday 2–4 p.m. during January and February starting January 11, 2006 to prepare for the 2006 ITU Plenipotentiary Conference. The meetings will be held at the offices of AT&T, 1120 20th Street, NW., Washington, DC. A conference bridge will be provided. Directions to the venue of the meeting may be obtained from Julian Minard, *minardje@state.gov*.

The International Telecommunication Advisory Committee (ITAC) will meet on each Wednesday 2–4 p.m. during January and February starting January 12, 2006 to prepare for the 2006 ITU Telecommunication Development Conference. A conference bridge will be provided. Directions to the venue of the meeting may be obtained from Julian Minard, *minardje@state.gov*.

Dated: December 8, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Department of State.

[FR Doc. E5–7615 Filed 12–20–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5218]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 19, 2006, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a review of projects selected for the 2004 and 2005 Educational Assistance Programs, which are under development, and selection of projects for the 2006 Educational Assistance Program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to January 9, 2006. Each visitor will be asked to provide his/her date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 14, 2005.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. E5–7614 Filed 12–20–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5217]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on January 10 and 11, 2006 at the Boeing Company in Arlington, Virginia. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c][4], it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial and financial information that is considered privileged and confidential. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: December 5, 2005.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E5–7613 Filed 12–20–05; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 2, 2005

The following Agreements were filed with the Department of Transportation under sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–23186.

Date Filed: November 29, 2005.

Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Africa-South Asian Subcontinent, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0279). TC23/TC123 Africa-Japan, Korea, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0280). TC23/TC123 Africa-South East Asia, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0281). Minutes: TC23 Africa, Middle East-TC3, Geneva & Teleconference, September 12–14, 2005 (Memo 0287). Tables: TC23/TC123 Africa-South Asian Subcontinent, Specified Fare Tables, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0127). TC23/TC123 Africa-Japan, Korea, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0128). TC23/TC123 Africa-South East Asia, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0129). Technical Correction: TC23/TC123 Africa-Japan, Korea, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0286).
Docket Number: OST–2005–23204.
Date Filed: December 1, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Africa TC3, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006. Minutes: TC23 Africa, Middle East-TC3, Geneva & Teleconference, September 12–14, 2005. (Memo 0287).
Docket Number: OST–2005–23205.
Date Filed: December 1, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Middle East TC3, Geneva & Teleconference, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0247). Minutes: TC23 Africa, Middle East-TC3, Geneva & Teleconference, September 12–14, 2005, (Memo 0266).
Docket Number: OST–2005–23206.
Date Filed: December 1, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Mail Vote 459 between Middle East and South East Asia, Geneva, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0253). Technical Correction: TC23/TC123 Mail Vote 459, between Middle East and South East Asia, Geneva, September 12–14, 2005,
Intended effective date: April 1, 2006 (Memo 0257).
Docket Number: OST–2005–23207.
Date Filed: December 1, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Mail Vote 460 between Africa and South West Pacific except between South Africa and Australia, Geneva, September 15–16, 2005,
Intended effective date: April 1, 2006.
Docket Number: OST–2005–23208.
Date Filed: December 1, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC31 Passenger Tariff Coordinating Conference, Bangkok, September 21 through November 1, 2005, TC3 (except Japan)—North America, Caribbean (except Korea (Rep. of), Malaysia—USA), Expedited Resolution 002bj, Intended effective date: January 15, 2006.
Docket Number: OST–2005–23217.
Date Filed: December 1, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC23 Mail Vote 463 between Europe and South Asian Subcontinent, Geneva & Teleconference, September 15–16, 2005, Intended effective date: April 1, 2006 (Memo 0142). Tables: TC23 Europe SASC Geneva and Teleconference, September 15–16, 2005 (Memo 0067), Specified Fare Tables, Technical Correction: TC23 Europe SASC, Geneva and Teleconference, September 15–16, 2005 (Memo 0068).
Docket Number: OST–2005–23218.
Date Filed: December 1, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Mail Vote 461 between South Africa and Australia, Geneva, September 15–16, 2005 (Memo 0283),
Intended effective date: April 1, 2006.
Docket Number: OST–2005–23228.
Date Filed: December 2, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Within Europe, Geneva, October 10–13, 2005 (Memo 0617), Minutes: TC2 Within Europe, Geneva, October 10–13 (Memo 0619), Tables: TC2 Within Europe/Specified Fare Tables, Geneva, October 10–13 (Memo 0124), Technical Correction: TC2 Within Europe, Geneva, October 10–13 (Memo 0618),
Intended effective date: March 1, 2006.
Docket Number: OST–2005–23229.
Date Filed: December 2, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC31 Passenger Tariff Coordinating Conference, Bangkok, September 21 through November 1, 2005, TC3 Central, South America Expedited Resolution, 002bs (Memo 0340),
Intended effective date: January 15, 2006.
Docket Number: OST–2005–23230.
Date Filed: December 2, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC31 North and Central Pacific, Bangkok, October 24 through November 1, 2005, TC3 (except Japan)—North America, Caribbean (except between Korea (Rep. of), Malaysia—USA), Expedited Resolution 002bk (Memo 0342),
Intended effective date: March 30, 2006.
Docket Number: OST–2005–23231.
Date Filed: December 2, 2005.
Parties: Members of the International Air Transport Association.
Subject:
PAC2 dated November 4, 2005, Mail Vote Number A 126, Extension of Resolution 814hh to Cyprus,
Intended effective date: February 1, 2006.
Docket Number: OST–2005–23232.
Date Filed: December 2, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC31 North and Central Pacific, Bangkok, October 24 through November 1, 2005, Korea (Rep. of), Malaysia—USA Expedited Resolution, 002nn (Memo 0343),
Intended effective date: March 30, 2006.
Docket Number: OST–2005–23233.
Date Filed: December 2, 2005.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP Mail Vote 470, Resolution 011 Section D and 011b, Mileages and Routes for Tariff Purposes and Global Indicator,

Intended effective date: January 15, 2006.

Docket Number: OST–2005–23234.

Date Filed: December 2, 2005.

Parties: Members of the International Air Transport Association.

Subject:

TC23/TC123 Middle East-South Asian Subcontinent, Geneva & Teleconference, September 12–14, 2005,

Intended effective date: April 1, 2006 (Memo 0248).

TC23 Middle East-South West Pacific, Geneva & Teleconference, September 12–14 2005,

Intended effective date: April 1, 2006 (Memo 0249).

TC23/TC123 Middle East-Japan, Korea, Geneva & Teleconference, 12–14 September 2005,

Intended Effective Date: April 1, 2006 (Memo 0250).

Fares: PTC23/TC123 Middle East-Asia, Specified Fares Tables (Memo 0116),

Minutes: TC23/TC123 Middle East-Japan, Korea, Geneva & Teleconference, 12–14 September 2005,

Intended effective date: April 1, 2006 (Memo 0266).

Docket Number: OST–2005–23235.

Date Filed: December 2, 2005.

Parties: Members of the International Air Transport Association.

Subject:

TC23/123 Passenger Tariff Coordinating Conferences, Geneva and Teleconference, September 26–28, 2005, TC23/123 Europe-South East Asia (Memo 0215),

Intended Effective Date: April 1, 2006.

Technical: Correction TC23/TC123 Passenger Tariff Coordinating Conference, Geneva and Teleconference, September 26–28, 2005, TC23/123 Europe-South East Asia Resolutions, (Memo 222),

Minutes: TC23/123 Europe-South East Asia Minutes (0223),

Tables: TC23/123 Europe-South East Asia specified Fares Tables (Memo 0068).

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E5–7597 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 2, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–23220.

Date Filed: December 1, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 22, 2005.

Description: Application of Flair Airlines Ltd. requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between Canada and the United States and other charters between third countries and the United States.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E5–7598 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary of Transportation, Department of Transportation (DOT).

ACTION: Notice to modify a system of records.

SUMMARY: DOT proposes to modify an existing system of records under the Privacy Act of 1974. An additional purpose for the system has been added to provide users of the system with investigation information. A routine use has been added to provide for the use and public posting of investigation results.

DATES: *Effective Date:* This notice will be effective, without further notice, on January 30, 2006, unless modified by a subsequent notice to incorporate comments received by the public. Comments must be received by January 20, 2006 to be assured consideration.

ADDRESSES: Send comments to Kara Spooner, Departmental Privacy Officer, United States Department of Transportation, Office of the Secretary of Transportation, 400 7th Street, SW., Room 6106, Washington, DC 20590 or *Kara.Spooner@dot.gov*.

FOR FURTHER INFORMATION CONTACT: Todd Zinser, Deputy Inspector General, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202–366–6767 (voice), 202–366–3912 (fax), or *Todd.J.Zinser@oig.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

SYSTEM NUMBER:

DOT/OST 101.

SYSTEM NAME:

Transportation Inspector General Reporting System, TIGR.

SECURITY CLASSIFICATION:

Sensitive, unclassified.

SYSTEM LOCATION:

This system of record is in the Office of the Inspector General in the Office of the Secretary, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

All active employees of the OIG, with history data on previous employees maintained for 2 years. Present and former DOT employees, DOT contractors and employees as well as grantees, subgrantees, contractors, subcontractors and their employees and recipients of DOT monies, and other individuals or incidents subject to investigation within the purview of the Inspector General Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's current position and employment status, assignments, travel, experience, training, with the following personal data: Name, social security account number, date of birth, service computation date, career status, address, assigned station, job series, education,

grade, minority status, and personnel transaction date. Investigative information consists of investigation targets' name and social security account number, organization name, type of investigation, offense data, source of referral data and action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. App.

PURPOSES:

The purpose of the system is to provide individuals with a need to know with specific information related to (1) Time and attendance of employees; (2) workload status reports; (3) security clearance alerts; (4) travel information; and (5) investigation information. The Inspector General publishes some investigation results publicly through a public Web site, in combination with investigation results of other agencies and organizations, in an effort to coordinate fraud enforcement and investigation efforts with other entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Security clearance notification alerts may be provided to an examined activity in advance of visits by OIG personnel if information to be examined requires a secret clearance or above; (2) time and attendance reports will be used to track temporary duty travel frequency and duration, to categorize indirect time for periodic reports, and to accrue staff hour data on assigned projects; (3) planned annual leave reporting will be used by various managers for workload planning and travel scheduling; (4) assignments information and workload status information will be used by managers to control audits and investigations, and to maximize effectiveness of staff resources; (5) miscellaneous personnel information will be used by staff managers to determine training needs, promotional eligibility, education and background, and professional organization participation; (6) information will be used to produce resource management reports; (7) travel information will be used by managers to control temporary duty travel, travel costs and issuances of travel orders; and (8) investigative information is collected and maintained in the administration of the Inspector General Act of 1978 (Pub. L. 95–452) to investigate, prevent, and detect fraud and abuse in departmental programs and operations. Material gathered is used for investigative case management, and some investigation information is posted publicly in an effort to reduce fraud and other crimes across the government. See also Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active reports on magnetic disk, with backup active records and inactive records maintained on magnetic tape.

RETRIEVABILITY:

Records will be retrievable through employee social security number, by name, or incident title, with selected records having certain secondary keys consisting of certain other data elements, listed in the ''Categories of Records in the System.''

SAFEGUARDS:

(1) Records will be maintained in a private library not accessible by any unauthorized user; (2) authorized user identification codes will be tied to multiple password system to afford additional protection; (3) any attempt to bypass the password protection system will result in ''Log-Off'' from the system or denial of access to data if access to system is authorized; (4) physical access to system documentation, hardcopy printouts, personal data files, and terminals will be restricted to authorized personnel by maintaining a secure environment in the headquarters office; and (5) tape files will be maintained in an environmentally secure vault area when not in use.

RETENTION AND DISPOSAL:

Records will be maintained for 2 years after they become inactive. All inactive records will be maintained on magnetic tape within the computer center and will be afforded the same safeguards as active records. Machine-resident records will be destroyed at the end of the 2-year period. Hard copy records will be retained until the records are replaced or become obsolete.

SYSTEM MANAGER AND ADDRESS:

Chief Information Officer, JM–10, Office of Inspector General, Department of Transportation, 400 7th Street, SW., Room 7117, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

(1) Official personnel folder; (2) other personnel documents; (3) activity supervisors; (4) individual applications and forms; and (5) information obtained from interviews, review of records and other authorized investigative techniques.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2).

Dated: November 28, 2005.

Kara Spooner,

Departmental Privacy Officer.

[FR Doc. E5–7599 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 207/Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 207 Meeting, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

DATES: The meeting will be held January 18–19, 2006, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., MacIntosh-NBAA & Hilton-ATA Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include:

- January 18:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks)
- Agenda Overview
- Workgroup Reports
- Workgroup 2
- Workgroup 3
- Workgroup 4
- Workgroup 5

- Workgroup 6
- Workgroup 7
- ICAO Update
- Discussions on vendor presentations—guidelines are as follows: The vendor/product categories sought are under Access Control, Perimeter Intrusion Detection, Biometric Systems/Devices, and Credentialing of employees. Each vendor seeking to present a short (maximum of 15 minutes) presentation to the committee members, will provide the briefing package, slides and supporting documents to Mr. Paul S. Ruwaldt (*paul.ruwaldt@dhs.gov* or *paul.s.ruwaldt@tc.faa.gov*) by January 4th, 2006, outlining the following:
- If the product is an access control system, sub-system or component of or could be applied to an airport access control system, the vendor is required to submit documentation, in written form, attesting to their understanding of the current DO–230A Airport Access Control Standard requirements and a description of how their product, system, sub-system or component complies with this current standard (this document will be inclusive of how their product(s) would be utilized in an automated access control system suitable for use under the requirements included in 49 CFR subpart 1500 et al.).
- How their product(s) would provide for (or enhance) the security objectives of the airport, and
- How their product(s) would be integrated into an airport comprehensive security system.

It is strongly suggested that the vendors requesting presentation time be fully cognizant of the airline and airport operational requirements as they apply to automated access control systems, perimeter intrusion detection, biometric system applications and credentialing application of employees, as well as the performance requirements of DO–230A and how their product(s) will interface, integrate or fuse (data) with automated access control systems. Further, it is suggested that the vendor by fully aware of how these operational and performance conditions will affect their product(s) and the access control procedures.

In addition, for those products or systems incorporating biometrics, specific reference and discussions will address the Biometric Guidance Package released and approved by the TSA this year.

The vendor presentation must strictly be pertinent to their product(s) and the relevant 49 CFR subpart 1500 et al. requirements for airport access control systems. The vendor must demonstrate their product's suitability to airline and airport operational access control conditions and illustrate how their product(s) would be deployed in automated access control systems and/or how their product(s) can be integrated into the automated access control systems.

The SC–207 committee emphasizes that this RTCA standard pertains only to airport access control systems, although there may be opportunities for future integration with other airport and federal information and/or communication technologies.

Further, the committee is interested in proven and available COTS technologies and/or products. The committee is not interested in yet untested, developmental concepts, representative products, systems or sub-systems or proprietary systems.

The vendors making presentations will be required to provide a soft copies of the material they wish to present to the committee. No material save that provided by the vendor by the 5th of January 2006 will be accepted or received by the Committee during the presentation on January 18th & 19th, 2006.

The presentations provided by the vendors will be collected and made available to the committee members in CD format on the day of the presentation.

It is expected that there will be only a limited presentation opportunity on these two days. Reservations will be made on a first come first served basis.

The Vendor should contact Mr. Ruwaldt via email to express interest in presenting. Once Mr. Ruwaldt receives the material, he will schedule the vendor's presentation time and date. All material must be received before this scheduling can take place.

If the presentation schedule is full for these two days, following consultation with the SC–207 Chairman, an additional presentation date in March could be allocated, however all vendors should not rely on this, and attempt to develop and provide their product(s) presentations as early as possible.

SC–207, in its deliberations for the updated standard DO–230B, is considering requiring that the products, systems, sub-systems and components utilized within airport access control systems, inclusive of perimeter, biometric intrusion detection and surveillance functions should be tested and verified to the requirements defined within the proposed DO–230B Standard.

Any such decision, including the identification of a responsible authority for conducting such verifications (or potential certification of products) will be taken before the final issuance of DO–230B.

- Closing Plenary Session (Other Business, Establish Agenda, Date and Place for Fourth, Fifth and Sixth Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 14, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–24320 Filed 12–20–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20930 (PDA–31(F))]

Notice of Delay in Processing the Application by American Trucking Associations, Inc. for a Preemption Determination Concerning the District of Columbia Restrictions Regarding Highway Routing of Certain Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: In accordance with statutory requirements, FMCSA is publishing a notice of delay in processing the American Trucking Associations, Inc.'s (ATA) application for a preemption determination. FMCSA is conducting fact-finding in response to ATA's request, and is delaying issuance of its determination in order to allow time for appropriate consideration of the issues raised by ATA's application.

FOR FURTHER INFORMATION CONTACT: James Simmons, Chief, Hazardous Materials Division (MC–ECH), (202) 493–0496; Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: ATA applied for an administrative determination that Federal hazardous

material transportation law, 49 U.S.C. 5101 *et seq.*, and FMCSA regulations, 49 CFR part 397, preempt routing requirements contained in the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 [D.C. Act 16–43, February 15, 2005, 52 CDR 3048] (''DC Act''), passed by the Council of the District of Columbia on February 1, 2005, and signed by the Mayor on February 15, 2005.

FMCSA published notice of ATA's application in the **Federal Register** on April 20, 2005, at 70 FR 20630. Title 49 U.S.C. 5125(d) requires FMCSA to issue a decision on ATA's application ''within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the **Federal Register** of the reason why the Secretary's decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made.''

ATA's application for a preemption determination is still under consideration by FMCSA. The Agency currently is conducting fact-finding in response to the application. Because of this additional fact-finding, it is impracticable to issue a decision within the 180-day timeframe. In order to allow time for appropriate consideration of the issues raised by ATA's application, FMCSA delays issuance of its determination, and estimates a decision will be published in the spring of 2006.

Issued on: December 14, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. E5–7637 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–23311]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TI AMO.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–23311 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 20, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2005 23311. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TI AMO is:

Intended Use: ''Pleasure cruises, day sails and longer, licensed skipper plus mate.''

Geographic Region: California, USVI, Puerto Rico, FL, NY, ME, MA, NH, RI, and CT depending on time of year.

Dated: December 13, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E5–7634 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of December 5, 2005 meeting with VISA participants.

The VISA program requires that a notice of the time, place, and nature of each JPAG meeting be published in the **Federal Register**. The program also requires that a list of VISA participants be periodically published in the **Federal Register**. The full text of the VISA program, including these requirements, is published in 70 FR 55947–55955, dated September 23, 2005.

On December 5, 2005, the Maritime Administration (MARAD) and the U.S. Transportation Command co-hosted a meeting of the VISA JPAG at the Military Sealift Command in Washington, DC. Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 51 U.S.-flag carrier corporate participants enrolled in the VISA program at the time of the meeting, 15 companies whose vessels were modeled in the Department of Defense's Mobility Capabilities Study (MCS) participated in the meeting. In addition, representatives from MARAD and the Department of Defense attended the meeting.

Richard Haynes, Executive Director for the Military Sealift Command opened the meeting with a welcome to all attendees. Remarks were offered by Earl Boyanton, Jr., Assistant Deputy Under Secretary (Transportation Policy) of the Office of the Under Secretary of Defense, James Caponiti, Associate Administrator for National Security for MARAD and Margaret LeClaire, Deputy Director, Strategy, Plans, Policy and Programs for USTRANSCOM.

Dr. Laura Williams from the Office of the Secretary of Defense (Program Analysis and Evaluation) presented an overview of the overall structure and findings of the Department of Defense's MCS. Following Ms. Williams' overview there was an open dialogue about the utilization of commercial sealift in the MCS. As a result of the discussion, industry participants provided DOD many useful comments and suggestions to consider in future analyses, and indicated a willingness to address future requirements as they emerge.

As of December 5, 2005, the following commercial U.S.-flag vessel operators

were enrolled in the VISA program with MARAD: AAA Shipping No. 1 L.L.C.; A Way to Move, Inc.; America Cargo Transport, Inc.; American Auto Carriers, Inc.; American Automar, Inc.; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; American Shipping Group; APL Marine Services, Ltd.; Beyel Brothers Inc.; Canal Barge Company, Inc.; Central Gulf Lines, Inc.; Cherokee Nation Distributors; Coastal Transportation, Inc.; Columbia Coastal Transport, LLC; CP Ships USA, LLC; CRC Marine Services, Inc.; Crowley Liner Services, Inc.; Crowley Marine Services, Inc.; Farrell Lines Incorporated; Fidelio Limited Partnership; Foss Maritime Company; Horizon Lines, LLC; Laborde Marine Lifts, Inc.; Laborde Marine, L.L.C.; Liberty Shipping Group Limited Partnership; Lockwood Brothers, Inc.; Lynden Incorporated; Maersk Line, Limited; Marine Transport Management; Matson Navigation Company, Inc.; Maybank Navigation Company, LLC; McAllister Towing and Transportation Co., Inc.; Northland Services, Inc.; OSG Car Carriers, Inc.; Pasha Hawaii Transport Lines LLC; Patriot Shipping, L.L.C.; Red River Holdings LLC; Resolve Towing & Salvage, Inc.; Samson Tug & Barge Company, Inc.; SeaTac Marine Services, LLC; Sealift Inc.; Signet Maritime Corporation; Smith Maritime; Stevens Towing Co., Inc.; Strong Vessel Operators LLC (SVO); Superior Marine Services, Inc.; Trailer Bridge, Inc.; TransAtlantic Lines LLC; Troika International, Ltd.; and Waterman Steamship Corporation.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor E. Jones II, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.
Dated: December 14, 2005.

Joel C. Richard,

Secretary.

[FR Doc. E5–7639 Filed 12–20–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–988X]

Nebkota Railway, Inc.—Abandonment Exemption—in Sheridan and Cherry Counties, NE

On December 1, 2005, Nebkota Railway, Inc. (NRI) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 43-mile portion of its line of railroad extending from milepost 374 at Rushville 69360 to the end of the line at milepost 331 at Merriman 69218 in Sheridan and Cherry Counties, NE. The line traverses U.S. Postal Service Zip Codes 69218, 69343, and 69360, and it includes the stations of Clinton, Gordon, Irwin and Merriman.

The line does not contain federally granted rights-of-way. Any documentation in NRI's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 21, 2006.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 10, 2006. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–988X, and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW., Washington, DC 20036–1601. Replies to NRI's petition are due on or before January 10, 2006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 15, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–24305 Filed 12–20–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Revised Notice of Funds Availability (NOFA) Inviting Applications for the FY 2006 Funding Round and the FY 2007 Funding Round of the Community Development Financial Institutions Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

DATES: Applications for the FY 2006 Funding Round must be received by 5 p.m. ET on February 13, 2006. Applications for the FY 2007 Funding Round must be received by 5 p.m. ET on January 9, 2007.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with two consecutive funding rounds of the Community Development Financial Institutions (CDFI) Program: (i) The FY 2006 Funding Round and (ii) the FY 2007 Funding Round. This NOFA replaces, in its entirety, the NOFA published in the **Federal Register** on December 13, 2005 (70 FR 73866); through this NOFA, the Fund has revised several of the dates set forth in the December 13, 2005 NOFA. Interested parties should review and refer to this NOFA, disregarding the December 13, 2005 NOFA, as the dates in the December 13, 2005 NOFA are inaccurate.

I. Funding Opportunity Description

A. Through the CDFI Program, the Community Development Financial Institutions Fund (the Fund) provides: (i) Financial Assistance (FA) awards to

CDFIs that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to CDFIs and entities proposing to become CDFIs in order to build their capacity to better address the community development and capital access needs of their particular Target Markets, to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and/or to become certified CDFIs.

B. The regulations governing the CDFI Program are found at 12 CFR Part 1805 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the CDFI Program. The Fund published the revised Interim Rule in the December 13, 2005 issue of the **Federal Register** (70 FR 73887), which contained revisions concerning how certain Applicants may use retained earnings as matching funds for a FA award. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. *Funding Availability:* 1. *FY 2006 Funding Round:* Through the FY 2006 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $25 million in appropriated funds, of which (i) approximately $2 million in appropriated funds may be awarded to Category I/SECA (defined in Section III.A.1, below) Applicants in the form of FA awards that may be coupled with TA grants; (ii) approximately $21 million in appropriated funds may be awarded to Category II/Core (defined in Section III.A.1, below) Applicants in the form of FA awards that may be coupled with TA grants; and (iii) approximately $2 million in appropriated funds may be awarded to Applicants in the form of TA grants only. The Fund reserves the right to award in excess of $25 million in appropriated funds to Applicants (and/or more or less than $2 million to Category I/SECA Applicants, and/or more or less than $21 million to Category II/Core Applicants) in the FY 2006 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. *FY 2007 Funding Round:* Through the FY 2007 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $25 million in appropriated funds, of which (i) approximately $2 million in appropriated funds may be awarded to Category I/SECA Applicants in the form of FA awards that may be coupled with TA grants; (ii) approximately $21 million in appropriated funds may be awarded to Category II/Core Applicants in the form of FA awards that may be coupled with TA grants; and (iii) approximately $2 million in appropriated funds may be awarded to Applicants in the form of TA grants only. The Fund reserves the right to award in excess of $25 million in appropriated funds to Applicants (and/or more or less than $2 million to Category I/SECA Applicants, and/or more or less than $21 million to Category II/Core Applicants) in the FY 2007 Funding Round, provided that the funds are available and the Fund deems it appropriate.

3. *Availability of Funds for the FY 2007 Funding Round:* Because funds for the FY 2007 Funding Round have not yet been appropriated, interested parties should be aware that electing to defer the submission of an application until the FY 2007 Funding Round, rather than for the FY 2006 Funding Round, entails some risk. If funds are not appropriated for the FY 2007 Funding Round, there will not be a FY 2007 Funding Round. Further, it is possible that if funds are appropriated for the FY 2007 Funding Round, the amount of such funds may be less than the amounts set forth above.

B. *Types of Awards:* An Applicant may submit an application either for: (i) A FA award only; (ii) a FA award and a TA grant; or (iii) a TA grant.

1. *FA Awards:* The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application. The Fund reserves the right, in its sole discretion, to provide a FA award on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. *TA Grants:* (a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which are requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as business, strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant for a TA grant through this NOFA is required to provide information in the application regarding the expected cost, timing and provider of the TA, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact and/or to become certified as a CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market and/or to become certified as a CDFI.

C. *Notice of Award; Assistance Agreement:* Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the

award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. *Eligible Applicants:* The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *FA Applicant Categories:* All Applicants for FA awards through this NOFA must meet the criteria for one of the following two categories of CDFIs:

FA applicant category	Criteria	What can it apply for?
FY 2006 Funding Round: Category I/Small and/or Emerging CDFI Assistance (SECA).	A Category I/SECA Applicant is a Certified CDFI or a Certifiable CDFI that: Has total assets as of December 31, 2005 as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million. • Insured Credit Unions: up to $10 million. • Venture capital funds: up to $10 million. • Other CDFIs: up to $5 million. OR Began operations on or after January 1, 2002. AND Prior to the FY 2006 Funding Round application deadline, has not been selected to receive in excess of $500,000 in FA award(s) in the aggregate from the CDFI Program or Native Initiatives Funding Programs.	A Category I/SECA Applicant may request up to and including $500,000 in FA funds, and up to and including $100,000 in TA funds.
FY 2007 Funding Round: Category I/Small and/or Emerging CDFI Assistance (SECA).	A Category I/SECA Applicant is a Certified CDFI or Certifiable CDFI that: Has total assets as of December 31, 2006 as follows: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million. • Insured Credit Unions: up to $10 million. • Venture capital funds: up to $10 million. • Other CDFIs: up to $5 million. OR Began operations on or after January 1, 2003. AND Prior to the FY 2007 Funding Round application deadline, has not been selected to receive in excess of $500,000 in FA award(s) in the aggregate from the CDFI Program or Native Initiatives Funding Programs.	A Category I/SECA Applicant may request up to and including $500,000 in FA funds, and up to and including $100,000 in TA funds.
FY 2006 and FY 2007 Funding Rounds: Category II/Core.	A Category II/Core Applicant is a Certified CDFI or a Certifiable CDFI that meets all other eligibility requirements described in this NOFA.	A Category II/Core Applicant may request up to and including $2 million in FA funds, and up to and including $100,000 in TA funds.

Please note: any Applicant, regardless of total assets, years in operation, or prior Fund awards, that requests FA funding in excess of $500,000 is classified as a Category II/Core Applicant.

For the purposes of this NOFA, the term ''began operations'' is defined as the month and year in which the Applicant first incurred operating expenses of any type. Also, for purposes of this NOFA, the term ''Native Initiatives Funding Programs'' refers to the following programs administered by the Fund: The Native American CDFI Technical Assistance (NACTA) Component of the CDFI Program, the Native American CDFI Development (NACD) Program, the Native American Technical Assistance (NATA) Component of the CDFI Program, and the Native American CDFI Assistance (NACA) Program.

The Fund will evaluate, rank and make awards to Category I/SECA Applicants separately from Category II/Core Applicants. The Fund, in its sole discretion, reserves the right to award amounts in excess of or less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

2. *TA Applicants:*

TA applicants	Criteria	What can it apply for?
All TA Applicants	A TA Applicant must be a Certified CDFI, a Certifiable CDFI, or an Emerging CDFI.	The Fund anticipates making TA grants up to $100,000 each.

The Fund, in its sole discretion, reserves the right to award amounts less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

3. *CDFI Certification Requirements:* For purposes of this NOFA, eligible FA Applicants include Certified CDFIs and Certifiable CDFIs; eligible TA Applicants include Certified CDFIs, Certifiable CDFIs and Emerging CDFIs, defined as follows:

(a) *Certified CDFIs:* A certified CDFI whose certification has not expired and that has not been notified by the Fund

that its certification has been terminated. Each such Applicant must submit a ''Certification of Material Event Form'' to the Fund not later than January 20, 2006 (for the FY 2006 Funding Round) or not later than December 4, 2006 (for the FY 2007 Funding Round), or such other dates as the Fund may proscribe, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov*. Please note: the Fund provided a number of CDFIs with certifications expiring in 2003 through 2005 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable CDFIs:* For purposes of this NOFA, a Certifiable CDFI is an entity from which the Fund receives a complete CDFI Certification Application no later than January 20, 2006 (for the FY 2006 Funding Round) or December 4, 2006 (for the FY 2007 Funding Round), or such other dates as the Fund may proscribe, evidencing that the Applicant meets the requirements to be certified as a CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *http://www.cdfifund.gov*. Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable CDFIs please note: While your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse award funds unless and until the Fund has certified your organization as a CDFI. If the Fund is unable to certify your organization as a CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging CDFIs:* For purposes of this NOFA, an Emerging CDFI is an entity that demonstrates to the satisfaction of the Fund that it has a reasonable plan to be certified as a CDFI by December 31, 2008 or such other date selected by the Fund (for the FY 2006 Funding Round) or December 31, 2009 or such other date selected by the Fund (for the FY 2007 Funding Round). Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to become certified as a CDFI by a date certain.

D. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap.* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the period extends back three years from the date that the Fund signs a Notice of Award issued to an Awardee under this NOFA.

2. *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) The Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2005 (for the FY 2006 Funding Round) and Calendar Year 2006 (for the FY 2007 Funding Round). Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) The Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in the Calendar Year 2005 (for the FY 2006 Funding Round) and Calendar Year 2006 (for the FY 2007 Funding Round).

6. *Undisbursed balances:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the

applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed funds. For purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of a prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the Awardee. ''Undisbursed funds'' does not include: (i) Tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the applicable application deadline of this NOFA.

7. *Exception for Applicants impacted by Hurricanes Katrina and/or Rita:* Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed balances) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants for the FY 2006 Funding Round and the FY 2007 Funding Round.

8. *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). All outstanding reports, disbursement or compliance questions should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 9, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round) (two business days before the respective application deadlines). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. on said dates, until after the respective funding application deadlines.

9. *Limitation on Awards:* An Applicant may receive only one award through either the CDFI Program or the Native American CDFI Assistance (NACA) Program in the same funding year. An Applicant may apply under both the CDFI Program and the NACA Program, but will not be selected for funding under both. A CDFI Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the NMTC Program, but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant receives a NMTC Program allocation; and (ii) an award through the BEA Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

10. *Other Targeted Populations as Target Markets:* Other Targeted Populations are defined as identifiable groups of individuals in the Applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in other Pacific Islands, lack adequate access to loans, Equity Investments or Financial Services. An Applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services.

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented:

(a) American Indian, Native American or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: A person having origins in any of the black racial groups of Africa (terms such as ''Haitian'' or ''Negro'' can be used in addition to ''Black or African American'');

(c) Hispanic or Latino: A person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term ''Spanish origin'' can be used in addition to ''Hispanic or Latino''); and

(d) Native Hawaiian: A person having origins in any of the original peoples of Hawaii; and

(e) Other Pacific Islander: A person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

E. *Matching Funds:* 1. *Matching Funds Requirements in General:*

Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR § 1805.500 et seq. and matching funds guidance materials on the Fund's website for further information.

2. *Matching Funds Requirements Per Applicant Category:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline under this NOFA. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *Category I/SECA Applicants:*

(i) *FY 2006 Funding Round:* A Category I/SECA Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2004 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 15, 2007 (with required documentation of such receipt received by the Fund not later than March 30, 2007), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007.

(ii) *FY 2007 Funding Round:* A Category I/SECA Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008.

(b) *Category II/Core Applicants:*

(i) *FY 2006 Funding Round:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2004 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 15, 2007 (with required documentation of such receipt received by the Fund not later than March 30, 2007), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate.

(ii) *FY 2007 Funding Round:* A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate.

3. *Matching Funds Terms Defined; Required Documentation.*

(a) *''Matching funds in-hand''* means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (i.e., grant, loan, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) ''*Firmly committed matching funds*'' means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 2 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total

amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions.* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report.

5. *Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita:* In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a ''severe constraints waiver'' (see section 1805.203 of the Interim Rule) if (i) it can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a ''major disaster area'' as declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 (for the FY 2006 Funding Round) or January 1, 2006 (for the FY 2007 Funding Round) and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 50 percent of the required matching funds by March 15, 2007 (for the FY 2006 Funding Round) and March 14, 2008 (for the FY 2007 Funding Round) (with required documentation of such receipt received by the Fund not later than March 31, 2007 (for the FY 2006 Funding Round) and March 30, 2008 (for the FY 2007 Funding Round)), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than 50 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007 (for the FY 2006 Funding Round) and March 14, 2008 (for the FY 2007 Funding Round). In the case of item (ii) of this paragraph, the CDFI Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. *Form of Application Submission:* Applicants may submit applications under this NOFA either (i) through Grants.gov or (ii) in paper form. Applications sent by facsimile or other form will not be accepted.

B. *Grants.gov:* For the FY 2006 Funding Round, in compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the Fund is required to accept applications submitted through the Grants.gov electronic system. The Fund will post to its Web site at *http://www.cdfifund.gov* instructions for accessing and submitting an application through Grants.gov. The application instructions will be posted as soon as they are available and once the application materials are accessible through Grants.gov. The anticipated release date for the application instructions is January 6, 2006. Applicants are encouraged to start the registration process now at *http://www.Grants.gov* as the process may take several weeks to fully complete. See the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf.*

C. *Paper Applications:* If an applicant is unable to submit an application through Grants.gov, it must submit to the Fund a request for a paper application using the CDFI Program Paper Application Submission Form, and the request must be received by 5 p.m. ET on January 6, 2006 (for the FY 2006 Funding Round) or December 8, 2006 (for the FY 2007 Funding Round). The CDFI Program Paper Application Submission Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–7754. The completed CDFI Program Paper Application Submission Form should be directed to the attention of the Fund's Chief Information Officer and must be sent by facsimile to (202) 622–7754. These are not toll free numbers. Paper applications must be submitted in the format and with the number of copies specified in the application instructions.

D. *Application Content Requirements:* Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An application submitted through Grants.gov that does not include an EIN is incomplete and will be deemed

ineligible. A paper application that does not include a valid EIN is incomplete and will be rejected and returned to the sender. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as a DUNS number or EIN information).

E. *MyCDFIFund Accounts:* All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *http://www.cdfifund.gov/myCDFI/Help/Help.asp*.

F. *Application Deadlines; Address for Paper Submissions; Late Delivery:* Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:*

(a) *FY 2006 Funding Round:* Applications submitted via Grants.gov must be received in accordance with the instructions provided by the Fund, by 5 p.m. ET on February 13, 2006. In addition, Applicants must separately submit (by mail or other courier/delivery service) any required paper attachments at the address set forth below by 5 p.m. ET on February 16, 2006. For applicants that have previously received permission from the Fund to submit all application materials in paper, said paper applications and all required attachments must be received at the address set forth below by 5 p.m. ET on February 13, 2006.

(b) *FY 2007 Funding Round:* Applications submitted via Grants.gov must be received in accordance with the instructions provided by the Fund, by 5 p.m. ET on January 9, 2007. In addition, Applicants must separately submit (by mail or other courier/delivery service) all required paper attachments at the address set forth below by 5 p.m. ET on January 12, 2007. For applicants that have previously received permission from the Fund to submit all application materials in paper; said paper applications and all required attachments must be received at the address set forth below by 5 p.m. ET on January 9, 2007.

2. *Address for Paper Submissions:* A complete paper application (or, in the case of an application submitted via Grants.gov, the required paper submissions) must be received at the following address, within the applicable deadline: CDFI Fund Grants Manager, CDFI Program, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–6088 (this is not a toll free number). Any documents received in any other office, including the Fund's Washington, DC office, will be rejected and returned to the sender.

3. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected and returned to the sender. An application submitted via Grants.gov and all required paper attachments must be received by the applicable time and date set forth above. A paper application and all required paper attachments must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

D. Intergovernmental Review: Not applicable.

E. Funding Restrictions: For allowable uses of FA proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. *Criteria:* The Fund will evaluate each application using numeric scores with respect to the following five sections:

1. *Market Analysis* (TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points:) The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a ''major disaster'' by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a ''reception state'' by FEMA. The form and content of such special consideration will be further clarified in the CDFI Program application.

2. *Business Strategy* (TA-only Applicants: 25 points; Category I/SECA: 25 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is proposing to expand into a new Target Market.

3. *Community Development Performance and Effective Use* (TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate (i) the Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that (i) it has a record of success in serving said Investment Area(s) or Targeted Population(s) and (ii) it will expand its operations into a new Investment Area or to serve a new Targeted Population, offer more products or services, or increase the volume of its current business.

4. *Management* (TA-only Applicants: 20 points; Category I/SECA: 20 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. *Financial Health and Viability* (TA-only Applicants: 10 points; Category I/SECA: 10 points; Category II/Core: 20 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds within the time table set forth above.

6. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified CDFI and that requests TA to address certification requirements, must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. The Fund will assess the reasonableness of the plan to become certified by December 31, 2008 (for the FY 2006 Funding Round) or December 31, 2009 (for the FY 2007 Funding Round), taking into account the requested TA. For example, if the Applicant does not currently make loans and therefore does not meet the Financing Entity requirement, it might describe how the TA funds will be used to hire a consultant to develop underwriting policies and procedures to support the Applicant's ability to start its lending activity. An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. *Review and Selection Process:* 1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application will be rejected as incomplete and returned to the sender. If an Applicant does not meet eligibility requirements, its application will be rejected and returned to the sender.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance. As part of the review process, the Fund may contact the Applicant by telephone or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

3. *Application Scoring; Ranking:*

(a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in calendar year 2005 (for FY 2006 Funding Round Applicants) and calendar year 2006 (for FY 2007 Funding Round Applicants), in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2004 and FY 2005 for FY 2006 Funding Round Applicants and FY 2005 and FY 2006 for FY 2007 Funding Round Applicants); (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2003, FY 2004 or FY 2005 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the CDFI Program. All questions regarding outstanding reports or compliance should be directed to the Grants Manager by e-mail at

grantsmanagement@cdfi.treas.gov; by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 9, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round). The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on February 9, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round) until after the applicable funding application deadline.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, as follows:

(i) *TA-only Applicants and Category I/SECA Applicants* will be ranked from highest to lowest, based on each Applicant's scores for all five criteria categories added together.

(ii) *Category II/Core Applicants* must receive scores in both the Management category and the Financial Health and Viability category that each equal at least 50 percent of the available points in each of those sections. For Category II/Core Applicants that exceed this threshold, the Fund will use the combined scores of the Market Analysis, Product Design and Implementation Strategy, and Community Development Performance categories to rank such Applicants, highest to lowest.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. TA-only Applicants, Category I/SECA and Category II/Core Applicants will be ranked separately. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a ''3'' or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2006 (for the FY 2006 Funding Round) or September 30, 2007 (for the FY 2007 Funding Round) or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues will be provided a written debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by email using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's website. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. *Notice of Award:* The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been

received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the applicable application deadline, may not apply for a new award through another NOFA for one CDFI or NACA Program funding round after the date of said deobligation.

B. *Assistance Agreement:* Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. *Reporting:* 1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report; (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial

Assistance and Matching Funds Report (for Awardees receiving Financial Assistance); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CDFI Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an award must provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 9, 2006 (for the FY 2006 Funding Round) and January 5, 2007 (for the FY 2007 Funding Round). The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its website responses to questions of general applicability regarding the CDFI Program.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's website should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

C. *Grants Management Support:* If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Compliance and Monitoring Support:* If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov.* Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's website should not be relied upon for purposes of this NOFA).

F. *Communication with the CDFI Fund:* The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

VIII. Information Sessions and Outreach

In connection with the Fiscal Year 2006 and FY 2007 Funding Round, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: December 15, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. E5–7629 Filed 12–20–05; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Revised Notice of Funds Availability (NOFA) Inviting Applications for the FY 2006 Funding Round and the FY 2007 Funding Round of the Native American CDFI Assistance Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

DATES: Applications for the FY 2006 Funding Round must be received by 5 p.m. ET on March 1, 2006. Applications for the FY 2007 Funding Round must be received by 5 p.m. ET on February 14, 2007.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with two consecutive funding rounds of the Native American CDFI Assistance (NACA) Program: (i) The FY 2006 Funding Round and (ii) the FY 2007 Funding Round. This NOFA replaces, in its entirety, the NOFA published in the **Federal Register** on December 13, 2005 (70 FR 73877); through this NOFA, the Fund has revised several of the dates set forth in the December 13, 2005 NOFA. Interested parties should review and refer to this NOFA, disregarding the December 13, 2005 NOFA, as the dates in the December 13, 2005 NOFA are inaccurate.

I. Funding Opportunity Description

A. Through the NACA Program, the Community Development Financial Institutions Fund (the Fund) provides Financial Assistance (FA) awards to Community Development Financial Institutions (CDFIs) that have at least 50 percent of their activities directed toward serving Native American, Alaska Native and/or Native Hawaiian communities (Native CDFIs) in order to build their capacity to better address the community development and capital access needs of their Target Market(s) and to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations. Through the NACA Program, the Fund provides Technical Assistance (TA) grants to entities that propose to become Native CDFIs, and to Native organizations, Tribes and Tribal organizations (Sponsoring Entities) that propose to create Native CDFIs, in order to build their capacity to better address the community development and capital access needs of their Target Market(s), to expand into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, or to create Native CDFIs.

B. The regulations governing the CDFI Program, found at 12 CFR Part 1805 (the Interim Rule), provide relevant guidance on evaluation criteria and other requirements of the NACA Program. The Fund published the revised Interim Rule in the December 13, 2005 issue of the **Federal Register** (70 FR 73887), which contained revisions concerning how certain Applicants may use retained earnings as matching funds for a FA award. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. *Funding Availability:*

1. *FY 2006 Funding Round:* Through the FY 2006 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $3.5 million in appropriated funds through the NACA Program. The Fund reserves the right to award in excess of $3.5 million in appropriated funds to Applicants in the FY 2006 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. *FY 2007 Funding Round:* Through the FY 2007 Funding Round, and subject to funding availability, the Fund expects that it may award approximately $3.5 million in appropriated funds through the NACA Program. The Fund reserves the right to award in excess of $3.5 million in appropriated funds to Applicants in the FY 2007 Funding Round, provided that the funds are available and the Fund deems it appropriate.

3. *Availability of Funds for the FY 2007 Funding Round:* Because funds for the FY 2007 Funding Round have not yet been appropriated, interested parties should be aware that electing to defer the submission of an application until the FY 2007 Funding Round, rather than for the FY 2006 Funding Round, entails some risk. If funds are not appropriated for the FY 2007 Funding Round, there will not be a FY 2007 Funding Round. Further, it is possible that if funds are appropriated for the FY 2007 Funding Round, the amount of such funds may be less than the amounts set forth above.

B. *Types of Awards:* A NACA Program Applicant may submit an application for: (i) A FA award; (ii) a FA award and a TA grant; or (iii) a TA grant.

1. *FA Awards:* The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant. The Fund reserves the right, in its sole discretion, to provide a FA award on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. *TA Grants:* (a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than and in addition to that which are requested by an Applicant.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as business, strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant for a TA grant through this NOFA is required to provide information in the application regarding the expected cost, timing and provider of the TA, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact, to become certified as a Native CDFI, or to create a Native CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and

Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market, and/or to become certified as a Native CDFI or to create a Native CDFI.

C. *Notice of Award; Assistance Agreement:* Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. *Eligible Applicants:* The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *CDFI Certification Requirements:* For purposes of this NOFA, any Applicant that is a Certified Native CDFI or a Certifiable Native CDFI may apply for a FA award or a FA award and a TA grant. An Applicant that is an Emerging Native CDFI or a Sponsoring Entity may apply for a TA grant only.

(a) *Certified Native CDFIs:* For purposes of this NOFA, a Certified Native CDFI is a Certified CDFI that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and whose certification has not expired and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must include a ''Certification of Material Event Form'' with its NACA application by the applicable application deadline, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov.* Please note: The Fund provided a number of CDFIs with certifications expiring in 2003 through 2005 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable Native CDFIs:* For purposes of this NOFA, a Certifiable Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and from which the Fund receives a complete CDFI Certification Application by the applicable deadline of the NACA Program application, evidencing that the Applicant meets all requirements to be certified as a CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *http://www.cdfifund.gov.* Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable Native CDFIs please note: while your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse FA award funds unless and until the Fund has certified your organization as a CDFI. If the Fund is unable to certify your organization as a CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging Native CDFIs:* For purposes of this NOFA, an Emerging Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and that demonstrates to the satisfaction of the Fund that it has a reasonable plan to achieve CDFI certification within a reasonable timeframe. Emerging CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to work toward CDFI certification by a date certain.

(d) *Sponsoring Entities:* For purposes of this NOFA, a Sponsoring Entity is an entity that proposes to create a separate legal entity that will become certified as a CDFI. For purposes of this NOFA, Sponsoring Entities include: (a) A Tribe, Tribal entity, Alaska Native Village, Village Corporation, Regional Corporation, Non-Profit Regional Corporation/Association, or Inter-Tribal or Inter-Village organization; (b) an organization whose primary mission is to serve a Native Community including, but not limited to an Urban Indian Center, Tribally Controlled Community College, community development corporation (CDC), training or educational organization, or Chamber of Commerce, and that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community. Sponsoring Entities may only apply for TA grants; they are not eligible to apply for FA awards. Each Sponsoring Entity that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to create a legal entity by a date certain that will, in turn, seek CDFI certification.

D. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap.* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the period extends back three years from the date that the Fund signs a Notice of Award issued to an Awardee under this NOFA.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund): (i) Is a prior Fund Awardee or allocatee under any Fund program; and (ii) has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) The Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round). Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) The Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund),

is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round).

6. *Undisbursed balances:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed funds. For purposes of this section, ''undisbursed funds'' is defined as: (i) In the case of a prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the Awardee; and (ii) in the case of a prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an assistance agreement with the Awardee. ''Undisbursed funds'' does not include (i) tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the applicable application deadline of this NOFA.

7. *Exception for Applicants impacted by Hurricanes Katrina and/or Rita:* Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed balances) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants for the FY 2006 Funding Round and the FY 2007 Funding Round.

8. *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or de-obligation of any outstanding balance of said prior award(s). All outstanding reports, disbursement or compliance questions should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 27, 2006 (for the FY 2006 Funding Round) and February 12, 2007 (for the FY 2007 Funding Round) (two business days before the respective application deadlines). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. on said dates, until after the respective funding application deadlines.

9. *Limitation on Awards:* An Applicant may receive only one award through either the CDFI Program or the NACA Program in the same funding year. An Applicant may apply under both the CDFI Program and the NACA Program, but will not be selected for funding under both. A NACA Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the NMTC Program, but only to the extent that the activities approved for CDFI Program awards are different from those activities for which the Applicant receives a NMTC Program allocation; and (ii) an award through the BEA Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

E. *Matching Funds:* 1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the Fund's website for further information.

2. *Matching Funds Requirements Per Funding Round:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application

deadline under this NOFA. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *FY 2006 Funding Round:* A NACA Program Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2004 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 15, 2007 (with required documentation of such receipt received by the Fund not later than March 30, 2007), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007.

(b) *FY 2007 Funding Round:* A NACA Program Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2008 (with required documentation of such receipt received by the Fund not later than March 31, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2008.

3. *Matching Funds Terms Defined; Required Documentation.*

(a) ''*Matching funds in-hand*'' means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (i.e., grant, loan, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) ''*Firmly committed matching funds*'' means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 5 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions.* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/ or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report.

5. *Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita:* In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a ''major disaster area'' as declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a ''severe constraints waiver'' (see section 1805.203 of the Interim Rule) if (i) it can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a ''major disaster area'' as declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2005 (for the FY 2006 Funding Round) or January 1, 2006 (for the FY 2007 Funding Round) and on or before the application deadline. The Fund reserves

the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 50 percent of the required matching funds by March 15, 2007 (for the FY 2006 Funding Round) or March 14, 2008 (for the FY 2007 Funding Round) (with required documentation of such receipt received by the Fund not later than March 31, 2007 (for the FY 2006 Funding Round) or March 30, 2008 (for the FY 2007 Funding Round)), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than 50 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 15, 2007 (for the FY 2006 Funding Round) or March 14, 2008 (for the FY 2007 Funding Round). In the case of item (ii) of this paragraph, the NACA Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. *Form of Application Submission:* 1. Applicants must submit applications under this NOFA in paper form. Applications sent by facsimile or other form will not be accepted. The NACA Program application (including detailed application content requirements and electronic templates for application forms) may be found on the Fund's website: *http://www.cdfifund.gov.* The Fund will send paper application materials to any Applicant that is unable to download the form from the website. To have application materials sent to you, please contact the Fund by telephone at (202) 622–6355, by e-mail at *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 622–7754. These are not toll free numbers. Applicants should allow at least one week for the timely receipt of paper application materials in the mail.

2. Applications must be submitted in the format specified in the application instructions. An Applicant requesting only a TA grant must submit one original application and three (3) complete copies. An Applicant requesting a FA award must submit one original application and four (4) complete copies. Do not bind the original application or separate the sections with tabs. Each copy must be placed in a three-ring binder, without staples or other forms of binding, and each section must be separated by tabs.

B. *Application Content Requirements:* Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An application that does not include a valid EIN will be deemed incomplete. Incomplete applications will be rejected and returned to the sender. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as DUNS number or EIN information).

C. *MyCDFIFund Accounts:* All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

D. *Application Deadlines; Address for Paper Submissions; Late Delivery:* Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:*

(a) *FY 2006 Funding Round:* Applications must be received by the Fund at the address cited below and in accordance with the instructions provided on the Fund's website, by 5 p.m. ET on March 1, 2006.

(b) *FY 2007 Funding Round:* Applications must be received by the Fund at the address cited below and in accordance with the instructions provided on the Fund's website, by 5 p.m. ET on February 14, 2007.

2. *Address for Application Submission:* A complete application must be received at the following address, by the applicable deadline: CDFI Fund Grants Manager, NACA Program, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–6088 (this is not a toll free number). Any documents received in any other office, including the Fund's Washington, DC office, will be rejected and returned to the sender.

3. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected and returned to the sender. An application, including the required signed signature page, and all required paper attachments, must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

D. Intergovernmental Review: Not applicable.

E. Funding Restrictions: For allowable uses of FA proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. *Criteria:* The Fund will evaluate each application using numeric scores with respect to the following five sections:

1. *Market Analysis* (25 points): The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a ''major disaster'' by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a ''reception state'' by FEMA. The form and content of such special consideration will be further clarified in the NACA Program application.

2. *Business Strategy* (25 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is proposing to expand into a new Target Market.

3. *Community Development Performance and Effective Use* (20 points): The Fund will evaluate (i) the Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that (i) it has a record of success in serving said Investment Area(s) or Targeted Population(s) and (ii) it will expand its operations into a new Investment Area or to serve a new Targeted Population, offer more products or services, or increase the volume of its current business.

4. *Management* (20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. *Financial Health and Viability* (10 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds within the time table set forth above.

6. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the application, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified CDFI and that requests TA to address certification requirements, must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. *Review and Selection Process:* 1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application will be rejected as incomplete and returned to the sender. If an Applicant does not meet eligibility requirements, its application will be rejected and returned to the sender.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance and/or Native community development. As part of the review process, the Fund may contact the Applicant by telephone or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

3. *Application Scoring; Ranking:* (a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum total score in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in calendar year 2005 (for FY 2006 Funding Round Applicants) and calendar year 2006 (for FY 2007 Funding Round Applicants), in meeting its performance goals, financial soundness covenants (if applicable),

reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2004 and FY 2005 for FY 2006 Funding Round Applicants and FY 2005 and FY 2006 for FY 2007 Funding Round Applicants); (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2003, FY 2004 or FY 2005 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the NACA Program. All questions regarding outstanding reports or compliance should be directed to the Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 27, 2006 (for the FY 2006 Funding Round) and February 12, 2007 (for the FY 2007 Funding Round). The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on February 27, 2006 (for the FY 2006 Funding Round) and February 12, 2007 (for the FY 2007 Funding Round) until after the applicable funding application deadline.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, based on each Applicant's scores for all five criteria categories added together.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a ''3'' or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2006 (for the FY 2006 Funding Round) or September 30, 2007 (for the FY 2007 Funding Round) or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues may be offered a debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by e-mail or fax using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. *Notice of Award:* The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the

Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls in Calendar Year 2005 (for the FY 2006 Funding Round) or Calendar Year 2006 (for the FY 2007 Funding Round), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the applicable application deadline, may not apply for a new award through another NOFA for one CDFI or NACA Program funding round after the date of said deobligation.

B. *Assistance Agreement:* Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein;

and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. *Reporting:* 1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report (not required of Sponsoring Entities); (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving FA awards); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the NACA Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives a FA award must establish a separate bank account for the FA funds and provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for that separate bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 27, 2006 (for the FY 2006 Funding Round) and February 12, 2007 (for the FY 2007 Funding Round). The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's website at *http://www.cdfifund.gov.* The Fund will post on its website responses to questions of general applicability regarding the CDFI Program.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's website should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

C. *Grants Management Support:* If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Compliance and Monitoring Support:* If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov.* Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's website (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's website should not be relied upon for purposes of this NOFA).

F. *Communication with the CDFI Fund:* The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

VIII. Information Sessions and Outreach

In connection with the Fiscal Year 2006 and FY 2007 Funding Round, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying

to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: December 15, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. E5–7630 Filed 12–20–05; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, ''Release of Non-Public Information—12 CFR 4, Subpart C.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit written comments by January 20, 2006.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0200, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0200, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Release of Non-Public Information—12 CFR 4, Subpart C.

OMB Number: 1557–0200.

Form Number: None.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information collection is required to protect non-public OCC information from unnecessary disclosure in order to ensure that national banks and the OCC engage in a candid dialogue during the bank examination process. Individuals who request non-public OCC information are required to provide the OCC with information regarding the requester's legal grounds for the request. Inappropriate release of information would inhibit open consultation between a bank and the OCC.

On October 13, 2005, the OCC published in the **Federal Register** (70 FR 59804) a notice concerning the renewal of this information collection. The OCC received no public comments and is now submitting its request to OMB for approval.

The information requirements in 12 CFR part 4, subpart C, are located as follows:

12 CFR 4.33: Request for non-public OCC records or testimony.

12 CFR 4.35(b)(3): Third parties requesting testimony.

12 CFR 4.36(a)(2): OCC former employee notifying OCC of subpoena.

12 CFR 4.37(a) and (b): Agreement to limit dissemination of released information.

12 CFR 4.38(d): Request for authenticated records or certificate of nonexistence of records.

The OCC uses the information to process requests for non-public OCC information and to determine if sufficient grounds exist for the OCC to release the requested information or provide testimony. This information collection makes the mechanism for processing requests more efficient and facilitates and expedites the OCC's release of non-public information and testimony to the requester.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Number of Respondents: 110.

Total Annual Responses: 170.

Frequency of Response: On occasion.

Total Annual Burden: 467 hours.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 14, 2005.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E5–7580 Filed 12–20–05; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register

Vol. 70, No. 244

Wednesday, December 21, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Notice of Submission for OMB Review; Final Comment Request

Correction

In notice document 05–23359 beginning on page 71294 in the issue of Monday, November 28, 2005 make the following corrections:

1. On page 71295, in the third column, in the first paragraph, in the next to last line ''curse'' should read ''course''.

2. On page 71296, in second column, in the first paragraph, in the third line ''with. ''Two'' should read ''with ''Two''.

3. On the same page, in the same column, in the first full paragraph, in the next to last line ''200 Census Data'' should read ''2000 Census Data''.

4. On the same page, in the third column, in the first full paragraph, eight lines from the bottom ''EEO-O1 data'' should read ''EEO-1 data''.

5. On page 71299, in the first column, in the second full paragraph, 14 lines from the bottom ''with'' should read ''within''.

6. On page 71300, in the first column, in the first paragraph, in the 10th line ''us'' should read ''use''.

7. On page 71301, in the first column, in the first full paragraph, in the first line ''on-time'' should read ''one-time''.

8. On page 71302, in the third column, in the first full paragraph, in the eighth line ''directors of others'' should read ''directors or others''.

9. On the same page, in the same column, in the same paragraph, in the 11th line ''executive'' should read ''executives''.

10. On page 71303, in the second column, in the first full paragraph, in the second line ''lobes'' should read ''jobs''.

11. On the same page, in the same column, in the second full paragraph, in the fifth line ''factor-related'' should read ''factory-related''.

[FR Doc. C5–23359 Filed 12–20–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

Correction

In notice document 05–24108 appearing on page 74867 in the issue of December 16, 2005, make the following correction:

In the third column, in the first paragraph, in the ninth line, ''9:30 a.m.'' should read ''8:30 a.m.''.

[FR Doc. C5–24108 Filed 12–20–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 21, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2005–0155; FRL–8008–4]

RIN 2060–AK18

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revised standards to limit emissions of perchloroethylene (PCE) from existing and new dry cleaning facilities. In 1993, EPA promulgated technology-based emission standards to control emissions of PCE from dry cleaning facilities. As required by section 112(d)(6) of the Clean Air Act (CAA), EPA has reviewed the standards and is proposing revisions to take into account new developments in production practices, processes, and control technologies. In addition, pursuant to CAA section 112(f), EPA has evaluated the remaining risk to public health and the environment following implementation of the technology-based rule and is proposing more stringent standards in order to protect public health with an ample margin of safety. The proposed standards are expected to provide further reductions of PCE beyond the 1993 national emission standards for hazardous air pollutants (NESHAP), based on application of equipment and work practice standards.

DATES: *Comments.* Comments must be received on or before February 6, 2006.

Public Hearing. A public hearing is currently scheduled for January 5, 2006. If this date falls on a weekend, the hearing will be held the next business day. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before January 20, 2006.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2005–0155, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, will be replaced by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov.* When that occurs, you will be redirected to that site to access the docket and submit comments. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2005–0155.
- *Fax:* (202) 566–1741, Attention Docket ID No. OAR–2005–0155.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR 2005–0155, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* In person or by courier, deliver your comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2005–0155, 1301 Constitution Avenue, NW., EPA West Building, Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. OAR–2005–0155. 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. Send or deliver information identified as CBI to only the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. OAR 2005–0155, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. 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* or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. OAR 2005–0155, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Public Hearing: If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's campus at 109 T.W. Alexander Drive, Research Triangle Park, NC, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division, EPA (C539–03), Research Triangle Park, NC 27711, telephone (919) 541–7946, at least 2 days in advance of the hearing. If no one contacts Ms. Eck in advance of the hearing with a request to present oral testimony at the hearing, we will cancel the hearing.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed rule, contact Ms. Rhea Jones, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Coatings and Consumer Products Group (C539–03), Research Triangle Park, NC 27711;

telephone number (919) 541–2940; fax number (919) 541–5689; e-mail address: *jones.rhea@epa.gov.* For questions on the residual risk analysis, contact Mr. Neal Fann, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Risk and Exposure Assessment Group (C404–01), Research Triangle Park, NC 27711; telephone number (919) 541–0209; fax number (919) 541–0840; e-mail address: *fann.neal@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by the proposed rule are industrial and commercial PCE dry cleaners. The proposed rule affects the following categories of sources:

Category	NAICS [1] code	Examples of potentially regulated entities
Coin-operated Laundries and Dry Cleaners	812310	Dry-to-dry machines, Transfer machines.
Dry Cleaning and Laundry Services (except coin-operated)	812320	Dry-to-dry machines, Transfer machines.
Industrial Launderers	812332	Dry-to-dry machines, Transfer machines.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. To determine whether your facility is regulated by the proposed rule, you should examine the applicability criteria in 40 CFR 63.320 of subpart M (1993 Dry Cleaning NESHAP). If you have any questions regarding the applicability of the proposed rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit information which you claim to be CBI 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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult either of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW. Following the Administrator's signature, a copy of the proposed rule will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the statutory authority for regulating hazardous air pollutants (HAP)?
B. What are PCE dry cleaning facilities?
C. What are the health effects of PCE?
D. What does the 1993 NESHAP require?
II. Summary of Proposed Rule
A. What are the proposed requirements for major sources?
B. What are the proposed requirements for area sources?
C. What are the proposed requirements for transfer machines at major and area sources?
III. Rationale for the Proposed Rule
A. What is our approach for developing residual risk standards?
B. How did we estimate residual risk?
C. What are the residual risks from major sources?
D. What are the options for reducing risk, their costs, and risk reduction impacts for major sources?
E. What is our proposed decision on acceptable risk and ample margin of safety for major sources?
F. What are the risks from typical area sources?
G. What are the options for reducing risk, their costs, and risk reduction impacts for typical area sources?
H. What is our proposal for addressing the remaining emissions for typical area sources?
I. What are the risks from co-residential area sources?
J. What is our proposed decision on co-residential area sources?
K. What determination is EPA proposing pursuant to review of the 1993 Dry Cleaning NESHAP under CAA section 112(d)(6)?
L. What additional changes are we making to the 1993 Dry Cleaning NESHAP?
IV. Solicitation of Public Comments
A. Additional Requirements for Highest Risk Facilities
B. Requirement for PCE Sensor and Lockout as New Source MACT for Major Sources
C. Alternative Performance-based Standard for Existing Major Sources
D. Environmental Impacts of PCE Emissions
E. Additional Time for Complying with Provisions for Transfer Machines
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Background

A. What is the statutory authority for regulating hazardous air pollutants (HAP)?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, section 112(d) calls for us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as major sources), as well as for certain area sources emitting less than those amounts. These technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

For area sources, CAA section 112(d)(5) provides that the standards may reflect generally available control technology or management practices in lieu of MACT, and are commonly

referred to as generally available control technology (GACT) standards. We published MACT and GACT standards for PCE dry cleaning facilities on September 22, 1993 at 58 FR 49376. The EPA is then required, pursuant to section 112(d)(6), to review these technology-based standards and to revise them ''as necessary, taking into account developments in practices, processes and control technologies,'' no less frequently than every 8 years.

The second stage in standard-setting is described in section 112(f) of the CAA. This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report (Residual Risk Report to Congress, EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, thereby triggering the second stage of the standard-setting process, the residual risk phase.

Section 112(f)(2) of the CAA requires us to determine for each section 112(d) source category whether the MACT standards protect public health with an ample margin of safety. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1-million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to protect public health with an ample margin of safety. The EPA must also adopt more stringent standards if required to prevent an adverse environmental effect (defined in section 112(a)(7) as ''any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *.''), but must consider cost, energy, safety, and other relevant factors in doing so.

B. What are PCE dry cleaning facilities?

Dry cleaners use PCE in a dry cleaning machine to clean all types of garments, including clothes, gloves, leather garments, blankets, and absorbent materials. There are approximately 28,000 PCE dry cleaning facilities in the United States. Of the 28,000 dry cleaners, 15 of the facilities are major sources and the remaining are area sources. Major source PCE dry cleaners are those that emit 10 tons or more of PCE per year upon the compliance date of the 1993 Dry Cleaning NESHAP. The 1993 Dry Cleaning NESHAP defines this as facilities that purchase more than 2,100 gallons (gal) of PCE per year (1,800 gal per year if the facility uses transfer machines). Area sources are typically the common neighborhood dry cleaner. Area sources were divided into large or small in the 1993 Dry Cleaning NESHAP, with large area sources defined as those facilities that use between 140 to 2,100 gal of PCE per year (or 140 to 1,800 gal per year if the facility uses transfer machines). Small area sources use less than 140 gal per year. Some area sources are collocated in the same building with residences. In the 1993 Dry Cleaning NESHAP we did not specifically discuss these sources, but in this notice we refer to them as co-residential dry cleaners. A co-residential dry cleaning facility is located in a building in which people reside. Co-residential facilities are located primarily in urban areas.

In general, PCE dry cleaning facilities can be classified into three types: commercial, industrial, and leather. Commercial facilities typically clean household items such as suits, dresses, coats, pants, comforters, curtains, and formalwear. Industrial dry cleaners clean heavily-stained articles such as work gloves, uniforms, mechanics' overalls, mops, and shop rags. Leather cleaners mostly clean household leather products like jackets and other leather clothing. The 15 major sources include eight industrial facilities, five commercial facilities, and two leather facilities. The five commercial facilities are each the central plant for a chain of retail storefronts. We do not expect any new source facilities constructed in the future to be major sources. Based on the low emission rates of current PCE dry cleaning machines and the typical business models used in the industrial and commercial dry cleaning sectors, it is unlikely that any new sources that are constructed will emit PCE at major levels, or that any existing area sources will become major sources due to business growth.

Dry cleaning machines can be classified into two types: Transfer and dry-to-dry. Similar to residential washing machines and dryers, transfer machines have a unit for washing/extracting and another unit for drying. Following the wash cycle, PCE-laden articles are manually transferred from the washer/extractor to the dryer. The transfer of wet fabrics is the predominant source of PCE emissions in these systems. Dry-to-dry machines wash, extract, and dry the articles in the same drum in a single machine, so the articles enter and exit the machine dry. Because the transfer step is eliminated, dry-to-dry machines have much lower emissions than transfer machines.

New transfer machines are effectively prohibited at major and area sources due to the 1993 Dry Cleaning NESHAP requirement that new dry cleaning systems eliminate any emissions of PCE while transferring articles from the washer to the dryer. Therefore, transfer machines are no longer sold. Existing transfer machines are becoming an increasingly smaller segment of the dry cleaning population as these machines reach the end of their useful lives and are replaced by dry-to-dry machines. There are approximately 200 transfer machines currently being used, all at area sources.

The primary sources of PCE emissions from dry-to-dry machines are the drying cycle and fugitive emissions from the dry cleaning equipment (including equipment used to recycle PCE and dispose of PCE-laden waste). Machines are designed to be either vented or non-vented during the drying cycle. Approximately 200 dry cleaners (1 percent) use vented machines, and the remaining facilities use the lower-polluting, non-vented machines. (The 1993 Dry Cleaning NESHAP prohibits new dry cleaning machines at major and area sources that vent to the atmosphere while the dry cleaning drum is rotating.) In vented machines, the majority of emissions from the drying cycle are vented outside the building. In non-vented machines, dryer emissions are released when the door is opened to remove garments. Currently, the largest sources of emissions from dry cleaning are from equipment leaks, which come from leaking valves and seals, and the loading and unloading of garments.

C. What are the health effects of PCE?

The main health effects of PCE are neurological, liver, and kidney damage following acute (short-term) and chronic (long-term) inhalation exposure. Animal studies have reported an increased incidence of liver cancer in mice via inhalation, kidney cancer and mononuclear cell leukemia in rats. PCE was considered to be a ''probable carcinogen'' (Group B) when assessed under the previous 1986 Guidelines by the EPA Science Advisory Board. See the risk characterization memorandum in the public docket for additional information regarding the health effects of PCE.

D. What does the 1993 NESHAP require?

The 1993 NESHAP prescribes a combination of equipment, work practices, and operational requirements. The requirements for process controls are summarized in table 1 of this preamble. The 1993 Dry Cleaning NESHAP defines major and area sources based on the annual PCE purchases for all machines at a facility. The consumption criterion (which affects the amount of PCE purchased) varies depending on whether the facility has dry-to-dry machines only, transfer machines only, or a combination of both. The affected source is each individual dry cleaning system.

TABLE 1.—SUMMARY OF THE 1993 DRY CLEANING NESHAP PROCESS CONTROLS

Sources	Annual PCE purchased	New [1] (after 12/9/91)	Existing [2]
Major Sources	Dry-to-dry ONLY > 2,100 gal/yr Transfer ONLY > 1,800 gal/yr Dry-to-dry AND Transfer > 1,800 gal/yr.	Dry-to-dry machines with a refrigerated condenser, AND carbon adsorber operated immediately before or as the door is opened.	Dry-to-dry machines: must have refrigerated AND condenser.[3] Transfer machines: must be enclosed in a room exhausting to a dedicated carbon adsorber.
Large Area Sources	Dry-to-dry ONLY 140 to 2,100 gal/yr. Transfer ONLY 200 to 1,800 gal/yr. Dry-to-dry AND Transfer 140 to 1,800 gal/yr.	Dry-to-dry machines with a refrigerated condenser.	Dry-to-dry with machines: must have a refrigerated condenser.[3] Transfer machines: No controls required.
Small Area Sources	Dry-to-dry ONLY < 140 gal/yr Transfer ONLY < 200 gal/yr Dry-to-dry AND Transfer < 140 gal/yr.	Same as large area sources	No controls required.

[1] No new transfer machines are allowed after 9/23/93.
[2] Compliance date = 9/23/96.
[3] Alternatively, carbon adsorber is allowed only if installed before 9/22/93.

In addition, all sources must comply with certain operating requirements, including recording PCE purchases, storing PCE and PCE-containing waste in non-leaking containers, and inspecting for perceptible leaks. Owners or operators are required to operate and maintain the control equipment according to procedures specified in the 1993 Dry Cleaning NESHAP and to use pollution prevention procedures, such as good operation and maintenance, for both dry cleaning machines and auxiliary equipment (such as filter, muck cookers, stills, and solvent tanks) to prevent liquid and vapor leaks of PCE from these sources.

II. Summary of Proposed Rule

A. What are the proposed requirements for major sources?

Under the proposed revisions, the requirements for all new and existing major sources would be the same. The proposed revisions would require the implementation of an enhanced leak detection and repair (LDAR) program and the use of dry-to-dry machines that do not vent to the atmosphere (closed-loop) during any phase of the dry cleaning cycle. A refrigerated condenser and a secondary carbon adsorber would be required control equipment for all machines. The secondary carbon adsorber would control the PCE emissions during the final stage of the dry cleaning cycle immediately before and as the drum door is opened. Under the enhanced LDAR program, the facility owner or operator would have to use a PCE gas analyzer (photoionization detector, flameionization detector, or infrared analyzer) and perform leak checks according to EPA Method 21 on a monthly basis. The facility owner or operator would also be required to continue the weekly perceptible leak check according to the requirements of the 1993 Dry Cleaning NESHAP.

B. What are the proposed requirements for area sources?

For existing area sources (large and small), the proposed revisions would require implementation of an enhanced LDAR program and a prohibition on the use of existing transfer machines.

For new area sources (large and small), the proposed rule would require implementation of an enhanced LDAR program and use of a non-vented dry-to-dry machine with a refrigerated condenser and secondary carbon adsorber. The enhanced LDAR program for area sources would require facilities to use a halogenated leak detector (instead of a more costly gas analyzer proposed for major sources) to perform leak checks on a monthly basis. The facility would also be required to continue to inspect for perceptible leaks biweekly for small area sources and weekly for large area sources according to the requirements of the 1993 Dry Cleaning NESHAP.

For co-residential area sources, we are proposing two options. The first proposed option would effectively prohibit new PCE sources from locating in residential buildings by requiring that owners or operators eliminate PCE emissions from the dry cleaning process. Existing co-residential sources, under this option, would only be subject to the same requirements proposed for all other existing area sources (*i.e.*, enhanced LDAR and elimination of transfer machines). The second proposed option would, instead of a prohibition on new co-residential sources, require that existing and new co-residential sources comply with standards based on those required by New York State Department of Environmental Conservation (NYSDEC) in their Title 6 NYCRR Part 232 rules, which include using machines equipped with refrigerated condensers and carbon adsorbers, enclosed in a vapor barrier to help prevent exposures to PCE emissions. We expect to select one of these options, with possible modifications in response to public comments, in the final rule.

C. What are the proposed requirements for transfer machines at major and area sources?

The proposed rule would effectively prohibit the use of all existing transfer machines 90 days from the effective date of the final rule by requiring owners or operators to eliminate any PCE emissions from clothing transfer between the washer and dryer. Similarly, the installation of new transfer machines was prohibited by the

1993 Dry Cleaning NESHAP. We estimate that about 200 transfer machines remain in use within the population of 28,000 dry cleaning machines located at area sources (estimated one PCE dry cleaning machine per facility with approximately 28,000 facilities). Most of these machines will be at or near the end of their useful economic life by the time final rule requirements are promulgated. The typical life of a dry cleaning machine is 10 to 15 years. By the end of 2006, the newest transfer machines in the industry will be 13 years old.

III. Rationale for the Proposed Rule

A. What is our approach for developing residual risk standards?

Following our initial determination that the individual most exposed to emissions from the category considered exceeds a 1-in-1 million individual cancer risk, our approach to developing residual risk standards is based on a two-step determination of acceptable risk and ample margin of safety. The first step, consideration of acceptable risk, is only a starting point for the analysis that determines the final standards. The second step determines an ample margin of safety, which is the level at which the standards are set.

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) refers positively to the interpretation of these terms in our 1989 rulemaking (54 FR 38044, September 14, 1989), ''National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP),'' essentially directing us to use the interpretation set out in that notice [1] or to utilize approaches affording at least the same level of protection.[2] We likewise notified Congress in the Residual Risk Report that we intended to utilize the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations.[3]

In the Benzene NESHAP (54 FR 38044, September 14, 1989), we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million; and (2) limiting to no higher than approximately 1 in 10 thousand [i.e., 100 in 1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

As explained more fully in our Residual Risk Report, these goals are not ''rigid line[s] of acceptability, but rather broad objectives to be weighed ''with a series of other health measures and factors.[4]''

B. How did we estimate residual risk?

The ''Residual Risk Report to Congress'' (EPA–453/R–99–001) provides the general framework for conducting risk assessments to support decisions made under the residual risk program. The report acknowledged that each risk assessment design would have some common elements, including a problem formulation phase, an analysis phase, and the risk characterization phase. The risk assessment for PCE dry cleaners used both site-specific data for many modeling parameters and population characteristics derived from census data, as well as default assumptions for exposure parameters—some of which were assumed to be health protective (*e.g.*, exposure frequency and exposure duration, 70-year constant emission rates).[5] [6] To estimate the cancer risk and non-cancer hazard for major source facilities, we performed refined modeling for a subset of major source facilities we determined were representative of all major sources, including industrial cleaners, commercial cleaners, and leather cleaners. Facilities within each of these three specializations tend to be homogenous with respect to factors that affect the emissions, pollutant dispersion, and population size in the modeling radius, allowing us to extrapolate risks from facilities modeled to those that were not modeled. We used a combination of modeling and monitoring approaches to analyze risks for area sources. See the risk characterization memorandum in the public docket for a complete discussion of the major and area source risk assessment.

1. How did we estimate the atmospheric dispersion of PCE emitted from major and area sources?

We used the Industrial Source Complex Short-term model, version 3 (ISCST–3) to estimate the dispersion of PCE from facilities to receptor locations. For a complete description of the dispersion modeling, please see the risk characterization memorandum.

2. How did we assess public health risk associated with PCE emitted from PCE dry cleaners?

PCE has been associated with a variety of health effects, including cancer. Although PCE has not yet been reassessed under the Agency's recently revised Guidelines for Cancer Risk Assessment,[7] it was considered to be a ''probable carcinogen'' (Group B) [8] when assessed under the previous 1986 Guidelines by the EPA Science Advisory Board. Since that time, the United States Department of Health and Human Services has concluded that PCE is ''reasonably anticipated to be a human carcinogen,[9]'' and the International Agency for Research on Cancer has concluded that PCE is ''probably carcinogenic to humans.[10]''

In our assessment of public health risk associated with PCE emitted from PCE dry cleaners, we considered risks of cancer and other health effects. Cancer risks associated with inhalation exposure were assessed using lifetime cancer risk estimates. The noncancer risks were characterized through the use of hazard quotient (HQ) and hazard index (HI) estimates. An HQ is calculated as the ratio of the exposure concentration of a pollutant to its health-based non-cancer threshold.

In this assessment, values that are below 1.0 are not likely to be associated with adverse health effects. An HI is the sum of HQ for pollutants that target the same organ or system. For dry cleaners, PCE is the only HAP emitted, therefore, HI and HQ are the same.

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[1] This reading is confirmed by the Legislative History to CAA section 112(f); see, e.g., ''A Legislative History of the Clean Air Act Amendments of 1990,'' vol. 1, page 877 (Senate Debate on Conference Report).

[2] Legislative History, vol. 1, p. 877, stating that: ''* * * the managers intend that the Administrator shall interpret this requirement [to establish standards reflecting an ample margin of safety] in a manner no less protective of the most exposed individual than the policy set forth in the Administrator's benzene regulations * * *.''

[3] Residual Risk Report to Congress. March 1999. EPA–453/R–99–001, page ES–11.

[4] *Id.*

[5] Additional details are provided in the risk characterization memorandum in the rulemaking docket.

[6] Residual Risk Report to Congress, pp. B–18 and B–22. The approach used to assess the risks associated with standards for the dry cleaning industry are consistent with the technical approach and policies described in the Report to Congress.

[7] USEPA. 2005. Guidelines for Carcinogen Risk Assessment. EPA/650/P–03/001B. Risk Assessment Forum, Washington, DC.

[8] March 9, 1988 letter to Lee Thomas, Administrator, U.S. Environmental Protection Agency, from Norton Nelson, Chair, Executive Committee of EPA Science Advisory Board.

[9] USDHHS. 1989. Report on Carcinogens, Fifth Edition; U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program.

[10] IARC. 1995. Monographs on the evaluation of carcinogenic risks to humans. Volume 63. Dry Cleaning, Some Chlorinated Solvents and Other Industrial Chemicals. ISBN 9283212630. Geneva, Switzerland.

Several sources were considered for cancer and noncancer dose-response assessment information. In a 1998 assessment of PCE cancer risks associated with dry cleaners, EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) derived and used a lifetime inhalation unit risk estimate (URE) of 7.1×10^{-7} per microgram per cubic meter (ug/m^3).[11] This reflected an update of the URE of 5.8×10^{-7} per ug/m^3 that was derived by EPA in the 1980s.[12] The PCE cancer dose-response assessments developed by others include a lifetime URE of 5.9×10^{-6} per ug/m^3 developed by the California Environmental Protection Agency (CalEPA),[13] and a lifetime URE of 3.8×10^{-7} per ug/m^3 developed by Clewell and others.[14]

We are currently reevaluating the available information on health effects of PCE, including cancer, as part of a hazard and dose-response assessment for the Agency's Integrated Risk Information System (IRIS). The cancer component of this evaluation is being conducted in accordance with the 2005 Guidelines for Carcinogen Risk Assessment. Data have become available from the Japanese Industrial Safety Association (1993) that includes rodent inhalation studies with a cancer bio-assay which was not considered by the sources above.[15] The document describing the evaluation is expected to be released for external scientific peer review and public comment. The projected schedule for completion of the IRIS assessment is available at *http://cfpub.epa.gov/iristrac/index.cfm*.

While all of the available lifetime URE are based on the same animal bioassay[16] (1986), there are several factors contributing to the differences in magnitude among them. One significant contributing factor is characterization of human metabolism of PCE. This is an area in which widely diverging quantitative estimates have been published, and their use leads to notable differences in human cancer dose-response value derived from animal data, illustrated to some extent by the range of values presented above.

As an interim approach in lieu of the completed IRIS assessment, we used two dose-response values to characterize cancer risk. These two values were chosen to represent the best available peer-reviewed science. As we have stated previously, we will not be relying exclusively on IRIS values, but will be considering all credible and readily available assessments.[17] We used the CalEPA URE (5.9×10^{-6} per ug/m^3) and the estimate developed by OPPTS (7.1×10^{-7} per ug/m^3). Both are derived with consideration of findings of liver tumors in mouse laboratory bioassays, with the OPPTS value additionally considering laboratory findings of mononuclear cell leukemia in rats, and both have received public comment and scientific peer review by external panels. Dose-response modeling performed in both assessments involved use of metabolized doses with different estimates of human PCE metabolism contributing to differences in the resulting URE.

Effects other than cancer associated with long-term inhalation of PCE in worker or animal studies include neurotoxicity, liver and kidney damage, and, at higher levels, developmental effects. To characterize noncancer hazard in lieu of the completed IRIS assessment, we used the Agency for Toxic Substances and Disease Registry's (ATSDR) Minimum Risk Level (MRL) (270 ug/m^3.[18] This value is based on a study of neurological effects in workers in dry cleaning shops, and is derived in a manner similar to EPA's method for derivation of reference concentrations (Rfc), and with scientific and public review. The ATSDR MRL is quite similar to the provisional RfC (170 ug/m^3) derived by OPPTS in 1997 based on a study of kidney effects in workers in dry cleaning shops[19] that reported effects at similar exposure concentrations than those elsewhere reported associated with neurological effects. The OPPTS value was termed a provisional RfC because it was derived by a single EPA program office with limited cross-office review. This value is based on a study of neurological effects in workers in dry cleaning shops. Since that time, more recent studies have been published, particularly with regard to more sensitive neurological effects at lower exposures.[20] We are reviewing these and all of the available information on the noncancer health effects of PCE as part of the IRIS assessment.

The proposed rule is based on both the risk estimates derived using both the CalEPA cancer dose-response values and the ATSDR noncancer MRL. The CalEPA cancer dose-response value is higher than the value derived by OPPTS, leading to higher cancer risk estimates. Given our uncertainty regarding the pending IRIS dose-response values, we have considered the range of available potencies with which to calculate inhalation cancer risk. We calculate cancer risk using both values, but propose to use the CalEPA value. We request comment on both this approach of using the more health protective end of the dose-response range and our selection of dose-response values. Based on the findings and status of the IRIS assessment at the time of promulgation, we may reassess our estimates of cancer risk and noncancer hazard. The Agency is aware that some stakeholders have suggested that we defer certain action pending completion of the IRIS assessment for PCE. In today's notice, we request comment on our proposal to use the available CalEPA and OPPTS potency values, and we request comments on whether we should defer further development of the risk assessment and any rulemakings under section 112(f)(2) for area sources pending completion of the IRIS assessment for PCE.

[11] USEPA. 1998. Cleaner Technologies Substitutes Assessment: Professional Fabricare Processes. EPA 744–B–98–001. U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Washington, DC.

[12] USEPA. 1996. Addendum to the Health Assessment Document for Tetrachloroethylene (Perchloroethylene), Updated Carcinogenicity Assessment for Tetrachloroethylene (Perchloroethylene, PERC, PCE). EPA/600/8–82/005FA. External Review Draft. U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Washington, DC.

[13] CDHS. 1991. Health Effects of Tetrachloroethylene (PCE). California Department of Health Services (subsequently CalEPA, Office of Environmental Health Hazard Assessment), Berkeley, CA.

[14] H.J. Clewell, P.R. Gentry, J.E. Kester, and M.E. Andersen. 2005. Evaluation of physiologically based pharmacokinetic perchloroethylene.

[15] JISA (Japan Industrial Safety Association). 1993. Carcinogenicity Study of Tetrachloroethylene by Inhalation in Rats and Mice. Data No. 3–1. Available from: EPA–IRIS Information Desk.

[16] NTP. 1986. NTP technical report on the toxicology and carcinogenesis of tetrachloroethylene (perchloroethylene) (CAS No. 127–18–4) in F344/N rats and B6C3F1 mice (inhalation studies). National Toxicology Program, Research Triangle Park, NC. NTP TR 311, NIH Publication No. 86–2567. August 1986.

[17] USEPA. March 1999. Residual Risk Report to Congress. Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. EPA–453/R–99–001; available at *http://www.epa.gov/ttn/oarpg/t3/meta/m8690.html*.

[18] ATSDR. 1997. Toxicological Profile for Tetrachloroethylene. Department of Health and Human Services, Public Health Services, Agnecy for Toxic Substances and Disease Registry, Atlanta, Georgia.

[19] V. Vu. 1997. Memorandum titled ''Provisional RfC for perchloroethylene'' From Vanessa Vu, Acting Director, Health and Environmental Review Division, to William Waugh, Acting Directory, Chemical Screening and Risk Assessment Division, OPPT, USEPA. As cited in OPPTS 1998. Cleaner Technologies Substitutes Assessment: Professional Fabricare Processes. EPA–744–B–98–001. USEPA, Office of Pollution Prevention and Toxics, Washington, DC.

[20] USEPA. 2004. Summary report of the peer review workshop on the neurotoxicity of tetrachloroethylene (perchloroethylene) discussion paper. National Center for Environmental Assessment, Washington, DC; EPA–600–R–04–041. Available online at *http://www.epa.gov/ncea*.

3. *How did we assess environmental impacts of major sources and typical area sources?*

The chemical properties of PCE suggest that once it is emitted into the atmosphere as a vapor, it is not likely to partition significantly into soil, water, or sediment. Based on fugacity modeling, we estimate that 99.8 percent of ambient PCE remains in the atmosphere, with the remainder partitioning into water (0.17 percent), and soil (0.05 percent). Thus, PCE emitted from major stationary sources is not likely to pose a significant ecological risk due to any exposure pathway other than inhalation.

Further, to assess the potential inhalation risk to mammals from PCE inhalation, we compared the minimum lowest observable adverse effect level (LOAEL) for rats with the highest level of modeled ambient concentration from PCE cleaners; the rat LOAEL for PCE can be found in the ATSDR toxicological profile that documents the development of the MRL (*http://www.atsdr.cdc.gov/toxprofiles/tp18.html*). The lowest rat LOAEL (9 parts per million (ppm), or 60 mg/m^3) is about 2,000 times higher than the highest modeled post-control ambient concentrations from major stationary sources.

This large margin of exposure leads us to conclude that risks to mammals from PCE inhalation are likely insignificant, obviating the need to further quantify ecological risks to any degree.

In the atmosphere, PCE is known to degrade into many compounds, including trichloroacetic acid (TCAA). TCAA is a persistent, known phytotoxin, which has been discontinued as a herbicide. Atmospheric transformation of PCE to TCAA is the subject of great debate, with potential conversion efficiencies estimated to be on the order of 5 to 15 percent. However, there are very few data quantifying TCAA concentrations in the air, precipitation, water, soil, or sediment in the United States. This scarcity of data makes it difficult to determine whether there is any potential for adverse ecological impacts on plant life from PCE emissions from dry cleaners due to conversion to TCAA. While we have no direct evidence that this will present a significant ecological risk, we nonetheless invite public comment and solicit additional scientific information on this issue. Since our results showed no screening level ecological effects, we do not believe that there is any potential for an effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.14(a). Because of these results, we concluded a consultation with the Fish and Wildlife Service is not necessary.

C. What are the residual risks from major sources?

Table 2 of this preamble summarizes the estimated risks remaining for the seven modeled major source facilities after compliance with MACT. In performing residual risk assessments under the CAA section 112(f)(2), EPA believes it may evaluate potential risk based on consideration of both emission levels allowed under the MACT standard and actual emissions levels achieved in compliance with MACT. See, *e.g.*, 70 FR 19992, 19998 (April 15, 2005). Generally, allowable emissions are the maximum levels sources could emit and still comply with existing standards. It is also reasonable that we consider actual emissions when available, as a factor in both steps of the residual risk determination, to avoid unrealistic inflation of risk levels or where other factors suggest basing the evaluation solely on allowables is not appropriate. Essentially, the existing dry cleaning MACT standard is comprised of equipment standards and various work practices. Compliance with the existing MACT standard is demonstrated by use of the required equipment and implementation of the required work practices, and there are no numeric emissions levels to model. Therefore, the seven facilities were modeled using actual 2000–2002 emissions and are representative of the emissions from major sources. We conclude that the sampled facilities represent characteristics of the major source facility population, including commercial, industrial, and leather facilities. The risk analysis shows that each of the seven modeled facilities poses a cancer risk of 1-in-1 million or greater. The highest maximum individual cancer risk (MIR) is between 300-in-1 million and 2,400-in-1 million. The MIR is the lifetime risk of developing cancer for the individual facing the highest estimated exposure over a 70-year lifetime. Five of the modeled facilities pose a risk greater than 100-in-1 million (the presumptive unacceptable risk level), and about 550 people are exposed at this level. One facility has a HQ of greater than 1.0. As described below in section III.E, we expect a continuing decline in PCE emissions even in the absence of additional Federal regulation. These baseline risk estimates do not reflect such a trend, therefore; baseline risks are likely to be overestimated.

TABLE 2.—MAJOR SOURCE BASELINE RISK ESTIMATES FOR MODELED FACILITIES AFTER APPLICATION OF 1993 DRY CLEANING NESHAP, BASED ON 70-YEAR EXPOSURE DURATION [1]

Parameter	MACT level (OPPTS URE)	MACT level (CalEPA URE)
MIR from facility with highest risk	300-in-1 million	2,400-in-1 million.
Maximum HQ from facility with highest risk based on ATSDR MRL	2	2.
Population at risk across all modeled facilities [modeled to 10 kilometers (km)]:		
> 1-in-1 million	16,000	175,000.
> 10-in-1 million	800	12,500.
> 100-in-1 million	10	550.
Total population exposed	3,300,000	3,300,000.

[1] In this table, all risk and population estimates are rounded.

To account for the fact that individuals may move through areas (microenvironments) of differing concentrations during their daily activities, EPA conducted an exposure variability analysis in which it used the Total Risk Integration Methodology Exposure model (TRIM.Expo, also known as the Air Pollutant Exposure Model 3, or APEX3). The TRIM.Expo model uses a personal profile approach in which it stochastically simulates exposures for individuals of differing demographic characteristics and associated daily activity patterns. The model output provides a distribution of exposure estimates which are intended to be representative of the study population with respect to their demographically based behavior, in terms of the microenvironments through

which they move during a day and throughout a year (see *http://www.epa.gov/ttn/fera* for more information regarding the model). To estimate cancer risk, EPA assumes that this 1-year exposure scenario continues for 70 years. Table 3 contrasts ISCST–3 and TRIM.Expo estimates of population risk for the worst-case facility, using the CalEPA URE; this example is illustrative only.[21]

TABLE 3.—COMPARISON OF ISCST–3 EXPOSURE ESTIMATES WITH ACTIVITY-PATTERNED/DAY, LIFETIME EXPOSURE

[ISCST–3+Trim.Expo]

Model	Total population at cancer risk		
	>100-in-1 million	>10-in-1 million	>1-in-1 million
ISCST–3	900	14,000	75,000
TRIM.Expo	400	9,000	80,000

TRIM.Expo provides a more central tendency estimate of risk by accounting for variability in personal exposure. The table above shows a smaller number of individuals exposed at the higher levels of cancer risk and a slightly larger number of individuals exposed at a cancer risk of at least 1-in-1 million. While we performed this analysis for the worst-case facility, it is reasonable to infer that the risk distribution above would be similar to the remainder of the major source facilities. One limitation of this analysis is that we assume continuous 70-year exposure when calculating cancer risk, and some individuals are likely to move away from the facility. However, given the large number of area source dry cleaners nation wide, and the consequent ubiquity of PCE exposure, it is unlikely that the PCE exposure of individuals moving out of the TRIM.Expo study area would fall to zero.

For illustrative purposes, below we provide estimates of individual inhalation cancer risk based on different assumptions regarding exposure duration. In contrast to the TRIM.Expo estimates above, the risk estimates below do not account for personal activity patterns and assume that individuals receive continuous exposure for the duration noted.

TABLE 4.—ESTIMATES OF INDIVIDUAL INHALATION CANCER RISK BASED ON DIFFERENT EXPOSURE DURATIONS

Estimated lifetime cancer risk	Assumed exposure duration [1]				
	70	50	30	20	10
Risk per Million (CalEPA)	2,400	1,700	1,030	700	340
Risk per Million (OPPTS)	300	210	130	90	40

[1] Risk estimates derived using maximum exposure concentration.

D. What are the options for reducing risk, their costs, and risk reduction impacts for major sources?

We evaluated several methods for reducing risks. These methods include enhanced LDAR and three emission control technologies.

Enhanced LDAR. Enhanced LDAR would require the facility owner or operator to use a portable PCE gas analyzer to perform leak checks on a monthly basis. Two major sources and several State and local agencies currently use a photoionization detector, one type of gas analyzer, for leak inspections. The detection probe is moved slowly along the equipment part, and if PCE is detected, the device gives a concentration reading of the leak. The proposed leak definition is a concentration of 25 ppm. Portable gas analyzers cost about $3,300 and have a 10-year life expectancy. The facility would be required to continue to perform the weekly perceptible leak checks as required by the 1993 Dry Cleaning NESHAP. A nominal amount of additional labor would be required as a result of the proposed requirement to use a gas analyzer. We estimated 1 hour of labor per machine per month to perform the leak inspection. The estimated total capital cost to the industry to establish an enhanced LDAR program is $40,000, with a annual cost savings of $390,000. The cost savings is due to reduced PCE consumption.

Control Technologies. Three types of emission control technologies can be used to reduce emissions from dry cleaning machines. The first two are a refrigerated condenser and a secondary carbon adsorber. The third technology is a PCE sensor and lockout. By using the first two control technologies together, and by operating them properly, a significant amount of PCE can be recovered.

Refrigerated condensers are the most effective method for reducing PCE from the drying cycle. They are used to condense PCE vapor for reuse. By operating at lower temperatures than water-cooled condensers, refrigerated condensers recover more PCE from the drying air and reduce emissions. By the end of the cool-down cycle, refrigerated condensers can reduce PCE concentrations in the drum to between 2,000 and 8,600 ppm. Refrigerated condensers require relatively little maintenance, needing only to have their refrigerant recharged and to have lint removed from the coils (yearly or even less frequently).

A secondary carbon adsorber controls the PCE emissions during the final stage of the dry cleaning cycle just prior to the drum door opening. A carbon adsorber removes organic compounds from air by adsorption onto a bed of activated carbon as the air passes over the bed. Carbon adsorbers have a PCE removal efficiency of 95 percent or greater. Properly designed and operated secondary adsorbers have been shown to reduce the PCE concentration in the drum from several thousand ppm to less

[21] Note that the ISCST–3 modeling results do not match earlier risk estimates due to the fact that EPA used an earlier set of ISCST–3 modeling results for the TRIM.Expo analysis. The original ISCST–3 results are retained here so that the comparison with TRIM.Expo will be consistent.

than 100 ppm, and in some cases, to less than 10 ppm. Most new dry cleaning machines sold today are equipped with secondary carbon adsorbers. Carbon adsorbers require periodic desorption to recover PCE and maintain their peak PCE collection efficiency.

The technologies currently in use by major and area source dry cleaners include vented dry-to-dry machines with water-cooled condensers and carbon adsorbers, non-vented (closed-loop) dry-to-dry machines with refrigerated condensers, non-vented dry-to-dry machines with refrigerated condensers and secondary carbon adsorbers and transfer machines. To meet a standard requiring a refrigerated condenser and secondary carbon adsorber, existing dry cleaning machines without this control could be retrofitted, or new replacement machines could be purchased depending on the remaining useful life of each existing machine. The costs to add control technologies range from $13,000 to $40,000 per machine, depending on the size of the existing machine and the level of control of the machine. Machine replacement costs are approximately $900 to $1,000 per pound of capacity. Additional analysis of costs can be found in the Background Information Document in the public docket.

A PCE sensor is the third control technology used in machines with a secondary carbon adsorber. The sensor controls the carbon adsorption cycle to achieve a set PCE concentration in the drum. This device uses a single-beam infrared photometer to measure the concentration of PCE in the drum, and prolongs the carbon adsorption cycle until the concentration set point is achieved. An interlock (lock-out) ensures that the PCE set-point has been attained before the machine door can be opened.

Regulatory Options. We considered three options for reducing risk from major source dry cleaners. Option I would require all major sources to use an enhanced LDAR program and have dry-to-dry machines with a refrigerated condenser and a secondary carbon adsorber. Option II would require a PCE sensor and lock-out in addition to the Option I controls. Option III would require no PCE emissions from major sources (a ban on the use of PCE).

Table 5 of this preamble shows the costs and risk estimates for each regulatory option. The population risk estimates were extrapolated from the seven modeled facilities to all 15 major source facilities. The cost estimates are also for all 15 major source facilities.

TABLE 5.—RISK ESTIMATES AND COSTS OF CONTROL OPTIONS FOR MAJOR SOURCES BASED ON 70-YEAR EXPOSURE DURATION [1]

Parameter	MACT level	Option I	Option II	Option III
MIR from facility with highest risk (CalEPA URE).	2,400-in-1 million	270-in-1 million	150-in-1 million	NA.[2]
MIR from facility with highest risk (OPPTS URE).	300-in-1 million	30-in-1 million	20-in-1 million	NA.
Maximum HQ from facility with highest risk	2	0.2	0.1	NA.
Population at Risk Across All Facilities [3] (Population Risk Range Represents Difference Between OPPTS and CalEPA URE)				
> 1-in-1 million	35,000 to 375,000	2,000 to 55,000	1,000 to 26,000	NA.
> 10-in-1 million	2,000 to 27,000	20 to 1,800	10 to 900	NA.
> 100-in-1 million	10 to 1,200	0 to 13	0 to 6	NA.
Total population exposed (within 10 km)		9,300,000		NA.
Capital Cost ($1000)		830	5,700	8,200.
Annualized Cost ($1000)		(220)	420	Not Estimated.
Emission Reduction (tons per year (tpy))		209	249 (40 incremental)	293 (44 incremental).

[1] In this table, risk estimates are based on both OPPTS and the CalEPA URE. All risk and population estimates are rounded.
[2] NA = not applicable. Under Option III, risk from PCE would be eliminated, however, potential risks from alternative solvents were not analyzed.
[3] Modeled to 10 km.

E. What is our proposed decision on acceptable risk and ample margin of safety for major sources?

Section 112(f)(2)(A) of the CAA states that if the MACT standards for a source emitting a:

> * * * known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category * * * to less than one in one million, the Administrator shall promulgate [residual risk] standards * * * for such source category.

The residual risk to the individual most exposed to emissions from PCE dry cleaners is estimated at 1-in-1 million or greater at each major source dry cleaner modeled. Major source dry cleaners subject to the proposed rule emit a possible to probable human carcinogen, and, as shown in table 3 of this preamble, we estimate that the MIR associated with the 1993 Dry Cleaning NESHAP limits is between 300-in-1 million and 2,400-in-1 million. Therefore, we believe a residual risk standard is necessary.

In the 1989 Benzene NESHAP, the first step of the residual risk decision framework is the determination of acceptable risk (*i.e.,* are the estimated risks due to emissions from these facilities ''acceptable''). This determination is based on health considerations only, without consideration of costs. The determination of what represents an ''acceptable'' risk level is based on a judgment of ''what risks are acceptable in the world in which we live'' (54 FR 38045, 1987, quoting the Vinyl Chloride decision at DC Circuit Courts Decision in *NRDC* vs. *EPA,* 824 F.2d at 1165) recognizing that our world is not risk-free.

In the 1989 Benzene NESHAP, we stated that a MIR of approximately 100-in-1 million should ordinarily be the upper end of the range of acceptable risks associated with an individual source of pollution. We characterized the MIR as ''the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' We acknowledge that

the MIR ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper bound that is unlikely to be exceeded.''

Understanding that there are both benefits and limitations to using MIR as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' Consequently, the presumptive risk level of 100-in-1 million provides a benchmark for judging the acceptability of MIR, but does not constitute a rigid line for making that determination. In establishing a presumption for the acceptability of maximum risk, rather than a rigid line for acceptability, we explained in the 1989 Benzene NESHAP that risk levels should also be weighed with a series of other health measures and factors, including the following:

- The numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km (about 30 miles) exposure radius around facilities.
- The science policy assumptions and estimation uncertainties associated with the risk measures.
- Weight of the scientific evidence for human health effects.
- Other quantified or unquantified health effects.
- The overall incidence of cancer or other serious health effects within the exposed population.

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by MIR alone.

Based on use of the criteria identified above, we judge the level of risk resulting from regulatory option I to be acceptable for this source category (table 3 of this preamble). This option requires dry cleaning machines at all major sources to have an enhanced LDAR program and closed-loop, dry-to-dry machines with refrigerated condensers and secondary carbon adsorbers. The calculated MIR is between 30-in-1 million and 270-in-1 million. While the upper-end of this risk range is greater than the presumptively acceptable level of MIR under the 1989 Benzene NESHAP formulation (100-in-1 million), we also considered other factors in making our determination of acceptability, as directed by the 1989 Benzene NESHAP. The principal factors that influenced our decision were that nearly all of the population living within 10 km of each facility receive cancer risk at less than 1-in-1 million. Considering the very small number of individuals that are estimated to receive greater than 100-in-1 million cancer risk coupled with the exposure and dose-response assessment methodology that was conservatively health protective, it is likely that no actual persons are exposed at risk levels above 100-in-1 million. Among the exposed population of 9.3 million individuals, a maximum of between 0 and 13 people are estimated to receive risks of more than 100-in-1 million. Under option I, the exposure to maximum exposed individuals would be reduced from between 300-in-1 million to 2,400-in-1 million to between 30-in-1 million and 270-in-1 million. Total combined cancer incidence would be between 0.002 and 0.003 cases per year for all seven major source facilities that were modeled. In addition, no significant non-cancer health effects are predicted. The maximum HQ would be reduced from 2 to 0.2, and no adverse ecological impacts are predicted under option I. In addition, we expect that PCE usage will continue to drop as has been the trend over the past 10 years. This trend has been caused by the greater use of alternative solvents, older machines at the end of their useful lives being replaced with newer, lower emitting dry-to-dry machines with refrigerated condensers and secondary carbon adsorbers, and State and industry programs that improve machine efficiency and reduce PCE consumption. All of these factors will cause risks to continue to decrease in the future in the absence of further Federal regulatory requirements. Therefore, we have determined that the risks associated with regulatory option I are acceptable after considering MIR, the population exposed at different risk levels, the projected absence of noncancer effects and adverse ecological effects, and the projected decline in PCE usage.

While not relevant for determining the acceptable risk level, the national capital costs of regulatory option I are $830,000 and annualized cost savings of $220,000. Most facilities would recognize a cost savings primarily from implementing the enhanced LDAR program. Leak detection and repair is a pollution prevention approach where reduced emissions translate into less PCE consumption and reduced operating costs because facilities would need to purchase less PCE. The capital costs for individual facilities would range from $0 to $313,000, with a median cost of $51,000. Annualized costs would range from a cost savings of $106,000 per year to a cost of $22,000 per year.

The second step in the residual risk decision framework is the determination of standards that are equal to or lower than the acceptable risk level and that protect public health with an ample margin of safety. In making this determination, we considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors, consistent with the approach of the 1989 Benzene NESHAP.

We evaluated regulatory option II as the first level of control more stringent than the acceptable risk level for this source category. Our analysis showed a relatively small incremental risk reduction beyond that achieved by option I. Under option I, one of the seven modeled facilities would pose risks greater than 100-in-1 million using the CalEPA URE and no facility would pose risks greater than 100-in-1 million using the OPPTS URE. Under option II, this facility would still have risks above 100-in-1 million using the CalEPA URE only. For the other six modeled facilities, the risks would remain in the range of 10-in-1 million under option II using the CalEPA URE and risks would drop below the range of 10-in-1 million for three of seven facilities using the OPPTS URE.

The national capital cost for option II (all 15 major sources) is $5.7 million with an annualized cost of $420,000. These costs include retrofitting PCE sensors and lockout systems on machines that were manufactured in 1998 or later, and the costs of replacing machines installed before 1998, which cannot reliably meet the same level of emission reduction with a PCE sensor.

Overall, option II has high costs considering the relatively low risk reduction for most of the major sources. These costs do not achieve a significant risk reduction for most sources. Consequently, we determined that requiring the addition of a PCE sensor and lock-out was not a reasonable or economically feasible option for all major sources.

We also evaluated regulatory option III, a ban on PCE use, as a level of control more stringent than the acceptable risk level for this source category. This would completely eliminate risk from PCE for the population around the 15 major source facilities by essentially eliminating the sources of PCE. The costs to eliminate PCE usage at major sources would require a capital cost to the industry of approximately $8.2 million. This

estimate was based on the total cost of replacing all PCE machines with machines using an alternative solvent (not an incremental cost of a new PCE machine versus a new alternative solvent machine). Alternative solvents currently being used in the industry include cyclic siloxanes, liquid carbon dioxide, wetcleaning, and synthetic hydrocarbon. There are some uncertainties that these solvents do not have the cleaning power (kB value) of PCE for the heavy soiled or greasy garments like leather work gloves and aprons which are the typical garments cleaned by industrial major sources. There are some fabrics that cannot be cleaned in the alternative solvents. There are also some uncertainties about whether the waste from alternative solvent systems would be classified as hazardous. Alternative solvents have a role in the industry, and are being used for certain cleaning applications. However, there is not enough experience to determine that these technologies are sufficiently demonstrated for all applications such that PCE should be eliminated from the marketplace. Therefore, we have determined that regulatory option III is not a viable option at this time considering cost, economic impacts, technical feasibility, and uncertainties.

Based on the information analyzed for the three options, we are proposing that option I provides an ample margin of safety to protect public health for major sources in the dry cleaning industry.

F. What are the risks from typical area sources?

We are not mandated to develop residual risk standards for area sources regulated by GACT. Under our discretion, we have developed estimates of the remaining risk for these sources. In estimating the inhalation cancer risk that area sources pose, we considered the risks from facilities co-located with residences (co-residential area sources) separately from those located in all other settings (typical area sources).

To assess risks from area sources, we first analyzed readily available data. The 1999 National Air Toxics Assessment (NATA) provides census tract level estimates of cancer risk and noncancer hazard across the United States for a subset of the 188 HAP. Using this assessment, we were able to generate a course-scale estimate of population risk for PCE area source dry cleaners by scaling the NATA cancer for PCE by the relative contribution of area source cleaners to PCE emissions. See table 6 below for a summary of the NATA-derived estimated risks for area source cleaners.

TABLE 6.—ESTIMATED NATA-DERIVED POPULATION CANCER RISK FOR PCE AREA SOURCE DRY CLEANERS

Dose-response value	Estimated cancer risk at least:		
	100-in-1 million	10-in-1 million	1-in-1 million
OPPTS	0	0	960,000
CalEPA	0	400,000	56,000,000

This assessment provides a screening-level estimate of PCE risk to the general population.

Next, we performed a ''model facility'' assessment. In this modeling scenario, we used information regarding typical facility size and dispersion parameters and average and upper-end emissions of a facility meeting the 1993 Dry Cleaning NESHAP to create a set of ''model facilities.'' See the risk characterization memorandum in the public docket for a complete description of the two modeling methodologies. Table 7 of this preamble summarizes the cancer and noncancer risk for typical area sources (excluding transfer machines).

TABLE 7.—ESTIMATED INCREMENTAL LIFETIME INDIVIDUAL CANCER RISK AND NON-CANCER HAZARD FOR TYPICAL AREA SOURCES USING A RANGE OF EMISSIONS AND WORST-CASE DISPERSION MODELING

Risk estimate	Model facility emissions		Maximum (8 tons)
	Average (.05 tons)	99th percentile (4 tons)	
MIR (OPPTS URE)	2-in-1 million	20-in-1 million	30-in-1 million.
MIR (CalEPA URE)	15-in-1 million	120-in-1 million	220-in-1 million.
Noncancer HQ [1]	0.001	0.07	0.1.

[1] HQ estimates have been rounded.

G. What are the options for reducing risk, their costs, and risk reduction impacts for typical area sources?

We evaluated three control measures to reduce risks from typical area sources. These measures are an enhanced LDAR program for area sources, elimination of emissions from existing transfer machines, and the use of a refrigerated condenser and secondary carbon adsorber (same control technologies described above for major sources). These control measures have been commercially demonstrated at area source dry cleaners in the United States. The three control measures were used to develop two regulatory options to reduce risk.

The enhanced LDAR program for area sources would require the use of a halogenated leak detector instead of a gas analyzer, which is being proposed for major sources. The cost of a halogenated leak detector ($250) is significantly less than a gas analyzer ($3,300). A gas analyzer is a more accurate device that provides a quantitative reading of PCE concentration. This device can be particularly useful in pinpointing leaks at major sources that have high background concentrations of PCE. The halogenated leak detector is a non-quantitative device that provides an audible or visual display when it detects a leak above 25 ppm. We have concluded that a halogenated leak detector is sufficient for detecting leaks at area source dry cleaners and will provide a significant improvement in reducing emissions compared to the

current requirement to inspect for perceptible leaks only.

Transfer machines have substantially higher emissions than dry-to-dry machines. The 1993 Dry Cleaning NESHAP effectively bans new transfer machines, but existing machines were grandfathered. In 1993, we determined that the capital costs required to replace all transfer machines would have created an adverse economic impact on a substantial portion of the industry, especially small businesses that had recently purchased new transfer machines. We estimate that about 200 transfer machines remain in use within the population of 28,000 dry cleaning machines located at area sources (estimated one PCE dry cleaning machine per facility with approximately 28,000 facilities). Most of these machines will be at or near the end of their useful economic life by the time final rule requirements are promulgated. The typical life of a dry cleaning machine is 10 to 15 years. By the end of 2006, the newest transfer machines in the industry will be 13 years old. Replacing these machines with new machines meeting the requirements for new sources under the proposed amendments would reduce PCE emissions substantially.

We developed two regulatory options to evaluate area source risk reductions. Option I would require enhanced LDAR and eliminate emissions from existing transfer machines by requiring that they be replaced with new machines. This option would apply to both large and small area sources. Option II would require all area sources to use a refrigerated condenser and secondary carbon adsorber in addition to option I. Table 8 of this preamble summarizes the cancer and noncancer risks from these control options.

TABLE 8.—ESTIMATED MAXIMUM[1] CANCER RISK AND NONCANCER HAZARD FOR TYPICAL AREA SOURCES

Risk metric	Control option		
	1993 NESHAP	Option I—LDAR	Option II—LDAR + secondary controls
Estimated Lifetime Cancer Risk (OPPTS URE)	30-in-1 million	20-in-1 million	15-in-1 million.
Estimated Lifetime Cancer Risk (CalEPA URE)	220-in-1 million	175-in-1 million	110-in-1 million
Noncancer HQ	0.1	0.1	0.1
Capital Cost—($1,000,000)		$12.4	$85.7
Annualized Cost—($1,000,000)		($2.7)	$7.9
Emission Reduction (tpy)		3,236	5,749

[1]Assumes a facility using a dry-to-dry machine with a refrigerated condenser emitting 8 tons of PCE a year (highest known emitting dry-to-dry machine). Risks from transfer machines are not included in the tables. The costs and risk estimates in this table do not consider the impacts of future trends of declining PCE usage.

H. What is our proposal for addressing the remaining emissions for typical area sources?

We are considering adopting a residual risk decision process for area sources which is based on that used for major sources. This involves first determining an acceptable level of risk to the public and then determining an ample margin of safety to protect public health, considering costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors. We request comments on this approach for area sources.

As part of this rulemaking, we have determined that exposure to emissions under the 1993 Dry Cleaning NESHAP constitutes an acceptable level of risk for typical area sources. Currently, we estimate that more than 98 percent of 28,000 existing dry cleaners use a dry-to-dry machine with a refrigerated condenser to comply with the 1993 Dry Cleaning NESHAP or State emission standards. Using the most health protective modeling assumptions for meteorology and location, the model facility analysis indicated that the highest known emitting area source would pose cancer risks of between 30-in-1 million and 220-in-1 million. The risk from the vast majority of area sources would be substantially less. For example, cancer risk for the typical area source, which emits approximately 0.5 ton of PCE per year, is estimated at between 4-in-1 million and 15-in-1 million. In addition, the assessment showed no significant acute health effects (HQ of 1.0 for the highest emitting area source facility). Considering the relatively low level of risk posed by the great majority of area sources, the projected absence of significant noncancer and ecological effects, and the projected decline in PCE usage, we believe that the 1993 Dry Cleaning NESHAP level of control results in an acceptable level of risk to the public.

Replacing transfer machines with new dry-to-dry equipment would reduce risks from the potentially highest-emitting sources. Under either option I or II, transfer machines would be replaced with dry-to-dry machines with a refrigerated condenser and a secondary carbon adsorber (*i.e.*, the proposed new source requirements for area sources, which are discussed below).

For dry-to-dry machines, equipment leaks are the largest source of emissions, particularly from older dry cleaning machines. While the perceptible leaks program under the 1993 Dry Cleaning NESHAP may prevent major leaks, a substantial emission reduction can be achieved by earlier leak detection using an instrument like a halogenated hydrocarbon leak detector.

Therefore, to protect public health with an ample margin of safety, we are proposing to eliminate the use of transfer machines and require an enhanced LDAR program for dry-to-dry machines (option I). This option would reduce PCE emissions by 3,200 tpy and reduce risks to the public from between 30-in-1 million and 220-in-1 million to between 20-in-1 million and 175-in-1 million.

Option I would require total capital costs of $12 million. The enhanced LDAR program would cost about $5 million. About 20,000 facilities would be required to purchase a halogenated hydrocarbon detector at a cost of $250 each. About 200 facilities would be required to replace their existing transfer machines with dry-to-dry machines with refrigerated condensers and carbon adsorber at a cost of about $36,000 each for a total industry cost of $7.3 million. Annually, option I is expected to result in a cost savings to industry of about $2.7 million per year. Cost saving would be realized because both replacement of transfer machines and enhanced LDAR will reduce annual PCE consumption. The reduction in annual PCE consumption at the 200 businesses that would replace transfer machines is more than sufficient to

offset the annualized cost of the new equipment. In particular, we believe most of the transfer machines are at the end of their useful life and it would be economically beneficial for the facilities to replace the transfer machines with dry-to-dry machines. Thus, we believe the economic impacts to the affected businesses and facilities are negligible. Finally, these costs and risk estimates do not consider the impacts of future trends of declining PCE usage.

We are not proposing the option of requiring existing area sources to install secondary carbon adsorbers (option II). Secondary carbon adsorbers would reduce maximum risks at the highest risk area sources from between 20-in-1 million and 175-in-1 million under option I to between 15-in-1 million and 110-in-1 million under option II. Under option II, about 7,500 facilities would be required to raise capital to install carbon adsorbers (27 percent of the industry). For these sources, the capital costs for compliance would be about $85 million with an annualized cost of about $8 million. The capital cost for individual facilities would range from $4,000 to $45,000. A majority of sources that would be affected by option II are small businesses. For these small businesses, the annualized costs would average from 10 to 20 percent of sales, and this amount is much higher than the average profit per unit of sales that small dry cleaners normally experience (1 to 3 percent). This cost would lead to a high number of small businesses owning affected facilities that will likely close due to the lack of available capital for the needed investment in carbon adsorbers. Therefore, we are not proposing to require a secondary carbon adsorber on existing area sources, because the risk reduction would be relatively minor and the costs would impose adverse economic impacts on a number of small businesses.

We do not believe that the proposed requirements for area sources pose more than a minimal burden; however, we specifically ask for comment on methods by which EPA could focus the additional regulatory requirements being proposed by this rule to only those area sources (typical and co-residential) which pose significant risks to human health. For example, we seek comments on whether there could be a methodology by which facilities could conduct site specific risk assessments to demonstrate that their PCE emissions pose cancer risk levels that are less than 1-in-1 million, with a HI of less than 1, and with no acute human health risks or adverse environmental effects, and thereby avoid the additional requirements that would otherwise apply under the proposed rule revisions. Comments should address whether such an approach is feasible (for example, if facilities would be able to conduct these risk assessments), the legal authority for such an approach, the methodology sources would use for conducting risk assessments, the specific criteria by which potential ''low-risk'' sources would be evaluated, the mechanism for evaluating and determining whether source risk assessments meet those criteria, how the process would be implemented by Federal and/or State and local agencies, how it would be enforced (for example, through a permitting program or other regulatory structure to ensure that any sources found to be ''low-risk'' remain so), and what would be the consequences if and when a source, for whatever reason, is found to no longer qualify as a ''low-risk'' source.

I. What are the risks from co-residential area sources?

Residents living in the same building with a dry cleaner may receive significantly higher exposures to PCE than people not living above or in the same building as a dry cleaner. We estimate there are approximately 1,300 co-residential dry cleaning facilities in the United States. Residents in these buildings can receive elevated PCE concentrations because PCE vapor travels through the building walls and up elevator and pipe shafts into residences. Emissions of PCE also can enter from the ambient air into residences via open windows. Even after the dry cleaner closes, PCE absorbed onto surfaces can continue to be emitted throughout the day and night. To assess potential risks, we used indoor air monitoring data collected by the New York Department of Health and the New York State Department of Environmental Conservation (NYSDEC) between 2001–2003 as part of an epidemiological study examining neurological endpoints. In considering the New York data, it should be recognized that the data resulted from an epidemiological study, and dry cleaner building and apartment inclusion and exclusion criteria influenced buildings that were ultimately sampled. Also, certain buildings were identified in order to potentially increase the likelihood of finding apartments with elevated PCE levels. Data collected during this period indicate that resident exposures ranged from a geometric mean of 33 ug/m^3 to a maximum of 5,000 ug/m^3. The New York Department of Health collected these data during the final implementation of title 6 NYCRR Part 232 rules, which require the use of a refrigerated condenser and secondary carbon adsorber, and a vapor barrier or room enclosure around co-residential dry cleaning machines. We extrapolated these 24-hour samples to lifetime exposure to estimate inhalation cancer risk and noncancer hazard. For a full description of the methodology that we used, see the risk characterization memorandum in the public docket. Table 9 of this preamble summarizes the inhalation cancer risk and noncancer hazard of co-residential area sources.

TABLE 9.—ESTIMATED INCREMENTAL LIFETIME INDIVIDUAL CANCER RISK AND NONCANCER HAZARD FOR CO-RESIDENTIAL AREA SOURCES USING A RANGE OF MONITORED EXPOSURES

Risk metric [3]	Distribution of Monitored Exposure				
	Lower 5th percentile [2]	Median	Geometric mean	Upper 95th percentile	Maximum
Estimated Lifetime Cancer Risk (OPPTSURE).	4-in-1 million	10-in-1 million	20-in-1 million	500-in-1 million	4,000-in-1 million.
Estimated Lifetime Cancer Risk (CalEPAURE).	30-in-1 million	50-in-1 million	200-in-1 million	4,000-in-1 million	30,000-in-1 million.
Noncancer HQ [1]	0.02	0.06	0.1	3	20

[1] HQ estimates have been rounded.
[2] The lowest 5th percentile of exposure is equal to the non-detect limit of the monitors, which is 5 ug/m^3.
[3] These estimates reflect only facilities in full compliance with Title 6 NYCRR Part 232.

To better characterize inhalation cancer risk among residents of apartments co-located with area source cleaners, we performed a sensitivity analysis in which we varied the assumed exposure duration. Table 10 illustrates the results from this analysis.

TABLE 10.—ESTIMATED HIGH-END CANCER RISKS FOR RESIDENTS OF CO-LOCATED APARTMENTS: EXPOSURE DURATION SENSITIVITY ANALYSIS [1]

Estimated Lifetime Cancer Risk	Assumed Exposure Duration				
	70 years	50 years	30 years	20 years	10 years
Risk per million (CalEPAURE)	4,000	3,000	2,000	1,000	600
Risk per million (OPPTSURE)	500	400	200	100	80
HQ	7	5	3	2	1

Inhalation cancer risk estimates using the 95th percentile exposure level range from a maximum of between 4,000 and 500-in-1 million, assuming 70-year expsure to between 600 and 80-in-1 million assuming 10-year experience.

[1] Cancer risk estimates derived using 95th percentile PCE exposures for monitoring data from facilities in full compliance with NYSDEC requirements.

The PCE exposure concentrations presented in table 11 of this preamble show the potential risk levels that co-residential sources may pose. The MIR was predicted at between 4,000-in-1 million and 30,000-in-1 million, which is higher than the maximum risk at both major sources and typical area sources. This table suggests that maximum co-residential area source risks are about 13 times higher than the maximum major source risks and about 140 times higher than the maximum typical area source risk.

TABLE 11.—COMPARISON OF PCE EXPOSURE CONCENTRATIONS BY TYPE OF FACILITY [3]

Facility	Co-residential area source	Typical area source	Major source
Maximum Exposure Concentration (ug/m^3)	5,000 [1]	37	405
Geometric Mean Exposure Concentration (ug/m^3)	33	1	1.3
Maximum Inhalation Risk (per million)	3,000 to 30,000 [2]	30 to 220	300 to 2,400
Maximum Noncancer HQ	20	0.1	2
Geometric Mean Noncancer HQ	0.1	0.004	0.004

[1] New York Department of Health monitoring data.

[2] Inhalation cancer risks were extrapolated from 24-hour monitoring data, assuming continuous exposure for 70 years at the maximum monitored concentration.

[3] Estimate range represents difference between estimated risk using OPPTS and CalEPA URE.

J. What is our proposed decision on co-residential area sources?

We are proposing two options for co-residential area sources in today's proposal. We expect to select one of these options, with possible modifications in response to comments, in the final rule. The first option addresses both risks and technological developments for new co-residential area sources as a combined CAA Section 112(f) residual risk and Section 112(d)(6) rulemaking, and is described further in this section. This is consistent with the approach we are taking for typical area sources and for major sources. However, for existing co-residential area sources under this option, we are not exercising our discretion to impose a section 112(f) residual risk standard, but only a section 112(d)(6) standard. We recognize that developing residual risk standards for area sources is discretionary under the CAA, and that emissions reductions can also be achieved under CAA section 112(d)(6) that do not rely upon our section 112(f) authority. Therefore, we are also proposing a second option to achieve emissions reductions through a technology based standard for both existing and new co-residential sources relying only on our Section 112(d)(6) authority, as discussed below and in section III.K. We request comment on alternative approaches that might protect public health with an ample margin of safety.

As our first option, we are proposing different requirements for new and existing co-residential sources. For new sources, we propose not to allow any new co-residential machines that emit PCE. Our proposal is based on the high-end estimated MIR of between 4,000-in-1 million and 30,000-in-1 million, and on our conclusion that risks from new co-residential sources should be substantially reduced. These risk estimates are based on monitored concentrations taken from apartments above co-residential dry cleaners with the level of equipment control required by NYSDEC in their title 6 NYCRR Part 232 rules (*e.g.*, a refrigerated condenser and secondary carbon adsorber, and a vapor barrier or room enclosure).

For new co-residential sources, the most stringent possible control option with the greatest risk reduction is a prohibition of PCE use at such sources. This option would eliminate PCE risks for new sources and require that any new dry cleaning machines located in a residential building would have to use an alternative cleaning solvent. We believe the owner/operator can choose from other alternative solvent dry cleaning systems to use in a residential building.

The national capital costs of this regulatory option for new co-residential sources are $8.6 million, and the annualized costs are approximately $950,000. These cost estimates are based on the assumption that existing facilities will replace PCE machines that have reached the end of their useful lives (15 years) and are estimated for facilities affected within the first 5 years after the final rule takes effect. These costs reflect the incremental cost between replacing existing machines with PCE machines with refrigerated condensers and carbon adsorbers, and replacing them with machines using hydrocarbon solvents.

This analysis includes costs for all affected facilities, such as the cost incurred to install fire protection sprinklers required by most applicable fire codes to operate a hydrocarbon technology, that would not be necessary with other options. Cost estimates would be much lower if facilities using this option have sprinkler systems in place, or if they choose a less costly alternative garment cleaning option utilizing non-flammable solvents, or conducting dry cleaning operations off-site from the co-residential facility. We estimate that this control option for new co-residential sources may, after about 15 years, result in the elimination of cancer risks from all co-residential sources, as existing sources would be replaced by new non-PCE sources. This means that maximum individual risk levels due to these sources would decline from between 30,000- and 4,000-in-1 million to 0; average individual risk would decline from between 1,000- and 200-in-1 million to 0; and annual incidence would decline from between 2.2 and 0.3 cases per year to 0. These risk reduction estimates for all co-residential dry cleaners are subject to a number of limitations, the greatest of which are likely: (1) The degree to which the small sampled subset of co-residential dry cleaners (16) is representative of the full set (about 1,300) of all co-residential dry cleaners; (2) our uncertainty of the size of the affected population; and (3) the possible range of cancer potency factors used in our analysis, which is reflected in the ranges of the risk metrics reported above.

We also recognize that a proposal to prohibit new co-residential sources could encourage continued operation of existing co-residential PCE machines beyond their useful lives rather than replacement with new machines. We request comment on a sunset provision, where, after some period of time that reflects the typical lifetime of a dry cleaning machine, existing co-residential sources would have to be replaced with new machines that do not emit PCE.

As part of this first option, we are proposing no additional control requirements for existing co-residential dry cleaners beyond the proposed requirements for existing area sources. However, we also request comment on the appropriateness of adopting other alternatives. In particular, we are continuing to analyze the potential health risks at co-residential sources and the range of options to reduce these risks. Options under consideration range from voluntary initiatives to regulatory action. About 1,100 of the estimated 1,300 co-residential sources are located in New York and California. These sources are controlled with the technology equivalent to the requirements of the 1993 Dry Cleaning NESHAP for new major sources; plus, the facilities in New York have installed room enclosures to reduce exposure from residual emissions.

At this time we have limited data on co-residential sources outside of New York and California. We do not know how representative the dataset is of all facilities in New York City. We do not know how many people are exposed at other sources and if the exposure and risk levels in other parts of the United States are similar to those in New York City buildings. We have little information on the distribution of PCE concentrations, the number of persons living in co-residential buildings, or the number of persons exposed to various PCE concentration levels. Based on the New York monitoring data, we know the level of PCE concentrations can vary substantially within co-residential buildings. While we believe that the dataset used for this risk assessment represents a high-quality set of measurements which is appropriate for estimating risks, we are also aware that the dataset may contain a selection bias due to the fact that the study from which the data were taken was an epidemiological study aimed at identifying high exposures within minority and economically-disadvantaged populations. Moreover, we are also aware that variable attention to work practices, difficulties in achieving compliance with newly-installed equipment, and poor ventilation in sampled apartments may also have increased the measured concentration values relative to the remaining population of apartments co-located with area source dry cleaners. Thus, we specifically request comment on the appropriateness of using this dataset to develop a risk assessment which represents the population of co-residential facilities. We also request any additional data that might be used to characterize these risks.

If a long-term time series dataset of concentration measurements were available, we would estimate chronic exposure based on it to take into account the true temporal variability of exposures. However, we do not have such a dataset. Instead, we base our exposure and risk estimates on snapshot data available, recognizing that an extrapolation from short-term monitoring values can lead to an upward bias of the high-end chronic exposures and risks and a downward bias of the low-end chronic exposures and risks. We request comment on ways to minimize these biases. In evaluating the potential impact of NYSDEC requirements, our analysis focused on those facilities which were deemed to be in compliance with the NYSDEC part 232 regulations. However, it is not always clear from the available data what the exact compliance status of the facilities was at the time that measurements were taken. For example, we note that the highest measured exposure level (5,000 ug/m3), which is associated with a facility that was reported to be in full compliance with the NYSDEC regulations at the time of the measurements, has been called into question by industry stakeholders based on evidence that the facility was inspected and found to be out of compliance (due to equipment operation problems) approximately 2 months after the measurements were taken. These problems were remedied and compliance was certified a week later. This uncertainty in exact compliance status leads to an uncertainty in whether the measured concentration values actually reflect a level of control consistent with implementation of the NYSDEC requirements. Thus, we request comment on whether and to what extent temporal variability or compliance problems among the facilities located in buildings with the sampled apartments may have biased the sampled measurements high or low and influenced the results of the risk assessment.

We believe that the risk assessment underlying the proposal of our first option is appropriate for rulemaking purposes, however, given the uncertainties discussed above, we are proposing a second option solely under the authority of section 112(d)(6) of the CAA. We propose the NYSDEC title 6 NYCRR Part 232 rules (or similar standards) as the basis for control standards for both new and existing sources, instead of prohibiting any new co-residential machines that emit PCE and the standards proposed for typical area sources and existing co-residential sources. The NYSDEC requires that co-residential dry cleaning machines have refrigerated condensers and secondary carbon adsorbers, and that equipment be housed inside a vapor barrier with general ventilation to the outside air for both new and existing facilities. Facilities must conduct weekly leak inspections using a leak detection device such as a halogenated hydrocarbon detector. Facilities are required to obtain annual third party inspections by a professional engineer,

and must make available the most recent inspection report to interested individuals for their review. The NYSDEC also requires that the facility owner and/or manager and the dry cleaning machine operator be certified by an organization that offers a training program approved by the State agency. Most co-residential facilities meet the New York standards (of the 1,300 co-residential facilities nationwide, approximately 900 are in New York), but approximately 240 facilities across the country would need to upgrade their equipment to comply with this second proposal option. The capital cost of this option is approximately $3 million, and the annual cost is $0.5 million. These estimates include the cost for approximately 240 existing facilities to either upgrade or replace their existing equipment to include a refrigerated condenser and carbon adsorber, install a vapor barrier and conduct the leak detection and repair described above. These estimates do not include the cost of third party inspections and operator training, so cost impacts may be understated. Emissions reduction is estimated to be about 48 tons per year from the use of refrigerated condensers and carbon adsorbers. Vapor barriers do not remove emissions, but contain them to help prevent exposures to emissions.

For this second option, we request data on the emission levels, exposure, and risks associated with meeting the level of control required by the NYSDEC standards and for any other control options for co-residential sources that may substantially reduce emissions from co-residential sources (*e.g.*, periodic gasket replacement in lieu of inspections).

K. What determination is EPA proposing pursuant to review of the 1993 Dry Cleaning NESHAP under CAA section 112(d)(6)?

Section 112(d)(6) of the CAA requires us to review and revise MACT standards, as necessary, every 8 years, taking into account developments in practices, processes, and control technologies that have occurred during that time. If we find relevant changes, we may revise the MACT standards and develop additional standards. We do not interpret CAA section 112(d)(6) as requiring another analysis of MACT floors for existing and new sources.

For major sources, we considered as a MACT alternative the same options considered above for residual risk (table 5 of this preamble). The use of a PCE sensor/lock system (option II on table 5 of this preamble) is an option more stringent than the level of control that we are proposing to protect the public from residual risks with an ample margin of safety. The system would reduce emissions by 40 tpy. Total capital costs are estimated to be $5.7 million for the 15 major sources with an annualized cost of $420,000. Additional analysis of costs can be found in the Background Information Document in the public docket. The incremental cost-effectiveness of the option is $17,000 per ton of PCE removed (overall, considering all 15 facilities). Consequently, we propose that requiring enhanced LDAR and a refrigerated condenser/secondary carbon adsorber would meet the requirements for CAA section 112(d)(6).

Section 112(d)(6) of the CAA also requires that we review and, if necessary, revise the technology-based standards for area sources. The 1993 Dry Cleaning NESHAP for area sources was based on the use of GACT. The options selected for evaluating GACT for existing area sources are the same two options that we discussed above; enhanced LDAR and eliminating transfer machines (option I on table 8 of this preamble), and the use of secondary carbon adsorbers (option II on table 8 of this preamble). Option I would reduce emissions by an estimated 3,200 tpy and would result in a net cost savings to area sources. Option II would reduce emissions by an additional 3,000 tpy. However, as explained above, retrofitting a secondary carbon adsorber would not be cost-effective for many existing area source dry cleaners. Consequently, we propose that requiring enhanced LDAR and eliminating transfer machines at existing area sources would meet the requirements of CAA section 112(d)(6).

For new machines located at area source dry cleaners, we are proposing the use of refrigerated condensers, secondary carbon adsorbers, and enhanced LDAR. Requiring the use of secondary carbon adsorbers on new machines will not impose any significant new costs to the industry, because the majority of new machines today are sold with secondary carbon adsorbers. Vented machines, water-cooled condensers, and transfer machines are no longer sold. Many area source dry cleaners are buying this latest technology (dry-to-dry machine with refrigerated condenser and secondary carbon adsorber) because they are easier to operate, use less PCE, and produce less hazardous waste. In addition, several States require the use of this technology. A machine manufacturer stated that 70 percent of the new PCE machines sold in the year 2000 were dry-to-dry machines with refrigerated condensers and secondary carbon adsorbers, and by 2003 nearly all of the PCE machines sold would have this technology. New York and, beginning in 2007, California, will require this technology for all existing major and area sources. Due to the vast number of area sources compared to major sources, the majority of the new PCE machines are purchased by area sources to replace older technology machines. Therefore, we are proposing the use of dry-to-dry machines with refrigerated condensers and secondary carbon adsorbers for new machines at area sources to meet the requirements of CAA section 112(d)(6).

For co-residential area sources, the most stringent standards currently in place are those enforced by NYSDEC (described in section III.J). In some cases, these and related requirements have been effective in reducing exposure levels; the mean exposure has dropped by tenfold since 1997 (McDermott, et al., 2005). However, as described earlier, a monitoring study in New York City suggests that risk levels after implementation of these standards may remain relatively high. Under our first option for addressing co-residential area sources discussed above in section III.J of this preamble, we are not proposing the NYSDEC levels of control under Section 112(d)(6). However, under the second option for co-residential sources, we are proposing under CAA section 112(d)(6) standards based on those required by NYSDEC Part 232 for new and existing co-residential sources, which would be modified, as appropriate, to function as nationally applicable Federal standards rather than State standards. While the first proposed option would eventually eliminate PCE exposures from co-residential sources, this second option would initially reduce exposures from existing co-residential sources more than the first option to require enhanced LDAR for all area sources. This second option for co-residential sources eliminates the continued use of equipment without secondary carbon adsorbers at new and existing co-residential sources; this contrasts with the first option discussed in section J above, which prohibits the use of new PCE machines and may give facilities the incentive to prolong the use of existing machines rather than purchase newer, lower emitting PCE machines at existing sources. With respect to new facilities, this option would allow new co-residential facilities to use PCE only if they also use equipment with refrigerated condensers and secondary carbon adsorbers housed in a vapor barrier. EPA is seeking comment and

additional information in section III.J to help assess risk reductions that could be achieved through application of standards similar to NYSDEC part 232.

L. What additional changes are we making to the 1993 Dry Cleaning NESHAP?

In 40 CFR 63.322(e), we are deleting the term ''diverter valve,'' but retaining the requirement to prevent air drawn into the door of the dry cleaning machine from passing through the refrigerated condenser. We are proposing this change because some newer machines accomplish this objective without a diverter valve. This change does not subject sources to any new requirements and does not change the requirement for machines with diverter valves.

In 40 CFR 63.322(m) and 40 CFR 63.324(d), we are changing ''perceptible leaks'' to ''leaks'' because the requirements now apply to both the monthly inspection for vapor leaks, which would require the use of a leak detection instrument, as well as the weekly or biweekly inspections for perceptible leaks. This harmonizing change would not change the nature of existing inspection requirements. To support the proposed requirements for monthly vapor leak inspection, we have proposed to add definitions of ''vapor leak,'' ''PCE gas analyzer,'' and ''halogenated hydrocarbon detector.''

The 40 CFR 63.323(b) would be revised to add PCE gas analyzers as an acceptable monitoring instrument in addition to colorimetric tubes. Major sources would need a PCE gas analyzer for enhanced leak detection and repair. This analyzer could also be used for monitoring a carbon adsorber. Also, the phrase ''or removal of the activated carbon'' would be added to clarify that any major source required to use a carbon adsorber is required to monitor the adsorber exhaust weekly for PCE. Previously, this requirement was unclear for sources that disposed of the carbon instead of desorbing it.

IV. Solicitation of Public Comments

We request comments on all aspects of the proposed amendments. We are also considering additional rule amendments and specifically solicit comments on these potential amendments. The additional amendments are described in the following sections. All significant comments received will be considered in the development and selection of the final amendments.

A. Additional Requirements for Highest Risk Facilities

For one of the modeled major source facilities, the estimated emissions after installing controls required by the proposed rule would pose a MIR greater than 100-in-1 million using the CalEPA URE. An alternative approach we are considering is establishing more stringent requirements for this source. We would like information about whether such an approach would be appropriate and what would be a suitable regulatory basis for creating a separate class for this major source. We are considering requiring this facility to install a PCE sensor and lockout on each dry cleaning machine.

Under the proposed rule, this facility would be required to install a refrigerated condenser and secondary carbon adsorber. Most dry cleaning machines with secondary carbon adsorbers sold in this country since 1998 are equipped with a lockout that prevents the drum from being opened until the completion of the timed adsorption cycle. These machines have been demonstrated to achieve a concentration inside the drum of less than 300 ppm without a PCE sensor. The addition of a sensor ensures that this target concentration will be met for every load, thereby preventing episodes of high emissions caused by operator error or machine malfunction.

The PCE sensor and lockout system originally was developed to meet the 2. BImSchV German Emission Control Law, which requires a PCE concentration in the dry cleaning machine drum of less than 2 grams per cubic meter (~300 ppm) at the end of the drying cycle. Dry cleaning machines equipped with PCE sensors are widely used in Germany and are available in the United States. However, there is limited experience with this technology in the United States. We are aware of only two commercial dry cleaners in the United States and one industrial dry cleaner in Canada that use a PCE sensor. Because of the limited United States experience, we do not have emission test data to evaluate the performance of this system relative to machines with a timed lockout system, particularly with industrial articles such as work gloves. The emissions reductions that we used to evaluate the PCE sensor and lockout system were based on estimates of solvent mileage (pounds garments cleaned per gal of PCE used) compared to machines with a refrigerated condenser and secondary carbon adsorber. The estimated mileage of the various dry cleaning systems was obtained from engineering judgment by several industry experts. Facilities using a PCE sensor and lockout system could possibly observe a wide range of emission reduction potential. For example, facilities that use good maintenance procedures and follow manufacturers specifications would achieve lower emission reductions than facilities with poor maintenance procedures. This control technology ensures optimal operation of the carbon adsorber by preventing the door from being opened until the PCE concentration in the drum is less than 300 ppm at the end of the drying cycle. Facilities with good maintenance procedures will have fewer high emission episodes caused by premature termination of the drying cycle.

We solicit comments on the appropriateness of requiring greater emission reduction at the highest risk source, the performance of the PCE sensor and lockout system and its effectiveness in reducing risks from this source, and the basis for creating a separate class for this major source dry cleaner. We also request information on the feasibility, cost, and amount of emission reduction that could be achieved at this source through other techniques, such as the use of alternative solvents or other approaches.

B. Requirement for PCE Sensor and Lockout as New Source MACT for Major Sources

We are considering making PCE sensor and lockout controls a requirement for new machines installed at major sources. The decision to select option I instead of this control option for major sources was based on the relatively small emission reduction estimated to result from the installation of PCE sensor and lockout controls. We would like additional data on the amount of PCE reduction achieved by these controls in both industrial and commercial applications, and about how site-specific factors influence the reduction achieved.

C. Alternative Performance-Based Standard for Existing Major Sources

We are considering establishing an alternative performance-based standard for existing major sources. The alternative standard would be a facility-wide PCE use limitation (*e.g.,* gal PCE per year, solvent mileage or other metrics), which would be determined as a percent reduction of actual PCE use from a baseline year. If adopted, a source could elect to comply with either the proposed process vent controls (*i.e.,* closed loop machine with refrigerated condenser and secondary carbon adsorber) or the performance-based

alternative. Facilities that use the performance-based alternative still would be required to comply with the operating controls (*i.e.,* enhanced leak detection and repair, etc.) in the proposed rule.

The alternative standard would provide more flexibility in choosing the method of reducing emissions. This flexibility provides the opportunity to decrease compliance costs, reduce recordkeeping, and simplify compliance and enforcement. We anticipate that any facility selecting this alternative would reduce emissions by replacing some machines with alternative solvent machines and continuing to operate some PCE machines without secondary controls. Additional emission reductions could also be achieved by more aggressive maintenance and leak detection programs.

The performance-based alternative we are considering would limit annual PCE consumption on a facility-wide basis. Usage of PCE correlates directly with PCE emissions. The limit would be based on the average fraction of emissions reduced by the control technology requirement for the different types of affected sources. For the three major source industrial facilities that would be required to make equipment changes to comply with the proposed rule, the average estimated facility-wide emission reduction, including enhanced leak detection and repair, would be 76 percent. For the four affected major source commercial facilities, the average estimated total emission facility-wide reduction would be 67 percent. These reductions are relative to estimated emissions from these facilities in 2002. Therefore, we envision that facilities that clean industrial articles such as work gloves would be required to reduce PCE usage by at least 76 percent. For facilities that do not clean work gloves or shop rags, we envision a PCE reduction of 67 percent. For a description of how the emission reduction percentages were estimated, refer to the Background Information Document in the public docket. The baseline year for determining the PCE usage limit would be 2002. Annual PCE usage would be calculated based on the amount of PCE purchased during the calendar year, adjusted for the PCE in use and storage at the beginning and end of the calendar year.

If the performance alternative is selected, the required PCE usage percent reduction levels will be prescribed in the final rule. The percent reductions would be selected to be equivalent to the emission reductions achieved by the technology based MACT requirements and the residual risk requirements adopted in the final rule.

The performance-based alternative would apply only to existing major sources. New major sources are not eligible for these performance-based alternative standards because no baseline PCE data exists for determining a required emission reduction level. This alternative also would not be practicable for area sources because the proposed rule has no process vent requirements for existing area sources. The only requirements for existing area sources are the ban on transfer machines, enhanced LDAR, and the operating requirements. Moreover, most area sources operate only one dry cleaning machine.

We solicit comments on whether such an approach would be appropriate for major sources. We would also like comments from affected sources regarding the likelihood that they would select this alternative standard. In addition, we welcome comments on other options for a performance-based alternative. Please include in your comments how the option ensures equivalent emission reductions to the proposed equipment standards and how the option could be enforced, including any recordkeeping needed.

D. Environmental Impacts of PCE Emissions

As discussed above, due to the large margin of exposures relative to known thresholds, risks to mammals from PCE inhalation are likely insignificant. Also, the scarcity of data makes it difficult to identify any potential for adverse ecological impacts to plant life from PCE emissions from dry cleaners due to conversion to TCAA. While we have no direct evidence that this will present a significant ecological risk, we nonetheless, invite public comment and solicit additional scientific information on this issue.

E. Additional Time for Complying With Provisions for Transfer Machines

As discussed in section III.H of this preamble, we are proposing to eliminate the use of transfer machines. Per section 112(f) of the CAA, sources have 90 days to comply with health based standards. However, we are soliciting comment on what additional time beyond the 90-day compliance period, if any, might be necessary for area sources to replace existing transfer machines with dry-to-dry machines, and on whether, if EPA were to grant area sources replacing transfer machines additional compliance time in the final rule, any further steps should be taken by these area sources before achieving compliance to assure that the health of persons will be protected from imminent endangerment, consistent with section 112(f)(4)(B) of the CAA.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has determined that it considers this proposed rule a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1415.06 and OMB Control Number 2060–0234.

The 2005 proposed revisions to the Dry Cleaning NESHAP contain recordkeeping and reporting requirements beyond the recordkeeping and reporting requirements that were promulgated on September 22, 1993. Owners or operators will continue to keep records and submit required reports to us or the delegated State regulatory authority. Notifications,

reports, and records are essential in determining compliance and are required, in general, of all sources subject to the 1993 Dry Cleaning NESHAP. Owners or operators subject to the 1993 Dry Cleaning NESHAP continue to maintain records and retain them for at least 5 years following the date of such measurements, reports, and records. Information collection requirements that were promulgated on September 22, 1993 in the Dry Cleaning NESHAP prior to the 2005 proposed amendments, as well the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to national emission standards, are documented in EPA ICR No. 1415.05.

The information collection requirements described here are only those notification, recordkeeping, and reporting requirements that are contained in the 2005 proposed revisions to the Dry Cleaning NESHAP. To comply with the 2005 proposed revisions to the 1993 Dry Cleaning NESHAP, owners or operators of dry cleaning facilities would read instructions to determine how they would be affected. All sources would begin an enhanced leak detection and repair program that requires a handheld portable monitor. Major source facilities would purchase a PCE gas analyzer and area sources would purchase a halogenated hydrocarbon leak detector. Owners and operators would incur the capital/startup cost of purchasing the monitors, plus ongoing annual operation and maintenance costs. The total capital/startup cost for this ICR is $5,049,000. Annual operation and maintenance cost would be $552,825.

Owners and operators of major and area sources would conduct enhanced leak detection and repair and keep monthly records of enhanced leak detection and repair events.

Approximately 28,000 existing area sources and 15 existing major sources are subject to the proposed rule and are subject to the 1993 Dry Cleaning NESHAP. We estimate that an average of 2,330 new area sources per year will become subject to the regulation in the next 3 years, but that the overall number of facilities will remain constant as the new owners will take over old existing facilities. No new major sources are expected. The estimated annual labor cost for major and area sources to comply with the 2005 proposed rule is approximately $3.9 million.

The recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to us pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to our policies set forth in 40 CFR part 2, subpart B.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for the proposed rule, which includes this ICR, under Docket ID No. OAR–2005–0155. Submit any comments related to the ICR for the proposed rule to EPA and OMB. See the **ADDRESSES** section at the beginning of today's notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 21, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by January 20, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business based on the following Small Business Administration (SBA) size standards, which are based on annual sales receipts: NAICS 812310—Coin-Operated Laundries and Dry Cleaners-$6.0 million; NAICS 812320—Dry Cleaning and Laundry Services (Except Coin-Operated)-$4.0 million; NAICS 812332—Industrial Launderers-$12.0 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Under these definitions, over 99 percent of commercial dry cleaning firms are small. For more information, refer to *http://www.sba.gov/size/sizetable2002.html.* The economic impacts of the regulatory alternatives were analyzed based on consumption of PCE, but are described in terms of comparing the compliance costs to dry cleaning revenues at affected firms. For more detail, see the current Economic Impact Analysis in the public docket.

After considering the economic impacts of today's proposed rule on small entities, I certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the economic impact of the proposed rule to affected small entities in the entire PCE dry cleaning source category and considers the economic impact associated with both proposed options for co-residential facilities. Over 98 percent of the approximately 20,000 small entities directly regulated by the proposed rule, including both major and area sources, are expected to have costs of less than 1 percent of sales. The cost impacts for all regulated small entities range from cost savings to less than 1.9 percent of sales. The small entities directly regulated by the proposed rule are dry cleaning businesses within the NAICS codes 812310, 812320, and 812332. We have determined that all of the major sources affected by the proposed rule are owned by businesses within NAICS 812332. The proposed rule is expected to affect 14 ultimate parent businesses that would be regulated as major

sources. Eight of the parent businesses are small according to the SBA small business size standard. None of the eight firms would have an annualized cost of more than 1 percent of sales associated with meeting the requirements for major sources (option I noted earlier in this preamble).

We have determined that virtually all of the affected small businesses that own area source dry cleaners are in NAICS 812320. Small businesses complying with the proposed area source requirements (area source option I described earlier in this preamble) are expected to have the following impacts. Over 98 percent of the approximately 20,000 small entities owning area sources directly regulated by the proposed rule, are expected to have costs of less than 1 percent of sales. The one-time cost of $250 for purchasing a halogenated hydrocarbon detector is less than 0.10 percent of the average annual revenues for dry cleaning businesses in NAICS 812320, and there are minimal annualized costs associated with a detector's use. Of the nearly 200 small businesses that would have to replace their transfer machines (or 1 percent of the total number of affected small entities), most of these businesses would experience an annual cost savings and the others would have compliance costs of less than 1.2 percent of sales. Of the remaining 200 affected small businesses (or 1 percent of the total number of affected small entities), all of which are owners of co-residential facilities, the compliance costs based on the first proposed option for co-residential area sources range from 0.9 to 1.9 percent of sales. For the second proposed option for co-residential area sources, there are 240 small firms that will be affected, and these firms will have compliance costs ranging from 0.4 to 1.9 percent of sales.

Cost impacts associated with the proposed decision for major sources are presented in Section III.E of this preamble. These impacts are also presented for area sources in Section III.H, and for co-residential sources in Section III.J. These impacts are detailed in the BID in the public docket as memos 5 through 7. For more information on the small entity economic impacts associated with the proposed decisions for dry cleaners affected by today's action, please refer to the Economic Impact and Small Business Analyses in the public docket.

Although the proposed rule would not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed rule on small entities. When developing the revised standards, we took special steps to ensure that the burdens imposed on small entities were minimal. We conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting.

Following publication of the proposed rule, copies of the **Federal Register** notice and, in some cases, background documents, will be publically available to all industries, organizations, and trade associations that have had input during the regulation development, as well as State and local agencies. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that today's proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed rule is not subject to section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected dry cleaning facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications.'' The proposed rule does not have tribal implications as specified in Executive Order 13175. It 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. No tribal governments own dry cleaning facilities subject to the proposed standards for dry cleaning facilities. Thus, Executive Order 13175 does not apply to the proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety risk of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This conclusion is based on our assessment of the information on PCE effects on human health and exposures associated with dry cleaner operations.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The proposed rule would have a negligible impact on energy consumption because less than 1 percent of the industry would have to install additional emission control equipment to comply. The cost of energy distribution should not be affected by the proposed rule at all since the standards do not affect energy distribution facilities. We also expect that there would be no impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. Further, we have concluded that the proposed rule is not likely to have any significant adverse energy effects.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed revisions to the 1993 NESHAP for PCE dry cleaners do not include requirements for technical standards beyond what the NESHAP requires. Therefore, the requirements of the NTTAA do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental Protection, Air pollution control, Hazardous substances, Reporting and Recordkeeping requirements.

Dated: December 9, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart M—[Amended]

2. Section 63.320 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 63.320 Applicability.

* * * * *

(b) The compliance date for a new dry cleaning system depends on the date that construction or reconstruction commences.

(1) Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991 and before December 21, 2005, shall be in compliance with the provisions of this subpart except § 63.322(o) beginning on September 22, 1993 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act; and shall be in compliance with the provisions of § 63.322(o) beginning on [90 DAYS AFTER DATE FINAL RULE IS PUBLISHED IN THE **Federal Register**] or immediately upon startup, whichever is later, except as provided by § 63.6(b)(4).

(2) Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005 and before [DATE FINAL RULE IS PUBLISHED IN THE **Federal Register**], shall be in compliance with the provisions of this subpart except § 63.322(o) immediately upon startup, and shall be in compliance with the provisions of § 63.322(o) beginning on [DATE FINAL RULE IS PUBLISHED IN THE **Federal Register**] or immediately upon startup, whichever is later.

(3) Each dry cleaning system that commences construction or reconstruction on or after [DATE FINAL RULE IS PUBLISHED IN THE **Federal Register**], shall be in compliance with provisions of this subpart, including § 63.322(o) immediately upon startup.

(c) Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall comply with §§ 63.322(c), (d), (i), (j), (k), (l), and (m); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993, and shall comply with other provisions of this subpart except § 63.322(o) by September 23, 1996; and shall comply with § 63.322(o) by [DATE 90 DAYS AFTER DATE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from §§ 63.322, 63.323, and 63.324, except paragraphs 63.322(c), (d),

(i), (j), (k), (l), (m), (o)(1), and (o)(4); 63.323(d); and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s), is exempt from §§ 63.322, 63.323, and 63.324, except paragraphs 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), and (o)(4), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

* * * * *

3. Section 63.321 is amended by revising the definition of *Filter*, and adding in alphabetical order definitions for *Halogenated hydrocarbon detector, Perchloroethylene gas analyzer, Residence*, and *Vapor leak* to read as follows:

§ 63.321 Definitions.

* * * * *

Filter means a porous device through which perchloroethylene is passed to remove contaminants in suspension. Examples include, but are not limited to, lint filter, button trap, cartridge filter, tubular filter, regenerative filter, prefilter, polishing filter, and spin disc filter.

Halogenated hydrocarbon detector means a portable device capable of detecting vapor concentrations of perchloroethylene of 25 parts per million by volume and indicating a concentration of 25 parts per million by volume or greater by emitting an audible or visual signal that varies as the concentration changes.

* * * * *

Perchloroethylene gas analyzer means a flame ionization detector, photoionization detector, or infrared analyzer capable of detecting vapor concentrations of perchloroethylene of 25 parts per million by volume.

* * * * *

Residence means any dwelling or housing in which people reside excluding short-term housing that is occupied by the same person for a period of less than 180 days (such as a hotel room).

* * * * *

Vapor leak means a perchloroethylene vapor concentration exceeding 25 parts per million by volume (50 parts per million by volume as methane) as indicated by a halogenated hydrocarbon detector or perchloroethylene gas analyzer.

* * * * *

4. Section 63.322 is amended by revising paragraphs (e)(3), (k) introductory text, and (m), and adding paragraph (o) to read as follows:

§ 63.322 Standards.

* * * * *

(e) * * *

(3) Shall prevent air drawn into the dry cleaning machine when the door of the machine is open from passing through the refrigerated condenser.

* * * * *

(k) The owner or operator of a dry cleaning system shall inspect the system weekly for perceptible leaks while the dry cleaning system is operating. Inspection with a halogenated hydrocarbon detector or perchloroethylene gas analyzer also fulfills the requirement for inspection for perceptible leaks. The following components shall be inspected:

* * * * *

(m) The owner or operator of a dry cleaning system shall repair all leaks detected under paragraph (k) or (o)(1) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt.

* * * * *

(o) Additional requirements:

(1) The owner or operator of a dry cleaning system shall inspect the components listed in paragraph (k) of this section for vapor leaks monthly while the component is in operation.

(i) Area sources shall conduct the inspections using a halogenated hydrocarbon detector or perchloroethylene gas analyzer that is operated according to the manufacturer's instructions. The operator shall place the probe inlet at the surface of each component interface where leakage could occur and move it slowly along the interface periphery.

(ii) Major sources shall conduct the inspections using a perchloroethylene gas analyzer operated according to EPA Method 21.

(2) The owner or operator of a dry cleaning system at any major source shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and shall pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning machine drum through a carbon adsorber or equivalent control device immediately before or as the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

(3) The owner or operator of each dry cleaning system installed after December 21, 2005 at an area source shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning machine drum through a carbon adsorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

(4) The owner or operator of any dry cleaning system shall eliminate any emission of perchloroethylene during the transfer of articles between the washer and the dryer(s) or reclaimer(s).

(5) The owner or operator shall eliminate any emission of perchloroethylene from any dry cleaning system that is installed after December 21, 2005 and that is located in a building with a residence.

5. Section 63.323 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), and (c) to read as follows:

§ 63.323 Test methods and monitoring.

* * * * *

(b) When a carbon adsorber is used to comply with § 63.322(a)(2) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with § 63.322(b)(3) or § 63.323(o)(2), the owner or operator shall measure the concentration of perchloroethylene in the exhaust of the carbon adsorber weekly with a colorimetric detector tube or perchloroethylene gas analyzer. The measurement shall be taken while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber or removal of the activated carbon to determine that the perchloroethylene concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube or perchloroethylene gas analyzer designed to measure a concentration of 100 parts per million by volume of

perchloroethylene in air to an accuracy of ±25 parts per million by volume; and

(2) Use the colorimetric detector tube or perchloroethylene gas analyzer according to the manufacturer's instructions; and

* * * * *

(c) If the air-perchloroethylene gas vapor stream is passed through a carbon adsorber prior to machine door opening to comply with § 63.322(b)(3) or § 63.323(o)(2), the owner or operator of an affected facility shall measure the concentration of perchloroethylene in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube or perchloroethylene gas analyzer to determine that the perchloroethylene concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube or perchloroethylene gas analyzer designed to measure a concentration of 300 parts per million by volume of perchloroethylene in air to an accuracy of ±75 parts per million by volume; and

(2) Use the colorimetric detector tube or perchloroethylene gas analyzer according to the manufacturer's instructions; and

(3) Conduct the weekly monitoring by inserting the colorimetric detector or perchloroethylene gas analyzer tube into the open space above the articles at the rear of the dry cleaning machine drum immediately upon opening the dry cleaning machine door.

* * * * *

6. Section 63.324 is amended by revising paragraphs (d)(3), (d)(5), and (d)(6) to read as follows:

§ 63.324 Reporting and recordkeeping requirements.

* * * * *

(d) * * *

(3) The dates when the dry cleaning system components are inspected for leaks, as specified in § 63.322(k), (l), or (o)(1), and the name or location of dry cleaning system components where leaks are detected;

* * * * *

(5) The date and temperature sensor monitoring results, as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a) or (b); and

(6) The date and monitoring results, as specified in § 63.323, if a carbon adsorber is used to comply with § 63.322(a)(2), (b)(3), or (o)(2).

* * * * *

[FR Doc. 05–24071 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
December 21, 2005

Part III

Department of Education

34 CFR Part 226

State Charter School Facilities Incentive Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 226

State Charter School Facilities Incentive Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to administer the State Charter School Facilities Incentive program. Under this program, the Department of Education (''Department'') provides competitive grants to States to help charter schools meet their need for facilities.

DATES: These regulations are effective January 20, 2006.

FOR FURTHER INFORMATION CONTACT: Ann Margaret Galiatsos or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140. Telephone: (202) 205–9765 or via Internet: *charter.facilities@ed.gov*.

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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: These regulations implement title V, part B, subpart 1 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110, enacted January 8, 2002) (''Act''). Subpart 1, Charter School Programs, of Part B of the Act authorizes the State Charter School Facilities Incentive program. These regulations apply to the State Charter School Facilities Incentive program, which assists charter schools in meeting their facilities needs. Under this program, funds are provided on a competitive basis to States to create new or enhance existing per-pupil facilities aid programs on behalf of charter schools.

On August 26, 2005, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (70 FR 50257). The NPRM proposed selection criteria to implement section 5205(b) of the Act, which authorizes the program. The NPRM also proposed regulations to clarify that construction and the purchase of real property are allowable expenditures under this program. In addition, it proposed a description of expenditures that are subject to the five percent cap on administrative costs.

Except for minor editorial revisions, there are no differences between the NPRM and these final regulations.

Public Comment

In response to the Secretary's invitation in the NPRM, one person submitted comments on the proposed regulations. An analysis of the comments follows.

Comment: The commenter thought charter schools that bus students should receive an incentive under the selection criteria. The commenter recognized that the grant funds cannot be used for buses since they are not facilities. However, the commenter noted that the percentage of minority and at-risk students is lower in some charter schools than it is in their communities. In addition, minority and at-risk students are less likely to be able to afford their own transportation, which may be necessary to attend a charter school. The commenter thought that providing an incentive for busing could rectify this problem.

Discussion: The Secretary shares the commenter's concern that charter schools should serve minority and at-risk students. It is our understanding that charter schools in general are more likely to serve these students than regular public schools; however, the Secretary wants to focus the Department's efforts on those charter schools that serve particularly high levels of economically disadvantaged students. These students have a greater level of need for the public school choice that charter schools offer, since economically disadvantaged students tend to lack the resources to attend private schools.

The regulations are designed to reward States that target funds to economically disadvantaged students. The selection criterion under § 226.11(b) awards points to States that target charter schools with the greatest need and the highest proportions of students in poverty. Furthermore, the competitive preference priority under § 226.14(a) would award points to applications that target services to communities with large proportions of low-income students.

While the Secretary supports the concept of making buses available to students in order to increase the accessibility of school choice, the more important issue is whether economically disadvantaged students are adequately represented in charter schools. A State applicant may provide buses for charter schools or give an incentive for charter schools to provide buses using their own funds. If the State applicant demonstrated that doing so increased the representation of economically disadvantaged students in charter schools, its grant application might be more competitive than other applications that do not include that type of demonstration.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (70 FR 50258). We include additional discussion of potential costs and benefits in the section of this preamble titled *Public Comment*.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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*.

(Catalog of Federal Domestic Assistance Number 84.282D State Charter School Facilities Incentive Program)

The Secretary of Education has delegated authority to the Assistant Deputy Secretary for Innovation and Improvement to issue these amendments to 34 CFR Chapter II.

List of Subjects in 34 CFR Part 226

Charter Schools, Education, Educational facilities, Elementary and secondary education, Grant programs-education, Report and recordkeeping requirements, Schools.

Dated: December 16, 2005.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 226 to read as follows:

PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

Subpart A—General

Sec.

226.1 What is the State Charter School Facilities Incentive program?
226.2 Who is eligible to receive a grant?
226.3 What regulations apply to the State Charter School Facilities Incentive program?
226.4 What definitions apply to the State Charter School Facilities Incentive program?

Subpart B—How Does the Secretary Award a Grant?

226.11 How does the Secretary evaluate an application?
226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?
226.13 What statutory funding priority does the Secretary use in making a grant award?
226.14 What other funding priorities may the Secretary use in making a grant award?

Subpart C—What Conditions Must Be Met by a Grantee?

226.21 How may charter schools use these funds?
226.22 May grantees use grant funds for administrative costs?
226.23 May charter schools use grant funds for administrative costs?

Authority: 20 U.S.C. 1221e–3; 7221d(b), unless otherwise noted.

Subpart A—General

§ 226.1 What is the State Charter School Facilities Incentive program?

(a) The State Charter School Facilities Incentive program provides grants to States to help charter schools pay for facilities.

(b) Grantees must use these grants to—

(1) Establish new per-pupil facilities aid programs for charter schools;

(2) Enhance existing per-pupil facilities aid programs for charter schools; or

(3) Administer programs described under paragraphs (b)(1) and (2) of this section.

(Authority: 20 U.S.C. 7221d(b))

§ 226.2 Who is eligible to receive a grant?

States are eligible to receive grants under this program.

(Authority: 20 U.S.C. 7221(b))

§ 226.3 What regulations apply to the State Charter School Facilities Incentive program?

The following regulations apply to the State Charter School Facilities Incentive program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 226.

(Authority: 20 U.S.C. 1221e–3; 7221d(b))

§ 226.4 What definitions apply to the State Charter School Facilities Incentive program?

(a) *Definitions in the statute*. The following term used in this part is defined in section 5210 of the Elementary and Secondary Education Act of 1965, as amended (ESEA):

Charter school

(b) *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Facilities
Grant
Grantee
Project
Public
Secretary

(c) *Other definition*. The following definition also applies to this part:

Construction means—

(1) Preparing drawings and specifications for school facilities projects;

(2) Repairing, renovating, or altering school facilities;

(3) Extending school facilities;

(4) Erecting or building school facilities; and

(5) Inspections or supervision related to school facilities.

(Authority: 20 U.S.C. 7221d(b); 7221i(1))

Subpart B—How Does the Secretary Award a Grant?

§ 226.11 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 226.12 and the competitive preference priorities in § 226.13 and § 226.14.

(b) The Secretary informs applicants of the maximum possible score for each

criterion and competitive preference priority in the application package or in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7221d(b))

§ 226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

The selection criteria for this program are as follows:

(a) *Need for facility funding.* (1) The need for per-pupil charter school facility funding in the State.

(2) The extent to which the proposal meets the need to fund charter school facilities on a per-pupil basis.

(b) *Quality of plan.* (1) The likelihood that the proposed grant project will result in the State either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance (State and Federal) declining over a five-year period.

(2) The flexibility charter schools have in their use of facility funds for the various authorized purposes.

(3) The quality of the plan for identifying charter schools and determining their eligibility to receive funds.

(4) The per-pupil facilities aid formula's ability to target resources to charter schools with the greatest need and the highest proportions of students in poverty.

(5) For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose.

(6) For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

(c) *The grant project team.* (1) The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants, and subcontractors.

(2) The adequacy and appropriateness of the applicant's staffing plan for the grant project.

(d) *The budget.* (1) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

(2) The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits.

(3) The extent to which the non-Federal share exceeds the minimum percentages (which are based on the percentages under section 5205(b)(2)(C) of the ESEA), particularly in the initial years of the program.

(e) *State experience.* The experience of the State in addressing the facility needs of charter schools through various means, including providing per-pupil aid, access to State loan or bonding pools, and the use of Qualified Zone Academy Bonds.

(Approved by the Office of Management and Budget under control number 1855–0012)

(Authority: 20 U.S.C. 7221d(b))

§ 226.13 What statutory funding priority does the Secretary use in making a grant award?

The Secretary shall award additional points under a competitive preference priority regarding:

(a) *Periodic Review and Evaluation.* The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter and is meeting or exceeding the student academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) *Number of High-Quality Charter Schools.* The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which the State applies for a grant under this competition.

(c) *One Authorized Public Chartering Agency Other than an LEA, or an Appeals Process.* The State—

(1) Provides for one authorized public chartering agency that is not a local educational agency (LEA), such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(2) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) *High Degree of Autonomy.* The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

(Approved by the Office of Management and Budget under control number 1855–0012)

(Authority: 20 U.S.C. 7221b; 7221d(b))

§ 226.14 What other funding priorities may the Secretary use in making a grant award?

(a) The Secretary may award points to an application under a competitive preference priority regarding the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under title I of the ESEA;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of low-income students.

(b) The Secretary may award points to an application under a competitive preference priority for applicants that have not previously received a grant under the program.

(c) The Secretary may elect to consider the points awarded under these priorities only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 226.12 of this part.

(Approved by the Office of Management and Budget under control number 1855–0012)

(Authority: 20 U.S.C. 7221d(b))

Subpart C—What Conditions Must Be Met by a Grantee?

§ 226.21 How may charter schools use these funds?

(a) Charter schools that receive grant funds through their State must use the funds for facilities. Except as provided in paragraph (b) of this section, allowable expenditures include:

(1) Rent.

(2) Purchase of building or land.

(3) Construction.

(4) Renovation of an existing school facility.

(5) Leasehold improvements.

(6) Debt service on a school facility.

(b) Charter schools may not use these grant funds for purchasing land when they have no immediate plans to construct a building on that land.

(Authority: 20 U.S.C. 7221d(b))

§ 226.22 May grantees use grant funds for administrative costs?

State grantees may use up to five percent of their grant award for administrative expenses that include: indirect costs, evaluation, technical

assistance, dissemination, personnel costs, and any other costs involved in administering the State's per-pupil facilities aid program.

(Authority: 20 U.S.C. 7221d(b))

§ 226.23 May charter schools use grant funds for administrative costs?

(a) Except as provided in paragraph (b) of this section, charter school subgrantees may use grant funds for administrative costs that are necessary and reasonable for the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect costs and rates, must comply with EDGAR and the Office of Management and Budget Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments).

(b) Consistent with the requirements in 34 CFR 75.564(c)(2), any charter school subgrantees that use grant funds for construction activities may not be reimbursed for indirect costs for those activities.

(Authority: 20 U.S.C. 1221e–3; 7221d(b))

[FR Doc. 05–24321 Filed 12–20–05; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
December 21, 2005

Part IV

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline to California Phase 3 Gasoline; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2003–0217; FRL–8011–4]

RIN 2060–AK04

Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline to California Phase 3 Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule exempts refiners, importers, and blenders of gasoline subject to the State of California's Phase 3 reformulated gasoline (CaRFG3) regulations from certain enforcement provisions in the Federal reformulated gasoline (RFG) regulations. We are taking this action because we believe that gasoline complying with the CaRFG3 regulations will provide emissions benefits equivalent to Federal Phase II RFG and because California's compliance and enforcement program will in practice be sufficiently rigorous to assure that the standards are met. Since the Federal RFG program began in 1995, California refiners, importers and blenders have been continuously exempted from certain enforcement-related requirements such as recordkeeping and reporting, and certain sampling and testing requirements. This final rule extends those exemptions, which are applicable to California Phase 2 gasoline, to CaRFG3. It also restores the definition of ''California gasoline'' which was erroneously and accidentally deleted during a prior rulemaking.

DATES: This final rule is effective February 21, 2006.

ADDRESSES: EPA has established a docket for this action under OAR–2003–0217. 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 the disclosure of which 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 Air Docket in the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, Attorney/Advisor, Transportation and Regional Programs Division, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9623; fax number: (202) 343–2801; e-mail address: *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Regulated categories and entities potentially affected by this final rule include:

Category	NAICSs codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. History of the California Enforcement Exemptions

Section 211(k) of the Federal Clean Air Act (the Act) directs the EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas, as well as ''anti-dumping'' requirements for conventional gasoline used in the rest of the country. The areas covered by the Federal RFG program in California are San Joaquin Valley, Los Angeles, San Diego, and Sacramento.[1] The RFG provisions of the Act require EPA to promulgate regulations to reduce the emissions in RFG covered areas of ozone forming volatile organic compounds (VOCs) and toxic air pollutants through the use of RFG in gasoline-fueled motor vehicles. The Act also specifies that RFG use result in no increase in the emission of oxides of nitrogen (NO_X) over baseline levels (under Phase I of the program). Finally, gasoline subject to the RFG requirements must meet certain content standards for oxygen, benzene and heavy metals.

The RFG program was designed to be implemented in two phases. The Phase I program was in effect from January 1, 1995 through December 31, 1999. The Phase II program, which began on January 1, 2000 and is currently in effect, is similar to the Phase I program, but requires even greater reductions in emissions of VOC, toxics and NO_X. The regulations for RFG and conventional gasoline may be found at 40 CFR part 80, subparts D, E, and F.

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations establishing California's Phase 2 reformulated gasoline program (''California Phase 2 RFG''), which became effective March 1, 1996. These regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NO_X, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants

[1] See *http://www.epa.gov/otaq/rfgmap.jpg* for a map and list of RFG covered areas by state. A copy of the map and list has been placed in the docket for this rulemaking. The map and list are revised frequently—please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for updated information. Please be aware that the statutory requirement for RFG use in Atlanta and Baton Rouge that arose from their classification as severe non-attainment areas for the 1-hour ozone standard is currently stayed pursuant to court orders in pending litigation and, therefore, these areas do not currently appear on the map.

from gasoline-fueled motor vehicles.[2] The California Phase 2 RFG regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T–50 and T–90, respectively). These regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.

EPA previously adopted enforcement exemptions for California Phase 2 gasoline under the Federal Phase I RFG program.[3] In doing so, we concluded that:

(1) The emission reductions resulting from the California Phase 2 standards would be equal to or greater than the Federal Phase I RFG standards (*i.e.*, the standards that were applicable from January 1, 1995 through December 31, 1999),

(2) The content standard for benzene under California Phase 2 would be equivalent in practice to the Federal Phase I content standard and that the oxygen content standard of 2.0 weight percent would be achieved in Federal RFG areas, and

(3) CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase I requirements would be met in practice.

Consequently, while the Federal Phase I RFG standards continued to apply in California, EPA exempted refiners, importers, and blenders of gasoline sold in California from many of the enforcement-related provisions of the Federal Phase I RFG regulations. The exemptions applied to the gasoline they sold for use in California and included, with some limitations, the following provisions in 40 CFR part 80:

Requirement exempted	Citation at 40 CFR 80.xx
Compliance Surveys.[4]	80.68
Independent Sampling & Testing.	80.65(f)
Designation of Gasoline.	80.65(d)
Marking of Conventional Gasoline.	80.65(g) and 80.82
Downstream Oxygenate Blending.	80.69
Recordkeeping	80.74 and 80.104
Reporting	80.75 and 80.105
Product Transfer Documents.	80.77
Parameter Value Reconciliation Requirements.	80.65(e)(2)
Reformulated Gasoline and Reformulated Gasoline Blendstock for Oxygenate Blending (RBOB) Compliance Requirements.	80.65(c)
Annual Compliance Audit Requirements.	80.65(h)
Compliance Attest Engagement Requirements.	subpart F

California refiners, importers, and blenders were not granted exemptions from these Federal enforcement requirements with regard to gasoline delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not apply to gasoline delivered for use outside of California.

The original California enforcement exemptions expired on December 31, 1999 when the Federal Phase II RFG started. The exemptions expired because they were based on a comparison of California Phase 2 gasoline and Federal Phase I RFG. An appropriate equivalency determination comparing California Phase 2 and Federal Phase II gasolines would have been premature in 1994, when the final RFG regulations were issued. However, on September 15, 1999, we published a direct final rule continuing the California enforcement exemptions beyond December 31, 1999.[5] We took this action after comparing California Phase 2 gasoline and Federal Phase II RFG. In brief, we concluded that:

(1) The emissions reductions resulting from the California Phase 2 RFG standards would be equal to or greater than the reductions from the Federal Phase II RFG standards;

(2) The content standards for benzene under California Phase 2 would be equivalent in practice to the Federal Phase II content standard and that the oxygen content standard of 2.0 weight percent would be achieved in Federal RFG areas, and

(3) CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase II requirements would be met in practice.[6]

III. Today's Action and Response to Comments on the Notice of Proposed Rulemaking

On August 11, 2004, EPA published a notice of proposed rulemaking for this rule in the **Federal Register**.[7] This section summarizes the analyses and conclusions that we used in developing the proposed and final rule. It also discusses comments we received in response to the notice of proposed rulemaking.

A. California's Phase 3 Gasoline Rulemaking Activities

On August 3, 2000, California first promulgated the CaRFG3 regulations, which included a prohibition on the use of methyl tertiary-butyl ether (MTBE) by December 31, 2002. On March 21, 2001, we received a written request from the California Air Resources Board (CARB) requesting extension of the California enforcement exemptions of 40 CFR 80.81 to CaRFG3. In that letter, CARB explains that its CaRFG3 regulations were adopted in response to Governor Gray Davis's issuance of Executive Order D–5–99, directing the phase-out of methyl tertiary-butyl ether (MTBE) as an additive in California gasoline by December 31, 2002.

Since March 21, 2001, CARB has completed a series of rulemakings that amended its CaRFG3 regulations. Many of these amendments were made necessary by a postponement of the MTBE phase-out and to accommodate the use of ethanol. The MTBE phase-out was delayed until December 31, 2003 by Governor Gray Davis's issuance of a second Executive Order D–52–02.[8] The CaRFG3 regulations and all standards discussed in this notice represent the May 1, 2003 version of the California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, § 2250 *et seq.*

B. EPA's Analysis and Conclusions Regarding California's Phase 3 Gasoline Regulations

In developing the proposed rule and determining whether to apply the Federal enforcement exemptions of 40 CFR 80.81 to CaRFG3, we considered:

[2] California's reformulated gasoline regulations, includng Phase 2 and Phase 3, are at Title 13, California Code of Regulations (CCR), section 2250 *et seq.* (May 1, 2003). A copy of the regulations have been placed in the docket.

[3] See 59 FR 7758 (February 16, 1994) and 63 FR 34818 (June 26, 1998).

[4] Partial exemption from oxygen survey requirement. *See* 63 FR 34818, 34820–34822 (June 26, 1998). Also see fn. 9.

[5] See "Regulation of Fuels and Fuel Additives, Extension of California Enforcement Exemptions for Reformulated Gasoline Beyond December 31, 1999" Direct Final rule, 64 FR 49992 (September 15, 1999).

[6] See the Notice of Proposed Rulemaking (which accompanied the Direct Rule cited in footnote 5) at 64 FR 50036, 50038–50040 (September 15, 1999).

[7] See 69 FR 48827.

[8] A copy of the Executive Order has been placed in the docket.

(1) Whether the emissions reductions resulting from CaRFG3 would be equal to or greater than the reductions from Federal Phase II RFG standards;

(2) Whether the content standard for benzene under CaRFG3 would be equivalent in practice to the Federal Phase II content standard and whether the oxygen content standard of 2.0 weight percent would be met in Federal RFG areas; [9] and

(3) Whether CARB's compliance and enforcement program is designed to be sufficiently rigorous to ensure that the Federal Phase II requirements would be met in practice.

Considering these factors is appropriate and consistent with the analyses we used when we previously granted enforcement exemptions to refiners, importers, and blenders of California Phase 2 gasoline under both the Federal Phase I and Phase II RFG programs.[10]

To determine whether CaRFG3 emissions reductions are equivalent to or greater than Federal Phase II RFG, we have evaluated the CaRFG3 standards and the Federal Phase II complex model standards. We have also considered whether possible ''real world'' CaRFG3 formulations would comply with Federal Phase II RFG emissions reduction standards. Compliance with performance standards under the Federal RFG program is determined by using the Phase II Complex Model. The Complex Model predicts VOC, toxics and NO_X emissions relative to the emissions of 1990 baseline gasoline.[11] These reduction percentages are compared to RFG performance standards. The Federal performance standards applicable to VOC-controlled RFG designated for VOC control region 1 apply to California areas covered by the Federal RFG program.[12]

California's Phase 2 RFG regulations established specifications for eight gasoline parameters: sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, RVP, T50 and T90. Some parameters are expressed as flat limits and some parameters are expressed as averaging limits with caps. California's flat limit option requires refiners to meet parameter standards on an every-gallon, rather than an averaged basis. The California flat limits are somewhat analogous to the Federal RFG per-gallon standards. The CaRFG3 regulations revised certain of these specifications and incorporated an updated version of the California predictive model.[13] Refiners may produce complying California gasoline using a ''recipe'' that meets these parameter specifications. Alternative specifications for complying gasoline can be established by using the California predictive model to demonstrate that emissions are equivalent to those of a gasoline meeting the established specifications. Six of the parameters are also input parameters for the EPA Complex Model. The remaining two, T50 and T90, are closely related to E200 and E300, the remaining two Complex Model inputs.[14]

If CaRFG3 provides emission benefits equivalent to Federal Phase II RFG, then a gasoline formulation meeting the CaRFG3 flat limit specifications should provide emission reductions, as calculated by the complex model, which meet Federal Phase II performance standards. The following table, which was prepared for the proposed rule, compares the emissions performance of the CaRFG3 ''recipe,'' evaluated using the Federal Complex Model, to the Federal Phase II RFG performance standards: [15]

TABLE 1.— COMPARISON OF CARFG3 FLAT LIMIT RECIPE COMPLEX MODEL PERFORMANCE WITH FEDERAL PHASE II RFG STANDARDS

	VOC (% reduction)	Toxics (% reduction)	NO_X (% reduction)
CaRFG3 Flat Limits with ethanol	27.7	30.0	14.5
CaRFG3 Flat Limits with MTBE	27.7	32.2	14.5
Federal per gallon standards	27.5	20.0	5.5
Federal averaged standards	29.0	21.5	6.8

Table 1 shows two sets of results; one where the oxygenate was assumed to be MTBE and the other where the oxygenate was assumed to be ethanol. The specific oxygenate affects the toxics performance estimate. Two sets of Federal standards are shown, the per-gallon standards and the averaged standards. (These numerically more stringent averaged standards are applicable if a refiner chooses to comply on average, rather than on a per gallon basis.) The emissions performance of the flat limit recipe gasoline is better than the Federal RFG per gallon standards for VOC, toxics and NO_X reductions, and better than the Federal RFG averaged standards for toxics and NO_X reduction. Thus, gasoline produced in compliance with the CaRFG3 flat limits (which are somewhat analogous to Federal per-gallon standards) would achieve performance limits at least as stringent as the Federal Phase II RFG per-gallon standards for VOCs and at least as stringent as the averaged standards for toxics and NO_X. Thus, CaRFG3 would meet Federal standards if every gallon were produced according to this recipe.

[9] Both oxygenated and nonoxygenated blends were considered in developing the notice of proposed rulemaking. At the time we issued the notice of proposed rulemaking, we did not know if California's request for a waiver of the oxygen content requirements for reformulated gasoline would be granted. We also did not know what the outcome would be with regard to the Energy Bill, H.R. 6, which addressed the elimination of the oxygen content requirement for reformulated gasoline. Since then, H.R. 6 was passed by both the House and Senate and was signed into law by President Bush. The Energy Policy Act of 2005, Pub.L. 109–58, Sec. 1504, amends section 211(k) of the Clean Air Act to eliminate the oxygen content requirement under that section. We plan to initiate rulemaking activity soon to amend 40 CFR part 80 to reflect changes to the Clean Air Act that were enacted in the Energy Policy Act.

[10] See 59 FR 7813 (February 16, 1994) as amended at 59 FR 36965 (July 20, 1994), 59 FR 39289 (August 2, 1994), 59 FR 60715 (November 28, 1994), 63 FR 34825 (June 26, 1998), 64 FR 49997 (September 15, 1999), and 66 FR 17263 (March 29, 2001).

[11] ''Baseline gasoline'' refers to a general set of properties representative of a refiner's fuel in 1990. The purpose of establishing a baseline is to prevent the quality of gasoline to degrade in areas in which reformulated gasoline is not required. For a discussion of baselines, please refer to the RFG and anti-dumping final rule, 59 FR 7798 (February 16, 1994).

[12] See 40 CFR 80.41 and 90.71.

[13] The California predictive model, like the Complex Model, is used to predict emissions performance of gasoline.

[14] There is a strong correlation between T50 (the 50% distillation temperature) and E200 (the percent distilled at 200F). Likewise, there is a strong correlation between T90 (the 90% distillation temperature) and E300 (the percent distilled at 300F). For the analysis in table 1, E200 and E300 were estimated from the flat limit T50 and T90 specifications using conversions found in EPA's complex model spreadsheet.

[15] Oxygen was assumed to be 2.0 wt%, the midpoint of the 1.8–2.2 wt% specification and RVP was 6.90, the RVP used with the evaporative compliance option in the predictive model.

However, as explained in the proposed rule, we anticipate that most refiners will use the CaRFG3 predictive model to certify alternative specifications with emissions equivalent to or better than the flat limit recipe. While there are similarities between the California Phase 3 predictive model and the Federal Phase II Complex Model, there are also substantial differences. Consequently, two recipes found to have equal emissions with the California predictive model may not have equal emissions when evaluated by the Federal Complex Model. In other words, a finding that the Complex Model emissions performance of the flat limit recipe is equal to or better than the Federal standards does not guarantee that the Complex Model emissions performance of all gasoline blends that may be produced in compliance with CaRFG3 will meet or surpass the Federal standards.

For purposes of determining whether or not CaRFG3 produced and certified under the predictive model would be equivalent to Federal Phase II RFG, we considered several reasonably likely ''real world'' CaRFG3 formulations. These formulations were developed in connection with California's 1999 request for a waiver from the Federal oxygen content requirement for reformulated gasoline.[16] The CaRFG3 formulations depicted in Tables 2 and 3 do not represent each and every possible gasoline formulation under the California's regulations, but we believe that they provide a representative sample of that universe of gasoline formulations that are likely to be produced under the CaRFG3 program. This analysis is discussed in more detail in the following paragraphs.

In April 1999, California applied for a waiver of the Federal oxygen content requirement for reformulated gasoline. In order to complete an evaluation of the technical basis for this waiver request, we determined that additional refinery modeling was needed to forecast the likely composition of CaRFG3, after California's phase-out of methyl-tertiary-butyl-ether (MTBE), with and without an oxygen waiver.[17] Consequently, EPA commissioned MathPro to conduct this modeling, which estimated the composition of ethanol-oxygenated and non-oxygenated CaRFG3 under various scenarios.[18] These scenarios varied in terms of the continued or reduced use of MTBE outside of California, whether or not refiners avoid the patent held by Unocal on certain reformulated blends, and whether ethanol is used at 2.0 or 2.7 weight percent oxygen. Although these modeling results were intended for use in the waiver evaluation, they are also helpful when considering the appropriateness of extending the existing enforcement exemptions to CaRFG3. EPA believes that these modeling results are likely to be the most accurate and comprehensive forecasts of the likely properties of the CaRFG3 that will be sold in Federal RFG areas in California. For the purpose of this rule, we have considered both oxygenated and non-oxygenated CaRFG3 blends. (See footnote 9 for a discussion of the oxygen content requirement in light of the Energy Policy Act of 2005.)

Table 2, below and as prepared for the proposed rule, shows that oxygenated CaRFG3 produced under each of the scenarios that EPA evaluated meets Federal RFG performance standards. All of these fuels had better performance than the Federal RFG per gallon standards. With one exception (underlined in Table 2), these fuels also met or surpassed the Federal RFG averaged standards. The one exception is a fuel that was estimated to provide a VOC reduction of 28.9%. Since the Federal per gallon standard is 27.5% and the averaged standard is 29.0%, this fuel would meet the Federal per gallon but not the averaged standard. However, we believe for purposes of today's analysis, that the Federal per gallon standard is a more appropriate reference point.

MathPro's modeling assumed that essentially all CaRFG3 is certified with the flat limit variant of the Predictive Model. Therefore, the formulations which they forecast have California predictive model emissions performance equivalent to, or better than, the flat limit recipe, but do not necessarily meet California predictive model averaged limit requirements. As previously noted, California's flat limit option requires refiners to meet parameter standards on an every-gallon, rather than averaged basis. The California flat limits are analogous to the Federal RFG per-gallon standards. In both cases, refiners elect to meet less stringent standards on an every-gallon basis, rather than more stringent standards, on average. Consequently, it is appropriate to expect the complex model performance of these CaRFG3 formulations to meet the Federal Phase II per-gallon performance standards, but not necessarily to meet the Federal Phase II averaged standards.

TABLE 2.—COMPLEX MODEL PERFORMANCE OF OXYGENATED CARFG3 USING MATHPRO GASOLINE PROPERTY ESTIMATES

Ethanol (wt% oxygen)	Sulfur (ppm)	RVP (psi)	E200 (%)	E300 (%)	Aromatics (vol%)	Olefins (vol%)	Benzene (vol%)	VOC (%)	Toxics (%)	NO_X (%)
2.0	15	6.66	47.20	87.60	24.10	4.40	0.64	30.2	32.9	14.8
2.0	10	6.74	46.40	88.70	23.30	3.90	0.57	29.6	34.1	15.4
2.7	10	6.85	46.90	88.10	23.20	3.80	0.70	29.0	32.8	15.4
2.7	9	6.84	46.60	88.00	23.30	3.80	0.68	29.0	32.9	15.4
2.0	17	6.60	46.80	88.30	26.50	3.40	0.62	30.1	32.0	14.3
2.0	17	6.60	45.20	90.60	19.10	4.60	0.77	30.8	33.8	16.4
2.0	13	6.62	46.20	87.70	24.30	3.70	0.60	30.1	33.2	15.0
2.0	12	6.60	46.10	88.20	28.60	2.90	0.51	29.6	32.1	14.2
2.7	10	6.76	46.20	88.60	25.70	2.80	0.66	29.1	32.1	14.9
2.7	12	6.60	44.90	87.70	22.40	2.80	0.71	30.2	32.9	15.7

[16] The California waiver analysis considered the effect of changes in gasoline composition on the entire on-road and off-road gasoline-power fleet. The analysis for this rule considers only Complex Model performance, which considers a portion of the on-road gasoline-powered fleet, since the Model considers 1990s technology vehicles.

[17] One of the reasons for this determination was that earlier modeling was done before the CaRFG3 predictive model was finalized. This may have affected the estimates of CaRFG3 properties developed from these earlier studies. EPA's Technical Support Document for the waiver decision ''Analysis of California's Reformulated Gasoline Oxygen Content Requirement for California Covered Areas'' discusses this in greater depth. A copy of this document has been placed in the docket.

[18] See ''Analysis of the Production of California Phase 3 Reformulated Gasoline With and Without an Oxygen Waiver'', MathPro, Inc. (January 19, 2001). A copy of this document has been placed in the docket.

TABLE 2.—COMPLEX MODEL PERFORMANCE OF OXYGENATED CARFG3 USING MATHPRO GASOLINE PROPERTY ESTIMATES—Continued

Ethanol (wt% oxygen)	Sulfur (ppm)	RVP (psi)	E200 (%)	E300 (%)	Aromatics (vol%)	Olefins (vol%)	Benzene (vol%)	VOC (%)	Toxics (%)	NO_X (%)
2.7	8	6.73	45.40	89.00	26.30	1.90	0.63	28.9	32.1	15.0
2.7	10	6.69	45.40	88.30	25.30	2.80	0.65	29.4	32.3	15.1

Table 3, below, shows that non-oxygenated CaRFG3 produced under each of the scenarios that EPA evaluated meets Federal RFG performance standards. All of the fuels shown in Table 3, which EPA believes to be reasonably representative of the fuel formulations that refiners would produce in California without an oxygen content requirement are predicted to perform better than the Federal RFG per gallon and averaged standards. (See footnote 9 for a discussion of the oxygen content requirement in light of the Energy Policy Act of 2005.)

TABLE 3.—COMPLEX MODEL PERFORMANCE OF NON-OXYGENATED CARFG3 USING MATHPRO GASOLINE PROPERTY ESTIMATES

Ethanol (wt% oxygen)	Sulfur (ppm)	RVP (psi)	E200 (%)	E300 (%)	Aromatics (vol%)	Olefins (vol%)	Benzene (vol%)	VOC (%)	Toxics (%)	NO_X (%)
0.0	8	6.60	47.7	87.4	23.0	5.9	0.57	30.7	32.5	15.1
0.0	7	6.60	48.7	87.6	28.6	4.7	0.51	30.0	30.4	14.0
0.0	8	6.60	48.1	87.2	26.9	2.4	0.46	29.7	32.0	14.3
0.0	10	6.60	47.7	88.0	24.3	3.9	0.49	30.3	32.9	14.8
0.0	12	6.60	49.0	85.8	24.8	6.0	0.52	30.5	32.2	14.3
0.0	10	6.60	49.2	87.4	28.6	4.1	0.53	30.0	30.2	13.8
0.0	12	6.60	47.6	86.8	21.2	6.3	0.52	31.0	33.8	15.3
0.0	9	6.60	47.9	87.6	25.7	3.9	0.49	30.1	32.2	14.5

Based upon a comparison of the CaRFG3 flat limit ''recipe'' and Federal Phase II Complex model standards, as well as a consideration of possible California fuel formulations certified using the California Phase 3 predictive model, we have concluded that the NO_X, VOC and toxics emissions reductions resulting from the CaRFG3 standards would be equal to or greater than the Federal Phase II RFG standards.

The content standard for benzene for CaRFG3 is equivalent to or better than the Federal Phase II standards. The California flat limit benzene standard is 0.80 volume percent and the averaged standard is 0.70 volume percent with a 1.10 volume percent cap. By comparison, the Federal per gallon benzene standard is 1.00 volume percent and the averaged standard is 0.95 volume percent with a 1.30 volume percent cap. EPA retains the authority to sample and test California gasoline to make sure it meets all applicable Federal standards.

In developing the proposed rule, we considered the design and implementation of CARB's enforcement program, which includes enforcement at refineries, import facilities, terminals, and service stations. CARB's enforcement program is generally outlined in its regulations and includes requirements that refiners submit annual compliance plans,[19] which outline how they will meet CaRFG3 requirements, and that refiners and importers conduct testing and maintain records of testing performed on batches of gasoline.[20] CARB staff summarized information on its actual enforcement activities in fiscal years 1999–2000 and 2000–2001, indicating that 6.6% and 6.5% of gasoline sold in California was inspected, during each respective period. In 1999–2000, the violation rate was 1.9% (based on volumes sampled) and 0.5% (based on the number of samples). In 2000–2001, the violation rate was 0.16% (based on volumes sampled) and 1.06% (based on the number of samples). We believe that, considering the presence of adequate enforcement provisions in its regulations and CARB's actual enforcement activities, that the CARB enforcement program is sufficiently stringent to ensure that the California standards will be met. For all these reasons, we have determined that it is appropriate to apply the enforcement exemptions at 40 CFR 80.81 to refiners, importers, and blenders of CaRFG3.

C. Definition of California Gasoline

This rule restores the definition of ''California gasoline,'' which was previously included in § 80.81, but which was accidentally and erroneously removed from the Code of Federal Regulations. The definition is necessary because it describes the gasoline to which the enforcement exemptions may apply.

D. Response to Comments

We received no adverse comments on the notice of proposed rulemaking. The only written comment received was from the Western States Petroleum Association and it was a positive one that urged us to finalize this rule as soon as possible.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, 58 **Federal Register** 51,735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

[19] Title 13, CCR section 2269.

[20] Title 13, CCR section 2270.

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

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

This rule is not a significant regulatory action within the meaning of the Executive Order. It would not have an annual effect on the economy of $100 million or more and is not expected to have any adverse economic effects as described in the Order. This rule does not raise issues of consistency with the actions taken or planned by other agencies, does not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

B. Paperwork Reduction Act

This rule does not impose any new information collection burden. Today's rule extends enforcement exemptions to refiners of CaRFG3 and would reduce burdens associated with overlapping Federal and state requirements, including recordkeeping and reporting requirements. However, the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, has previously approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and gasoline sulfur control rulemaking, and has assigned OMB control numbers 2060–0277 and 202–0308. A copy of the OMB approved Information Collection Request (ICR) may be obtained from the Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' See 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today's rule extends enforcement exemptions to refiners of CaRFG3 and would reduce burdens associated with overlapping Federal and state requirements, including recordkeeping and reporting requirements. We have therefore concluded that today's rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include

regulations that have ''substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. 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. Today's rule extends enforcement exemptions to refiners of CaRFG3 and would reduce burdens associated with overlapping Federal and state requirements, including recordkeeping and reporting requirements. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are 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 does not have tribal implications. It 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. This rule applies to refiners, importers and blenders of CaRFG3 and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

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

This rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 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. Today's rule does not affect technical standards and raises no issues under the NTTAA.

J. Statutory Provisions and Legal Authority

Statutory authority for today's rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

K. 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 to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the rule is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 15, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

Subpart D—[Amended]

■ 2. Section 80.81 is amended by:
■ a. Revising paragraph (a).
■ b. Revising paragraph (c) introductory text.
■ c. Revising paragraph (e)(2) introductory text and (e)(3)(i).
■ d. Revising paragraph (g)(1) introductory text.
■ e. Revising paragraphs (h)(1) introductory text, (h)(1)(ii)(A), (h)(1)(ii)(C) and (h)(2)(i).

The revisions read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

(a)(1) The requirements of subparts D, E, F, and J of this part are modified in accordance with the provisions contained in this section in the case of California gasoline.

(2) For purposes of this section, ''California gasoline'' means any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California and that:

(i) Is manufactured within the State of California;

(ii) Is imported into the State of California from outside the United States; or

(iii) Is imported into the State of California from inside the United States and that is manufactured at a refinery that does not produce reformulated gasoline for sale in any covered area outside the State of California.

* * * * *

(c) Any refiner, importer, or oxygenate blender of California gasoline that is manufactured or imported subsequent to March 1, 1996 and that meets the requirements of the California Phase 2 or Phase 3 reformulated gasoline regulations, as set forth in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003), is with regard to such gasoline, exempt from the following requirements (in addition to the requirements specified in paragraph (b) of this section:

* * * * *

(e) * * *

(2) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline with regard to any gasoline formulation that it produces or imports and that is certified under Title 13, California Code of Regulations, section 2265 or 2266 (May 1, 2003), unless:

* * * * *

(3)(i) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline who has been assessed a civil, criminal, or administrative penalty for violations of subpart D, E, or F of this part or for a violation of the California reformulated gasoline regulations set forth in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003).

* * * * *

(g)(1) Any refiner that operates a refinery located outside the State of California at which California gasoline is produced (as defined in paragraph (a)(2)(ii) or (iii) of this section) is produced shall, with regard to such gasoline, provide to any person to whom custody or title of such gasoline has transferred, and each transferee shall provide to any subsequent transferee, documents which include the following information:

* * * * *

(h)(1) For the purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1) and § 80.101(i)(1)(i)(A), any refiner, importer, or oxygenate blender of California gasoline may use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003), in lieu of any applicable methodology specified in § 80.46, with regard to:

* * * * *

(ii) * * *

(A) The gasoline must be produced by a refinery that is located in the state of California that produces California gasoline, or imported into California from outside the United States as California gasoline;

* * * * *

(C) The refiner or importer must correlate the results from the applicable sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003) with the method specified in § 80.46, and such correlation must be adequately demonstrated to EPA upon request.

(2) * * *

(i) The samples are properly collected under the terms of a current and valid protocol agreement between the refiner and the California Air Resources Board with regard to sampling at the off site tankage and consistent with the requirements prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003); and

* * * * *

[FR Doc. 05–24298 Filed 12–20–05; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
December 21, 2005

Part V

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0178; FRL–8011–6]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On May 13, 2005 (70 FR 25676), EPA issued direct final rule amendments and a parallel proposal to provide additional compliance options for the national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Coating Manufacturing. One proposed amendment specified that compliance with the weight percent hazardous air pollutant (HAP) limit in coatings products may be demonstrated based on formulation data. However, the proposed amendment did not include *de minimis* limits for HAP in formulation data as allowed in other surface coating NESHAP. Due to adverse comment, we withdrew that provision of the direct final, and we are now issuing final amendments to specify that certain raw material formulation data as supplied to coating manufacturers may be used to demonstrate compliance with the weight percent HAP limit.

DATES: *Effective Date:* December 21, 2005.

ADDRESSES: Docket ID No. OAR–2003–0178 contains supporting information used in developing the NESHAP. All documents in the docket are listed in the EDOCKET index at *http://docket.epa.gov/edkpub/index.jsp.* 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 Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), Office of Air Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS*	Examples of regulated entities
Industry	3255, 3259	Manufacturers of paints, coatings, adhesives, or inks.

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of the rule, as well as in today's amendment to the definitions sections. If you have questions regarding the applicability of the amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule amendments will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 21, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Response to Comments
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children for Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

On December 11, 2003, we issued the NESHAP for miscellaneous coating manufacturing (40 CFR part 63, subpart HHHHH). Subpart HHHHH applies to equipment and processes involved in the manufacturing of coatings, such as paints, inks, and adhesives.

On May 13, 2005, we issued direct final rule amendments (70 FR 25676) and a parallel proposal (70 FR 25864) to amend subpart HHHHH. We stated in the direct final rule that if we received adverse comment by June 13, 2005, we would publish a timely withdrawal in the **Federal Register**.

We subsequently received adverse comments from two commenters on one provision and, accordingly, withdrew paragraph (b)(4) in 40 CFR 63.8055 (70 FR 38780). The remaining provisions, for which we did not receive any adverse comments, became effective on July 12, 2005. After consideration of the comments, we are promulgating the final rule amendments based on the parallel proposal published on May 13, 2005.

II. Response to Comments

The direct final rule amendments published on May 13, 2005, included amendments that allow formulation data to be used as an alternative to test data for demonstrating compliance with the 5 weight percent HAP limit in '63.8055 of 40 CFR part 63, subpart HHHHH. The intent was to make the compliance options for the miscellaneous coating manufacturing NESHAP consistent with options for other surface coating rules. For example, 40 CFR part 63, subpart MMMM, the NESHAP for surface coating of miscellaneous metal parts and products, has a compliant materials option that requires the owner or operator of the surface coating operation to determine the mass fraction of organic HAP for each coating. One method of determining this mass fraction is to use formulation data from the supplier or manufacturer. However, unlike the option in the other surface coating rules, the formulation data option in the direct final rule amendments to subpart HHHHH did not have mass cutoffs of 0.1 percent for carcinogens as defined by Occupational Safety and Health Administration (OSHA) or 1 percent for other HAP because subpart HHHHH does not establish cutoffs for trace materials or impurities.

The commenters objected to this direct final rule amendments and pointed out that the amendments did not allow for mass cutoffs reported in Material Safety Data Sheets (MSDS), which require reporting of quantities of materials based on limits of 0.1 percent for carcinogens and 1 percent for other HAP; and/or other technical reports supplied by the coating manufacturers that use these reporting quantities. These limits account for trace constituents and impurities in materials. These reporting limits are used when raw material and product formulations are supplied to paint and coating manufacturers and, in turn, supplied to their customers. One of the commenters also pointed out that to disallow the use of these *de minimis* reporting levels effectively renders the option useless because raw material data and manufacturer formulations are not reported below these limits. Further, without this allowance, the miscellaneous coating manufacturing NESHAP would create an inherent inconsistency between manufacturer=s certifications under the surface coatings NESHAP (recordkeeping and reporting for downstream users) and potential certification (recordkeeping and reporting) for this option under the miscellaneous coating manufacturing NESHAP.

We appreciate the commenter's request to minimize the compliance burden and allow exemptions for impurities and trace constituents. We agree that the proposed rule amendment allowing formulation data should be a practical option that reduces the compliance burden on both the regulated industry and the permitting authorities.

We do not agree with the commenter regarding consistency between compliance with other surface coating NESHAP and the miscellaneous coating manufacturing NESHAP. The formats of the standards in other surface coating rules are different than the format of the standard in the coating manufacturing rule. Although we considered formulation data in development of the standards for the other surface coating NESHAP, for coating manufacturing, we only considered emissions reduction techniques in development of standards. The 5 percent HAP limit in the miscellaneous coating manufacturing NESHAP was intended as a pollution prevention option that provides a level of control more stringent than the emissions standards. Nevertheless, we have considered lessons learned in the development of surface coating rules and, in that light, we tried to be consistent. In the other surface coating rules, we have not required raw material providers to perform complete analyses of their products to quantify impurities or trace constituents, nor have we considered any requirements that might force raw material providers to change their raw material specifications. We understand that use of MSDS sheets as formulation data would mean that a HAP, such as toluene at 0.5 percent of the material by mass, may be present in the raw material yet not be considered in the 5 percent HAP limit compliance demonstration. However, because a limited number of trace HAP are used in coating manufacturing and trace compounds in raw materials will only become more dilute in the final coating, we believe formulation data with the MSDS *de minimis* limits for trace compounds are adequate to conform with the intended pollution prevention alternative and demonstrate compliance with the 5 percent HAP limit.

We do not agree, however, that the MSDS information for a coating product provided by the coating manufacturer is a legitimate basis for determining compliance with the 5 percent HAP limit. A manufacturer can estimate the HAP content of the coating by formulation data from the raw material supplier.

Therefore, we are promulgating a final rule amendment that allows compliance with the 5 percent HAP limit using formulation data from suppliers, if the formulation data represent each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, and at 1.0 percent by mass or more for other HAP. Only formulation data from raw material suppliers shall be used to demonstrate compliance with the 5 percent HAP limit.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that the final rule amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action gives a source owner or operator the option of using vapor balancing to comply with the standards. Since it is only an option, this action will not increase the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0535 (EPA ICR No. 2115.01).

Copies of the information collection request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325 that has up to 500; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rule amendments will not impose any requirements on small entities. The final rule amendments add a compliance option granting greater flexibility to small entities subject to the final rule that may result in a more efficient use of resources for them and, therefore, impose no additional regulatory costs or requirements on owners or operators of affected sources.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments do not significantly or uniquely affect small governments. The final rule amendments provide a source owner or operator with additional options to comply with the standards and contain no requirements that apply to small governments. Therefore, the final rule amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the 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.'' The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13175 does not apply to the final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant''; as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today=s final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule amendments have been determined not to be ''economically significant'' as defined under Executive Order 12866.

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

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs the 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 the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are cited in the final rule amendments. Therefore, the EPA is not proposing or adopting any voluntary consensus standards in the final rule amendments.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final 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 direct final rule in the **Federal Register**. The final rule amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule amendments are effective on December 21, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 15, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart HHHHH—[Amended]

■ 2. Section 63.8055 is amended by adding paragraph (b)(4) to read as follows:

§ 63.8055 How do I comply with a weight percent HAP limit in coating products?

* * * * *

(b) * * *

(4) You may rely on formulation data from raw material suppliers if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. If the HAP weight percent estimated based on formulation data conflicts with the results of a test conducted according to paragraphs (b)(1) through (3) of this section, then there is a rebuttal presumption that the test results are accurate unless, after consultation, you demonstrate to the satisfaction of the permitting authority that the test results are not accurate and that the formulation data are more appropriate.

[FR Doc. 05–24300 Filed 12–20–05; 8:45 am]

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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.

RULES GOING INTO EFFECT DECEMBER 21, 2005

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- National School Lunch Program—
  - Fluid milk; marketing and sale in schools; published 11-21-05

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Food Safety and Inspection Service

Meat and poultry inspection:
- Meat and meat product exportation to United States; eligible countries; addition—
  - Chile; published 11-21-05

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Yellowtail flounder; published 12-22-05

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Air pollutants, hazardous; national emission standards:
- Miscellaneous coating manufacturing; published 12-21-05

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Difenoconazole, etc.; published 12-21-05

FEDERAL ELECTION COMMISSION

Compliance procedures:
- Administrative fines; reporting requirements; published 12-21-05

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- Marine Safety Center; address change; published 12-21-05

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Federal Aviation Administration

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- Boeing; published 11-16-05
- British Aerospace; published 11-16-05

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Internal Revenue Service

Income taxes:
- S corporations; section 1374 effective dates; published 12-21-05

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Animal and Plant Health Inspection Service

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- Emerald ash borer; comments due by 12-30-05; published 10-31-05 [FR 05-21608]

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- Northeastern United States fisheries—
  - Atlantic herring; comments due by 12-30-05; published 12-15-05 [FR 05-24079]
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- Organic liquids distribution (non-gasoline); comments due by 12-29-05; published 11-14-05 [FR 05-22108]

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- California; comments due by 12-30-05; published 11-30-05 [FR 05-23502]

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- Georgia; comments due by 12-29-05; published 11-29-05 [FR 05-23417]
- Indiana; comments due by 12-27-05; published 11-25-05 [FR 05-23278]

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- National Pollutant Discharge Elimination System—
  - Cooling water intake structures at Phase III facilities; comments due by 12-27-05; published 11-25-05 [FR 05-23276]

Water pollution; effluent guidelines for point source categories:
- Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

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- New York; comments due by 12-27-05; published 11-23-05 [FR 05-22837]
- Oklahoma; comments due by 12-27-05; published 11-23-05 [FR 05-22838]

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  - Goat's milk ice cream, mellarine, ice cream and frozen custard, sherbet, water ices, and parmesan and reggiano cheese; food standards; comments due by 12-27-05; published 9-27-05 [FR 05-19194]

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- Chicago Sanitary and Ship Canal, IL; comments due by 12-31-05; published 8-10-05 [FR 05-15781]

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  - Gray wolf; northern Rocky Mountain distinct population segment; comments due by 12-27-05; published 10-26-05 [FR 05-21344]
  - Peirson's milk-vetch; comments due by 12-30-05; published 11-30-05 [FR 05-23407]

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- Montana; comments due by 12-29-05; published 11-29-05 [FR 05-23396]
- Texas; comments due by 12-29-05; published 11-29-05 [FR 05-23402]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.J. Res. 75/P.L. 109–128

Making further continuing appropriations for the fiscal year 2006, and for other purposes. (Dec. 18, 2005; 119 Stat. 2549)

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