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RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8001 of April 13, 2006

Thomas Jefferson Day, 2006

By the President of the United States of America

A Proclamation

Today, we celebrate the birthday of Thomas Jefferson. Few individuals have shaped the course of human events as much as this proud son of Virginia. His achievements are extraordinary: Governor of Virginia, author of the Statute of Virginia for Religious Freedom, Secretary of State, third President of the United States, and founder of the University of Virginia. Thomas Jefferson was also a scholar, author, farmer, inventor, and architect. As President, Thomas Jefferson secured the purchase of the Louisiana Territory from France, which doubled the size of the United States and extended opportunity and prosperity to many more Americans.

Thomas Jefferson was an eloquent and powerful champion of liberty. He captured the American creed when he wrote in a private letter: ''I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.'' And in one of the most important public documents in history, Jefferson wrote these words: ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.'' The Declaration of Independence has become a cornerstone for those who love freedom and justice.

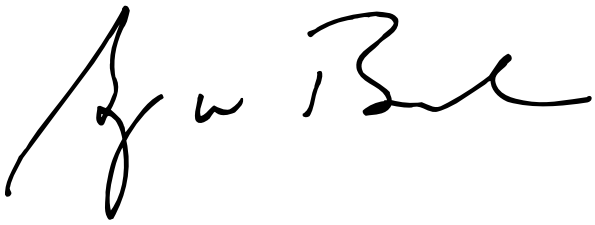
More than eight decades later, Abraham Lincoln returned to the words and meaning of the Declaration of Independence. Lincoln knew that in the distant future people would look upon it and ''take courage to renew the battle which their fathers began—so that truth, and justice, and mercy . . . might not be extinguished from the land.'' A century after Lincoln, Martin Luther King, Jr., called the Declaration of Independence a ''promissory note to which every American was to fall heir.''

The Declaration of Independence has become a standard by which other nations and peoples measure their progress in the effort to advance human freedom. Even nations that are not yet free pay homage to freedom, and it is seen as a universal human good.

Our Nation is vastly different than it was during the days of our founding—yet our commitment to America's founding truths remains strong and steady. Our duty is to continue to fulfill the promise of Thomas Jefferson's words and vision of a better life for all people. Meeting that responsibility is the best way we can honor the memory of the man who was an architect of the freest Nation on Earth.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim April 13, 2006, as Thomas Jefferson Day. I encourage all Americans to join in celebrating Thomas Jefferson's achievements, reflecting on his words, and learning more about this extraordinary man's influence on American history and ideals.

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



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Rules and Regulations

Federal Register
Vol. 71, No. 75
Wednesday, April 19, 2006

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

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

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

12 CFR Chapter XVII

Office of Federal Housing Enterprise Oversight; Notice of Regulatory Review

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Response to comments.

SUMMARY: On September 7, 2005, the Office of Federal Housing Enterprise Oversight (OFHEO) issued a notice of regulatory review (Notice), and request for comments under OFHEO Policy Guidance 01–001 (April 2, 2001).[1] OFHEO requested public comment as to whether existing regulations have become inefficient or create unwarranted burden. This document summarizes the comments that were received.

DATES: Written comments on the Notice were required to be received no later than November 7, 2005.

FOR FURTHER INFORMATION CONTACT: David A. Felt, Acting General Counsel, telephone (202) 414–3750 (not a toll-free number); or Tina Dion, Associate General Counsel, telephone (202) 414–3838 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Federal Housing Enterprises Safety and Soundness Act of 1992, Title XIII of Pub. L. 102–550, empowers the Director of OFHEO to undertake rulemaking and such other actions as the Director determines to be appropriate to oversee the activities and operations of Freddie Mac and Fannie Mae (the Enterprises). In the course of exercising such authority, the Director has promulgated regulations and issued guidelines and supervisory policies.

OFHEO Policy Guidance 01–001 for regulatory review creates a process for routine review and, where appropriate, revision of regulations by OFHEO. Such a process provides for planned reviews of the regulatory infrastructure and consideration of information under uniform criteria to assist in determinations of whether an unnecessary regulatory burden exists. Once a review is completed, the Director determines what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

The review process is conducted by the Office of General Counsel, under the direction of the General Counsel, and includes internal consultation with other OFHEO offices and staff, guidance provided by the Director, as well as consideration of public comments. A review and report of findings and recommendations are provided to the Director. The report of findings and recommendations is privileged and confidential.

The regulatory review conducted under the Policy Guidance is not a formal or informal rulemaking proceeding under the Administrative Procedure Act and creates no right of action against OFHEO. Moreover, the determination of OFHEO to conduct or not to conduct a review of a regulation and any determination, finding, or recommendation resulting from any review under the Policy Guidance are not final agency actions and, as such, are not subject to judicial review.

Regulations Under Review

The regulations of OFHEO that were subject to the regulatory review described in the Notice are codified in Title 12, Chapter XVII, Subchapters A, C, and D, Parts 1700–1780 of the Code of Federal Regulations (CFR). In addition to being found in the CFR, the regulations (as well as the Policy Guidance referenced in this Notice) are available on the OFHEO Web site, *http://www.ofheo.gov*, by clicking on the ''Regulations and Policy Guidance'' category on the left side of the webpage.

Request for Comments

The Office of the General Counsel invited comments on all aspects of the proposed regulatory review, including legal and policy considerations, and took all comments into consideration before issuing its report of findings to the Director. The comment period was set at 60 days to afford ample opportunity for comment. All comments received were made available to the public in the OFHEO Public Reading Room and were posted on the OFHEO Web site at *http://www.ofheo.gov.*

Comments Received

Comments were received from Freddie Mac; the Mortgage Insurance Companies of America (MICA); and the Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers. A discussion of significant comments follows.

Freddie Mac commented that the Minimum Capital regulation (12 CFR part 1750 subpart A) should be updated. OFHEO concurs that revisions to the regulation are in order and currently is considering whether to propose an amended regulation that would address FAS 133 and other mark-to-market accounting pronouncements. Any proposed amendments would be issued for public comment.

Also addressing capital regulation, MICA commented that OFHEO should change the categorization of loan-to-value ratios (LTVs) for risk-based capital purposes from the current approach, which does not distinguish a first mortgage made concurrently with a second lien and one without, to an approach based on the combined LTV of all loans outstanding on a property, to the extent known (RBC Rule) (12 CFR part 1250 subpart B).

Freddie Mac commented that OFHEO should amend the Prompt Supervisory Response and Corrective Action regulation (12 CFR part 1777) to eliminate provisions relating to the one-year transition period that followed the effective date of the RBC rule. OFHEO is aware that Subpart B of the regulation contains an out-of-date section and would propose appropriate updates under a proposal for notice and comment.

Commenting on the OFHEO Safety and Soundness regulation (12 CFR part 1720), MICA stated that OFHEO should,

[1] 70 FR 53105 (September 7, 2005).

by regulation, bar the Enterprises from purchase of mortgages or mortgage-backed securities that exceed the 80% LTV. However, the Enterprises are already limited to the purchase of mortgages and mortgage-backed securities that are similar in risk to those with an 80% LTV. Further, this proposal would not reduce regulatory burden, which was the subject of this document.

CMC also commented on the Safety and Soundness regulation, stating that OFHEO should augment the policy guidance on internal controls to clarify that *ultra vires* acts also represent a failure of internal controls. OFHEO would consider addressing this comment within the context of corporate governance oversight as either a rule or guidance. CMC further commented that OFHEO should augment the Safety and Soundness regulation to include prohibitions on anticompetitive, deceptive or unfair practices. OFHEO, as a matter or practice, would refer such behavior if detected for review and determination by the appropriate regulatory agency.

CMC commented that OFHEO should use two rating agencies to review the Enterprises on a biennial basis, and a stand-alone basis. OFHEO notes that it has such statutory authority under 12 U.S.C. 4519 to employ such agencies and that this is a regulatory decision in the discretion of the Director.

Consideration of Comments

All comments were taken into consideration, and where appropriate, may be considered within the context of changes to OFHEO regulations or new guidance. Some comments received, but not discussed here, would require legislative changes and may not be acted upon under OFHEO's current authority. OFHEO, nevertheless, appreciated comment on all aspects of its regulatory program that may pose a burden.

Dated: April 14, 2006.

Stephen A. Blumenthal,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 06–3762 Filed 4–18–06; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23646; Directorate Identifier 2006–CE–05–AD; Amendment 39–14563; AD 2006–08–08]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–400; AT–401, AT–401B, AT–402, AT–402A, and AT–402B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Air Tractor, Inc. (Air Tractor) Models AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes. This AD requires you to lower the safe life for the wing lower spar cap for certain Models AT–402A and AT–402B airplanes and those that incorporate or have incorporated Marburger Enterprises, Inc. (Marburger) winglets. For Models AT–400, AT–401, AT–401B, AT–402, and certain AT–402A, airplanes, this AD requires you to repetitively inspect the wing lower spar cap in order to reach the safe life. We also developed an alternative method of compliance (AMOC) to the requirements of this Ad for certain Models AT–402A and AT–402B airplanes. The AMOC includes repetitive eddy current inspections, modification of the center splice connection, and lower spar cap replacement. This AD is the result of reports of cracks in the ⅜-inch bolt hole of the wing lower spar cap before reaching the approved safe life. We are issuing this AD to prevent fatigue cracks from occurring in the wing lower spar cap before the originally established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in wing separation and loss of control of the airplane.

DATES: This AD effective on April 21, 2006.

As of April 21, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by June 2, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; US Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2006–23646; Directorate Identifier 2006–CE–05;AD.

FOR FURTHER INFORMATION CONTACT: Direct all questions to:

—For airplanes that do not incorporate and never have incorporated Marburger winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

—For airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California, 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

What is the background of the subject matter? There have been five previous airworthiness directives (ADs) issued related to the wing spar inspection and safe life on Air Tractor airplanes:

- AD 2000–14–51, Amendment 39–11837 (65 FR 46567, July 31, 2000).
- AD 2001–10–04, Amendment 39–12230 (66 FR 27014, May 16, 2001).
- AD 2001–10–04 R1, Amendment 39–12247 (66 FR 2990, June 4, 2001).
- AD 2002–11–05, Amendment 39–12766 (67 FR 37967, May 31, 2002).
- AD 2002–26–05, Amendment 39–12991 (68 FR 18, January 2, 2003).

AD 2000–14–51: An Air Tractor Model AT–502A experienced an in-flight wing separation. As a result, the

FAA issued AD 2000–14–51 as an emergency AD. This AD required the inspection of the wing lower spar cap for cracks on Air Tractor Models AT–501, AT–502, and AT–502A airplanes and modification or replacement of any cracked wing lower spar cap. Following the release of this AD, the manufacturer evaluated the AT–400 and AT–800 series lower spar cap fatigue life.

AD 2001–10–04: The manufacturer recalculation the fatigue life of the wing lower spar cap on Air Tractor AT–400, AT–500, and 800 series airplanes. The manufacturer also received reports of in-service cracks on airplanes with hours time-in-service (TIS) less than the published safe life. The cracks originated in the wing main spar lower cap at the center splice joint outboard ⅜-inch bolt hole. To address this condition, we issued AD 2001–10–04 to lower the safe life for the wing lower spar cap on Air Tractor AT–400, AT–500, and AT–800 series airplanes. The safe for the wing lower spar cap ranged from a low of 3,000 hours TIS to a high of 13,300 hours TIS depending upon model and serial number. This AD superseded AD 2000–14–51 and allowed for inspection (using eddy current methods) of the wing lower spar cap for airplanes that were at or over the lower life and for which parts were not available. Operation of the airplane was not allowed if you found cracks or you reached TIS limit.

AD 2001–10–04 R1: We inadvertently included those AT–800 series airplanes in the applicability of AD 2001–10–04 that were equipped with the factory-supplied computerized fir gate (part number 80540) and engaged in full-time firefighting. Consequently, we revised the AD to clarify that those airplanes were not affected.

AD 2002–11–05: In response to AD 2001–04 R1, we received a comment from the National Transportation Safety Board (NTSE) to recommend an eddy-current inspection requirement immediately before doing the two-part modification described in Snow Engineering Service Letter #202, revised March 26, 2001. Doing the eddy current inspection before the modification makes the crack easier to detect and gives the mechanic an area to concentrate on during any post-modification inspections. We issued AD 2002–11–05 to minimize the possibility that a crack existing in a bolt hole before doing the modification was still present after doing the modification. Additional analysis by the manufacturer also indicated the need to further the safe life for certain AT–400 series airplanes and certain AT–500 series airplanes that either incorporate or have incorporated Marburger winglets. These winglets were installed following Supplemental Type Certificate (STC) No. SA00490LA. We developed criteria for determining what the new safe life would be for airplanes that either incorporate or have incorporated these winglets. The safe life was reduced for airplanes that either incorporate or have incorporated these winglets by a usage factor reduction that is applied to the basic safe life. We used this information and issued AD 2002–11–05 to supersede AD 2001–10–04 R1 and require eddy-current inspections of the wing lower spar cap immediately before doing the replacement/modification to detect and correct any crack in a bolt hole before it extends to the modified center section of the wing. This AD further reduced the safe life for certain Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, and AT–501 airplanes that incorporate or have incorporated Marburger winglets and removed the Models AT–502, AT–502A, AT–502B, and AT–503A airplanes from the applicability.

AD 2002–26–05: To address the Models AT–502, AT–502A, AT–502B, and AT–503A airplanes that were removed from AD applicability by AD 2002–11–05, we issued AD 2002–26–05. This AD is still in effect and lowers the safe life requires the eddy-current inspections of the wing lower spar cap immediately before doing the replacement/modification. This would allow you to detect and correct any crack in a bolt hole before it extends to the modified center section of the wing.

What has happened to initiate this AD action? The FAA received reports of fatigue cracking found on three AT–400 series airplanes and on three Model AT–802A airplanes that were below the reduced safe life established in AD 2002–11–05. One of the AT–400 series airplanes had Marburger winglets and the other incident airplanes did not Specifically:

- One AT–400 series airplanes equipped with winglets cracked at 5,340 hours TIS where the reduced safe life was 5,380 hours TIS. A second AT–400 series airplane cracked at 3,359 hours TIS where the reduced safe life was 4,589 hours TIS. A third AT–400 series airplane cracked at 4,176 hours TIS where the reduced safe life was 4,589 hours TIS, and the cracks were severe enough to not allow modification and required immediate wing spar replacement; and
- One AT–802A airplane cracked at 2,378 hours TIS where the reduced safe life was 4,531 hours TIS. A second AT–802A airplane cracked at 3,809 hours TIS where the reduced safe life was 4,531 hours TIS. A third AT–802A airplane cracked at 4,479 hours TIS where the reduced safe life was 4,531 hours TIS.

Further analysis shows the continued operation of these airplanes without inspection and/or modification could severely jeopardize the safety of the fleet.

What is the potential impact if the FAA took no action? This condition could result in fatigue cracks in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in wing separation and loss of control of the airplane.

Is there service information that applies to this subject? Snow Engineering Co. has issued Process Specification #197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002; Drawing Number 21088, dated November 3, 2004; and Service Letter #202, page 3, dated October 16, 2000.

Snow Engineering Co. has a licensing agreement with Air Tractor that allows them to produce technical data to use for Air Tractor products.

What are the provisions of this service information? The process specification and drawing include procedures for doing the eddy-current inspection and replacing the spar caps and associated hardware. The service letter provides information for installing access panels, if not already installed.

The FAA's Determination and Requirements of the AD

What has the FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other Air Tractor Models AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes of the same type design. Therefore, we are issuing this AD to prevent fatigue cracks from occurring in the wing lower spar cap before the originally established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in wing separation and loss of control of the airplane. The FAA is also issuing a similar AD on the AT–800 series airplanes and revising AD 2002–11–05 to retain the applicability of the Model AT–501 airplanes.

What does this AD require? This AD requires you to:

- Lower the safe life for the wing lower spar cap for certain Models AT–402A and AT–402B airplanes and those that incorporate or have incorporated Marburger winglets;

• Eddy-current inspect the wing lower spar cap at specified thresholds and intervals for Models AT–400, AT–401, AT–401B, AT–402, and certain AT–402A airplanes in order to reach the safe life;

• Eddy-current inspect the wing lower spar cap immediately before doing the modification for certain Models AT–402A and AT–402B airplanes to detect and correct any crack in a bolt hole; and

• Report the results of this inspection to the FAA if any cracks are found.

We also included an alternative method of compliance to the requirements of this AD for certain Models AT–402A and AT–402B airplanes.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2006–23646; Directorate Identifier 2006–CE–05–AD'' in the subject line of your comments. If your want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contract and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does the FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 206 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2006–23646; Directorate Identifier 2006–CE–05–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–08–08 Air Tractor, Inc.: Amendment 39–14563; Docket No. FAA–2006–23646; Directorate Identifier 2006–CE–05–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on April 21, 2006.

What Other ADs Are Affected by This Action?

(b) As of the issuance of this action, AD 2002–11–05 applies to Models AT–400, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–802, and AT–802A airplanes. The FAA is revising AD 2002–11–05 to remove the AT–400 series and AT–800 series airplanes from the applicability. The FAA is also issuing another similar AD on the AT–800 airplanes.

What Airplanes Are Affected by This AD?

(c) This AD applies to certain Models AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes that are certificated in any category. Use paragraph (c)(1) of this AD for affected airplanes that do not incorporate and never have incorporated Marburger winglets. Use paragraph (c)(3) of this AD for airplanes that have been modified to install lower spar caps, part number (P/N) 21058–1, and P/N 21058–2. Use paragraph (c)(4) of this AD for certain Models AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes that incorporate or have incorporated Marburger winglets.

(1) The following table applies to airplanes that do not incorporate and never have incorporated Marburger winglets along with the safe life (presented in hours time-in-service (TIS)) of the wing lower spar cap for all affected airplane models and serial numbers:

TABLE 1.—SAFE LIFE FOR AIRPLANES THAT DO NOT INCORPORATE AND NEVER HAVE INCORPORATED MARBURGER WINGLETS

Model	Serial Nos.	Wing lower spar cap safe life
AT–400	All beginning with 0416	13,300 hours TIS.
AT–401	0662 through 0951	10,757 hours TIS.
AT–401B	0952 through 1020, except 1015	6,948 hours TIS.
AT–401B	1015 and all beginning with 1021	7,777 hours TIS.
AT–402	0694 through 0951	7,440 hours TIS.
AT–402A	0738 through 0951	7,440 hours TIS.
AT–402A	0952 through 1020	2,000 hours TIS.
AT–402A	All beginning with 1021	2,300 hours TIS.
AT–402B	0966 through 1020, except 1015	2,000 hours TIS.
AT–402B	1015 and all beginning with 1021	2,300 hours TIS.

(2) If piston-powered aircraft have been converted to turbine power, you must use the limits for the corresponding serial number turbine-powered aircraft.

(3) If you have an aircraft that has been modified by installing lower spar caps, P/N 21058–1 and P/N 21058–2, you must use a wing lower spar cap life of 9,800 hours TIS. No inspections are required to reach this life.

(i) Airplanes that have been modified with replacement spar caps, P/N 21058–1 and P/N 21058–2, are not eligible to have Supplemental Type Certificate (STC) No. SA00490LA, Marburger winglets, installed.

(ii) If your airplanes currently has spar caps, P/N 21058–1 and P/N 21058–2, and winglets installed, then you must remove the winglets before further flight and you must contact the FAA at the address in paragraph (l)(1) of this AD for a new safe life.

(iii) Installation of Marburger winglets on airplanes that have been modified with replacement spar caps, P/N 21058–1 and P/N 21058–2, will require additional fatigue-data substantiating an appropriate safe life. If you have replacement spar caps and wish to install winglets, you must contact the FAA at the address in paragraph (l)(1) of this AD for additional information.

(4) The following table applies to airplanes that incorporate or have incorporated Marburger winglets. These winglets are installed following STC No. SA00490LA. Use the winglet usage factor in Table 2 of this paragraph, the wing lower spar cap safe life specified in Table 1 in paragraph (c)(1) of this AD, and the instructions included in Appendix 1 to this AD to determine the new safe life of airplanes that incorporate or have incorporated Marburger winglets:

TABLE 2.—WINGLET USAGE FACTOR TO DETERMINE THE SAFE LIFE FOR AIRPLANES THAT INCORPORATE OR HAVE INCORPORATED MARBURGER WINGLETS PER STC NO. SA00490LA

Model	Serial Nos.	Winglet usage factor
AT–401	0662 through 0951	1.6
AT–401B	0952 through 1020, except 1015	1.1
AT–401B	1015 and all beginning with 1021	1.1
AT–402	0694 through 0951	1.6
AT–402A	0738 through 0951	1.6
AT–402A	0952 through 1020	1.1
AT–402A	All beginning with 1021	1.1
AT–402B	0966 through 1020, except 1015	1.1
AT–402B	1015 and all beginning with 1021	1.1

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of fatigue cracking of the wing main spar lower cap at the center splice joint outboard fastener hole. The actions specified in this AD are intended to detect and correct cracks in the wing main spar lower cap, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

What Must I Do To Address This Problem?

(e) *Safe Life Record:* For all affected airplanes, modify the applicable aircraft records (logbook) as follows to show the safe life for the wing lower spar cap listed in this AD (use the information from paragraph (c) of this AD and Appendix 1 to this AD, as applicable).

(1) Incorporate the following into the Aircraft Logbook: ''Following AD 2006–08–08 the wing lower spar cap is life limited to ____ hours time-in-service (TIS).'' Insert the applicable safe life number from the applicable tables in paragraph (c) of this AD and Appendix 1 to this AD.

(i) Do the logbook entry within the next 10 hours TIS after April 21, 2006 (the effective date of this AD).

(ii) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the aircraft records. Make an entry into the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(2) *Wing Spar Replacement:* For all affected airplanes, replace the wing lower spar cap following Snow Engineering Drawing Number 21088, dated November 3, 2004. Replace upon accumulating the safe life used in paragraph (e)(1) of this AD or within the next 50 hours TIS after [date] (the effective date of this AD), whichever occurs later. The owner/operator may not do the spar cap replacement, unless he/she holds the proper mechanic's authorization.

(f) *Inspection Requirements:* For all affected airplanes, except Model AT–402A, all serial numbers beginning with 0952, and except Model AT–402B, all serial numbers beginning with 0966: Do the initial inspection of the outboard two lower spar cap bolt holes following Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002; and using the wing spar lower cap TIS schedules listed in the following table. After the initial inspection, perform repetitive inspections using the same procedure as the initial inspection at the repetitive inspection intervals listed in the following table. If not already done, install access panels at the time of the first inspection following Snow Engineering Service Letter #202, page 3, dated October 16, 2000.

Note 1: Hours listed in the table are in hours TIS and the phrase ''within ____ hours'' refers to ''within ____ hours after [date] (the effective date of this AD).''

TABLE 3.—INSPECTION TIMES

Model	Serial Nos.	Current wing spar lower cap TIS hours	Initial inspection	Repetitive inspection interval
AT–400	All beginning with 0416.	Greater than 7,750	Within 50 hours or upon the accumulation of 8,000 hours, whichever is later.	900 hours.
AT–401	0662–0951	Greater than 6,250	Within 50 hours or upon the accumulation of 6,500 hours, whichever is later.	700 hours.
AT–401	0662–0951	Greater than 4,350 but less than or equal to 6,250.	Within 250 hours or upon the accumulation of 4,850 hours, whichever is later.	700 hours.
AT–401	0662–0951	Greater than 2,750 but less than or equal to 4,350.	Within 500 hours	700 hours.
AT–401	0662–0951	Less than or equal to 2,750.	Upon the accumulation of 3,250	700 hours.
AT–401B	0952–1020 except 1015.	Greater than 3,950	Within 50 hours or upon the accumulation of 4,200 hours, whichever is later.	600 hours.
AT–401B	0952–1020 except 1015.	Greater than 2,650 but less than or equal to 3,950.	Within 250 hours or upon the accumulation of 3,150 hours, whichever is later.	600 hours.
AT–401B	0952–1020 except 1015.	Greater than 1,600 but less than or equal to 2,650.	Within 500 hours	600 hours.
AT–401B	0952–1020 except 1015.	Less than or equal to 1,600.	Upon the accumulation of 2,100 hours	600 hours.
AT–401B	1015 and 1021–1124	Greater than 4,450	Within 50 hours or upon the accumulation of 4,700, whichever is later.	400 hours.
AT–401B	1015 and 1021–1124	Greater than 3,000 but less than or equal to 4,450.	Within 250 hours or upon the accumulation of 3,500 hours, whichever is later.	400 hours.
AT–401B	1015 and 1021–1124	Greater than 1,850 but less than or equal to 3,000.	Within 500 hours	400 hours.
AT–401B	1015 and 1021–1124	Less than or equal to 1,850.	Upon the accumulation of 2,350	400 hours.
AT–401B	All beginning with 1125.	Greater than 4,450	Within 50 hours or upon the accumulation of 4,700 hours, whichever is later.	1,000 hours.
AT–401B	All beginning with 1125.	Greater than 3,000 but less than or equal to 4,450.	Within 250 hours or upon the accumulation of 3,500 hours, whichever is later.	1,000 hours.
AT–401B	All beginning with 1125.	Greater than 1,850 but less than or equal to 3,000.	Within 500 hours	1,000 hours.
AT–401B	All beginning with 1125.	Less than or equal to 1,850.	Upon the accumulation of 2,350	1,000 hours.
AT–402/4 02A	0694–0951	Greater than 4,250	Within 50 hours or upon the accumulation of 4,500, whichever is later.	700 hours.
AT–402/4 02A	0694–0951	Greater than 2,850 but less than or equal to 4,250.	Within 250 hours or upon the accumulation of 3,350, whichever is later.	700 hours.
AT–402/4 02A	0694–0951	Greater than 1,750 but less than or equal to 2,850.	Within 500 hours	700 hours.
AT–402/4 02A	0694–0951	Less than or equal to 1,750.	Upon the accumulation of 2,250	700 hours.

(g) *For all affected airplanes:* Replace any cracked wing lower spar cap following Snow Engineering Drawing Number 21088, dated November 3, 2004, before further flight after the inspection in which cracks are found.

(h) *For all affected airplanes, except Model AT–402A, all serial numbers beginning with 0952, and except Model AT–402B, all serial numbers beginning with 0966:* Report to the FAA any cracks detected as the result of each inspection required by paragraph (f) of this AD on the form in Figure 1 of this AD.

(1) Only if cracks are found, send the report within 10 days after the inspection required in paragraph (f) of this AD.

(2) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056.

(i) *For all affected airplanes:* Upon the accumulation of the life used in paragraph (e)(1) of this AD or within the next 50 hours TIS after [date] (the effective date of this AD), whichever occurs later, you must replace your wing lower spar cap before further flight following Snow Engineering Drawing Number 21088, dated November 3, 2004.

(j) *For Model AT–402A airplanes, all serial numbers beginning with 0952; and Model AT–402B airplanes, all serial numbers beginning with 0966:* In lieu of the safe life used in paragraph (e)(1) of this AD, you may eddy-current inspect and modify the wing lower spar cap. The inspection schedule and modification procedures are included in Appendix 2 to this AD.

(k) *For all affected airplanes (those complying with the actions in the AD or AMOC):* One of the following must do the inspection:

(1) A level 2 or 3 inspector certified in eddy current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or

(2) A person authorized to perform AD work and who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.

BILLING CODE 4910–13–P

AD 2006-08-08 INSPECTION REPORT *(REPORT ONLY IF CRACKS ARE FOUND)*	
1. Inspection Performed By:	2. Phone:
3. Aircraft Model:	4. Aircraft Serial Number:
5. Engine Model Number:	6. Aircraft Total TIS:
7. Wing Total TIS:	8. Lower Spar Cap TIS:
9. Has the lower spar cap been inspected before? (Eddy-current, Dye penetrant, magnetic particle, ultrasound) ☐ Yes ☐ No	9a. If yes, Date: _____ Inspection Method: _____ Lower Spar Cap TIS: _____ Cracks found? ☐ Yes ☐ No
10. Has there been any major repair or alteration performed to the spar cap? ☐ Yes ☐ No	10a. If yes, specify (Description and TIS)
11. Date of AD inspection:_____	
12. Inspection Results: (Note: Report only if cracks are found)	12a. ☐ Left Hand ☐ Right Hand
12b. Crack Length:_____	12c. Does drilling hole to next larger size remove all traces of the crack(s)? ☐ Yes ☐ No
12d. Corrective Action Taken:	

Mail report to: Manager, Fort Worth ACO, ASW-150, 2601 Meacham Blvd., Fort Worth, TX 76193-0150; or fax to (817) 222-5960

Figure 1

BILLING CODE 4910–13–C

May I Request an Alternative Method of Compliance?

(1) The Manager, Fort Worth or Los Angeles Airplane Certification Office (ACO), as applicable, FAA, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested using the procedures found in 14 CFR 39.19. For information on any already approved alternative methods of compliance, contact:

(1) For the airplanes that do not incorporate and never have incorporated Marburger winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Forth Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

(2) For airplanes that incorporate or have incorporated Marburger winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (502) 627–5228; facsimile: (562) 627–5210.

(m) AMOCs approved for AD 2001–10–04, AD 2001–10 R1, or AD 2002–11–05 for the AT–400 series airplanes are not considered approved for this AD.

Special Flight Permit

(n) Under 14 CFR part 39.23, we are allowing special flight permits for the purpose of compliance with this AD under the following conditions:

(1) Only operate in day visual flight rules (VFR).

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

Does This AD Incorporate Any Material by Reference?

(o) You must do the actions required by this AD following the instructions in Snow Engineering Drawing 21088, dated November 3, 2004; Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002; and Snow Engineering Co. Service Letter #202, page 3, dated October 16, 2000. The Director of the **Federal Register** approved the incorporation by reference of this service information following 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; US Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–23646; Directorate Identifier 2006–CE–05–AD.

Appendix 1 To AD 2006–08–08

The following provides procedures for determining the safe life for those Models AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes that incorporate or have incorporated Marburger winglets. These winglets are installed following Supplemental Type Certificate (STC) No. SA009490LA.

What if I removed the Marburger winglets prior to further flight after the effective date of this AD or prior to the effective date of this AD?

1. Review your airplane's logbook to determine your airplane's time in service (TIS) with winglets installed per Marburger STC No. SA00940LA. This includes all time spent with the winglets currently installed and any previous installations where the winglet was installed and later removed.

Example: A review of your airplane's logbook shows that you have accumulated 350 hours TIS since incorporating the Marburger STC. Further review of the airplane's logbook shows that a previous owner had installed the STC and later removed the winglets after accumulating 150 hours TIS. Therefore, your airplane's TIS with the winglets installed is 500 hours.

If you determine that the winglet STC has never been incorporated on your airplane, then your safe life is presented in paragraph (c)(1) of this AD. Any future winglet installation will be subject to a reduced safe life per these instructions.

2. Determine your airplane's unmodified safe life from paragraph (c)(1) of this AD.

Example: Your airplane is a Model AT–401B, serial number 1022. From paragraph (c)(1) of this AD, the unmodified safe life of your airplane is 7,777 hours TIS.

All examples from hereon will be based on the Model AT–401B, serial number 1022 airplane.

3. Determine the winglet usage factor from paragraph (c)(4) of this AD.

Example: Again, your airplane is a Model AT–401B, serial number 1022. From paragraph (c)(4) of this AD, your winglet usage factor is 1.1.

4. Adjust the winglet TIS to account for the winglet usage factor. Multiply the winglet TIS (result of Step 1 above) by the winglet usage factor (result of Step 3 above).

Example: Winglet TIS is 500 hours X a winglet usage factor of 1.1. The adjusted winglet TIS is 550 hours.

5. Calculate the winglet usage penalty. Subtract the winglet TIS (result of Step 1 above) from the adjusted winglet TIS (result of Step 4 above).

Example:

Adjusted winglet TIS – the winglet TIS – winglet usage penalty.

(550 hours) – (500 hours TIS) = (50 hours TIS).

6. Adjust the safe life of your airplane to account for winglet usage. Subtract the winglet usage penalty (result of Step 5 above) result from the unmodified safe life from paragraph (c)(1) of this AD (result of Step 2 above.).

Example:

Unmodified safe life – winglet usage penalty = adjusted safe life.

(7,777 hours TIS) – (50 hours TIS) = (7,727 hours TIS).

7. If you remove the winglets from your airplane before further flight or no longer have the winglets installed on your airplane, the safe life of your airplane is the adjusted safe life (result of Step 6 above). Enter this number in paragraph (e)(1) of this AD and the airplane logbook.

What if I have the Marburger winglet installed as of the effective date of this AD and plan to operate my airplane without removing the winglet?

1. Review your airplane's logbook to determine your airplane's TIS without the winglets installed.

Example: A review of your airplane's logbook shows that you have accumulated 1,500 hours TIS, including 500 hours with the Marburger winglets installed. Therefore, your airplane's TIS without the winglets installed is 1,000 hours.

2. Determine your airplane's unmodified safe life from paragraph (c)(1) of this AD.

Example: Your airplane is a Model AT–401B, serial number 1022. From paragraph (c)(1) of this AD, the unmodified safe life of your airplane is 7,777 hours TIS.

All examples from hereon will be based on the Model AT–401B, serial number 1022 airplane.

3. Determine the winglet usage factor from paragraph (c)(4) of this AD.

Example: Again, your airplane is a Model AT–401B, serial number 1022. From paragraph (c)(4) of this AD, your winglet usage factor is 1.1.

4. Determine the potential winglet TIS. Subtract the TIS without the winglets installed (result of Step 1 above) from the unmodified safe life (result of Step 2 above).

Example:

Unmodified safe life – TIS without winglets = Potential winglet TIS.

(7,777 hours TIS) – (1,000 hours TIS) = (6,777 hours TIS).

5. Adjust the potential winglet TIS to account for the winglet usage factor. Divide the potential winglet TIS (result of Step 4 above) by the winglet usage factor (result of Step 3 above).

Example:

Potential winglet TIS ÷ Winglet usage factor = Adjusted potential winglet TIS.

(6,777 hours TIS) ÷ (1.1) = (6,155 hours TIS).

6. Calculate the winglet usage penalty. Subtract the adjusted potential winglet TIS (result of Step 5 above) from the potential winglet TIS (result of Step 4 above).

Example:

Potential winglet TIS – Adjusted potential winglet TIS = Winglet usage penalty.

(6,777 hours TIS) – (6,155 hours TIS = (622 hours TIS).

7. Adjust the safe life of your airplane to account for the winglet installation. Subtract the winglet usage penalty (result of Step 6 above) from the unmodified safe life from paragraph (c)(1) of this AD (the result of Step 2 above).

Example:

Unmodified safe life – Winglet usage penalty = Adjusted safe life.

(7,777 hours TIS) – (622 hours TIS) = (7,155 hours TIS).

8. Enter the adjusted safe life (result of Step 7 above) in paragraph (e)(1) of this AD and the airplane logbook.

What if I install or remove the Marburger winglet from my airplane in the future?

If, at anytime in the future, you install or remove the Marburger winglet STC from your airplane, you must repeat the procedures in this Appendix to determine the airplane's safe life.

Appendix 2—Alternative Method of Compliance (AMOC) To AD 2006–08–08

Optional Inspection Program

For Model AT–402A airplanes, all serial numbers (S/Ns) beginning with 0952, and Model AT–402B airplanes, all S/Ns beginning with 0966, *that do not incorporate and never have incorporated Marburger winglets installed following STC No. SA00490LA;* you may begin a repetitive inspection interval program as an alternative to the safe life requirement of this AD with the following provisions:

1. Upon accumulating 1,600 hours time-in-service (TIS) or within the next 50 hours TIS after April 21, 2006 (the effective date of AD 2006–08–08), whichever occurs later, eddy-current inspect the outboard two lower spar cap bolt holes following Snow Engineering Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002. The inspection must be done by one of the following:

a. A Level 2 or Level 3 inspector that is certified for eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or

b. A person authorized to do AD work and who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.

2. Repeat these inspections at intervals of (as applicable):

a. 400 hours TIS:

i. Model AT–402A, S/Ns 1021 through 1124

ii. Model AT–402B, S/Ns 1015, and 1021 through 1124

b. 600 hours TIS:

i. Model AT–402A, S/Ns 0952 through 1020

ii. Model AT–402B, S/Ns 0966 through 1020, except 1015

c. 1,000 hours TIS:

i. Model AT–402A, all S/Ns beginning with 1125

ii. Model AT–402B, all S/Ns beginning with 1125

d. If the outboard two lower spar cap bolt holes have been cold worked following Snow Engineering Service Letter #238 or #239, both dated September 30, 2004, then you may double the inspection intervals listed in a., b., and c. above (800 hours TIS, 1,200 hours TIS, or 2,000 hours TIS, as applicable) (See Step 8.–re: mid cycle cold work).

e. Your logbook entry must include the work done and the inspection intervals that are upcoming, as follows:

''Following AD 2006–08–08, at XXXX (insert hours TIS of the initial pre-modification inspection) hours TIS an eddy-current inspection has been performed. As of now, the safe life listed in the AD no longer applies to this airplane. This airplane must be eddy-current inspected at intervals not to exceed (400/600/800/1,000/1,200/2,000, as applicable) hours TIS. The first of these inspections is due at (insert the total number of hours TIS the first of these inspections is due) hours TIS.''

3. If at any time a crack is found, and:

a. If the crack indication goes away by doing the initial steps of the modification following the applicable sheet of Snow Engineering Co. Drawing Number 20992, then you may continue to modify your wing. After modification, proceed to Step 5.

b. If the crack indication does not go away by doing the initial steps of the modification following the applicable sheet of Snow Engineering Co. Drawing Number 20992, then you must replace all parts and hardware listed in Step 7.

c. Report to the FAA any cracks found using the form in Figure 1 of this AD.

4. Upon accumulating 4,000 hours TIS, you must:

a. Modify your center splice connection following the applicable sheet of Snow Engineering Co. Drawing Number 20992, unless already done. Before doing the modification, do an eddy-current inspection following Snow Engineering Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002. (See Step 9). If, as of April 21, 2006 (the effective date of AD 2006–08–08), your airplane is over or within 50 hours of reaching the 4,000-hour TIS modification requirement, then you must perform the modification within 50 hours TIS.

b. Your logbook entry must include the work done and the inspection intervals that are upcoming, as follows:

''Following AD 2006–08–08, at XXXX (insert hours TIS of the modification) hours TIS an eddy-current inspection has been performed. As of now, the safe life listed in the AD no longer applies to this airplane. This airplane must be eddy-current inspected at (insert the number of hours TIS at modification plus 1,600 hours TIS) hours TIS.

5. Upon accumulating 1,600 hours TIS after modification, inspect the left-hand and right-hand outboard two lower spar cap bolt holes following Snow Engineering Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002.

6. Repeat the inspection at intervals of:

a. 1,000 hours TIS; or

b. 2,000 hours TIS if the outboard two lower spar cap bolt holes have been cold worked following Snow Engineering Service Letter #239, dated September 30, 2004 (See Step 8.).

c. Your logbook entry must include the work done and the post-modification inspection intervals that are upcoming, as follows:

''Following AD 2006–08–08, at XXXX (insert hours TIS of the initial post-modification inspection) hours TIS an eddy-current inspection has been performed. As of now, the safe life listed in the AD no longer applies to this airplane. This airplane must be eddy-current inspected at intervals not to exceed (1,000/2,000, as applicable) hours TIS. The first of these inspections is due at (insert the total number of hours TIS the first of these inspections is due) hours TIS.''

d. If at any time a crack is found, then before further flight you must replace the lower spar caps, splice blocks, and wing attach angles and hardware. You must also notify the FAA using the form in Figure 1 of this AD.

7. Upon accumulating 8,000 hours TIS, before further flight you must replace the lower spar caps, splice blocks, and wing attach angles (P/N 20693–1) and associated hardware. No additional time will be authorized for airplanes that are at over 8,000 hours TIS (See Step 9.).

8. If you decide to cold work your bolt holes following Snow Engineering Service Letter #238 or #239, both dated September 30, 2004, at a TIS that does not coincide with a scheduled inspection following this AD, then eddy-current inspect at the time of cold working and then begin the 800/1,200/2000 hour TIS inspection intervals (2 times the intervals listed in Steps 2.a., 2.b., 2.c., and 6.a listed above).

9. If you have modified your airplane before accumulating 4,000 hours TIS, then you may continue to fly your airplane past (modification + 4,000 hours TIS) provided you cut your inspection intervals in half. Make a logbook entry following Step 6.c. to reflect these reduced inspection intervals. Upon accumulating 8,000 hours TIS, you must comply with Step 7 above. See example:

Example: An AT–402B had the two-part modification installed at 3,000 hours TIS and the bolt holes have not been cold worked.

The first inspection would occur at 4,600 hours TIS. From Step 5, this is modification plus 1,600 hours.

Inspections would follow at 5,600 and 6,600 hours TIS. From Step 6a, this is 1,000-hour TIS inspection intervals.

There is another inspection at 7,000 hours TIS (modification plus 4,000 hours TIS). This relates to the 8,000-hour TIS inspection from Step 7, which is modification plus 4,000 hours TIS, except in this example the modification took place at 3,000 hours TIS instead of 4,000 hours TIS listed in Step 4.

This airplane may continue to fly if inspected again at 7,500 hours TIS, which is 500 hours TIS. This 500-hour time corresponds to Step 9 where you cut your inspection interval from Step 6a in half.

Upon accumulating 8,000 hours TIS (this is the same as Step 7), you must replace the parts listed in Step 7 above.

For Model AT–402A airplanes, al S/N's beginning with 0952, and Model AT–402B airplanes, all S/Ns beginning with 0966, *that incorporate or have incorporated Marburger winglets installed following STC No. SA00490LA;* you may begin a repetitive inspection interval program as an alternative to the safe life requirement of this AD following the steps above with the following provisions:

If you have removed the winglets, then calculate new, reduced hours for Steps 1, 4, 5, and 7 above, as applicable, based on the winglet usage factor listed in paragraph (c)(4) and Appendix 2 of this AD.

You may repetitively inspect at the same intervals list in Step 2 above provided that you do not re-install the winglets.

Example: An AT–402B airplane, S/N 1020, had winglets installed at 200 hours TIS and removed at 800 hours TIS.

The winglet usage factor is: 1.1.

Calculate equivalent hours: 600 hours TIS with winglets × 1.1 = 660 hours TIS.

Winglet usage penalty = 660 − 600 = 60.

New Step 1 Pre-Modification Initial Inspection time = 1,600 − 60 = 1,540 hours TIS.

Retained Step 2 Pre-Modification Inspection interval: Since the winglets are removed, the Pre-Modification Inspection interval remains at 600 hours TIS.

New Step 4 Modification time = 4,000 − 60 = 3,940 hours TIS.

New Step 5 Post-Modification Initial Inspection time = 3,940 + 1,600 = 5,540 hours TIS.

Retained Step 6 Post-Modification Inspection interval: Since the winglets are removed the Post-Modification Inspection interval remains at 1,000/2,000 hours TIS.

New Step 7 Replacement time = 8,000 − 60 = 7,940 hours TIS.

Use the Retained Step 2 interval, the New Step 5 time, and the Retained Step 6 interval to make appropriate logbook entries for the pre- and post-modification intervals, using the format presented in Steps 2.e., 4.b., and 6.c.

If you have not removed the winglets, then calculate new, reduced hours for Steps 1, 2, 4, 5, 6, and 7 above, as applicable, based on the winglet usage factor listed in paragraph (c)(4) and Appendix 2 of this AD.

Repetitively inspect at the appropriate interval listed in the step above divided by the winglet usage factor.

Example: An AT–402B, S/N 1,000 has had winglets on since new.

The winglet usage factor is: 1.1.

New Step 1 Pre-Modification Initial Inspection time: 1,600 ÷ 1.1 = 1,455 hours TIS.

New Step 2 Pre-Modification Inspection interval: 600 ÷ 1.1 = 545 hours TIS.

New Step 4 Modification time: 4,000 ÷ 1.1 = 3,636 hours TIS.

New Step 5 Post-Modification Initial Inspection time: 3,636 + (1,600 ÷ 1.1) = 5,090 hours TIS.

New Step 6 Post-Modification Inspection interval: 1,000 ÷ 1.1 = 909 hours TIS.

New Step 7 Replacement time: 8,000 ÷ 1.1 = 7,273 hours TIS.

Use the reduced hours you calculate in New Step 2, New Step 5, and New Step 6 to make appropriate logbook entries for the pre- and post-modification inspection intervals, using the format presented in Steps 2.e., 4.b., and 6.c.

Issued in Kansas City, Missouri, on April 10, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3617 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20591; Directorate Identifier 2005–CE–14–AD; Amendment 39–14565; AD 2006–08–09]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–802 and AT–802A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Air Tractor, Inc. (Air Tractor) Models AT–802 and AT–802A airplanes. This AD requires you to repetitively inspect (using the eddy current method) the two outboard fastener holes in both of the wing main spar lower caps at the center splice joint for cracks and repair or replace any cracked spar cap. This AD results from in-service fatigue cracking of the wing main spar lower cap at the center splice joint outboard fastener hole at hours time-in-service below the safe life limit established for these airplanes in AD 2002–11–05. We are issuing this AD to detect and correct cracks in the wing main spar lower cap at the center splice joint, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

DATES: This AD becomes effective on April 21, 2006.

As of April 21, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by June 2, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–20591; Directorate Identifier 2005–CE–14 AD.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

What is the background of the subject matter?

There have been five previous airworthiness directives (ADs) issued related to the wing spar inspection and safe life on Air Tractor airplanes:

- AD2000–14–51, Amendment 39–11837 (65 FR 46567, July 31, 2000).
- AD2001–10–04, Amendment 39–12230 (66 FR 27014, May 16, 2001).
- AD2001–10–04 R1, Amendment 39–12247 (66 FR 2990, June 4, 2001).
- AD2002–11–05, Amendment 39–12766 (67 FR 37967, May 31, 2002).
- AD2002–26–05, Amendment 39–12991 (68 FR 18, January 2, 2003).

AD 2000–14–51: An Air Tractor Model AT–502A experienced an in-flight wing separation. As a result, the FAA issued AD 2000–14–51 as an emergency AD. This AD required the inspection of the wing lower spar cap for cracks on Air Tractor Models AT–501, AT–502, and AT–502A airplanes and modification or replacement of any cracked wing lower spar cap. Following the release of this AD, the manufacturer evaluated the AT–400 and AT–800 series lower spar cap fatigue life.

AD 2001–10–04: The manufacturer recalculated the fatigue life of the wing

lower spar cap on Air Tractor AT–400, AT–500, and AT–800 series airplanes. The manufacturer also received reports of in-service cracks on airplanes with hours time-in-service (TIS) less than the published safe life. The cracks originated in the wing main spar lower cap at the center splice joint outboard ⅜-inch bolt hole. To address this condition, we issued AD 2001–10–04 to lower the safe life for the wing lower spar cap on Air Tractor AT–400, AT–500, and AT–800 series airplanes. The safe life for the wing lower spar cap ranged from a low of 3,000 hours TIS to a high of 13,300 hours TIS depending upon model and serial number. This AD superseded AT 2000–14–51 and allowed for inspection (using eddy current methods) of the wing lower spar cap for airplanes that were at or over the lower safe life and for which parts were not available. Operation of the airplane was not allowed if you found cracks or you reached TIS limit.

AD 2001–10–04 R1: We inadvertently included those AT–800 series airplanes in the applicability of AD 2001–10–04 that were equipped with the factory-supplied computerized fire gate (part number 80540) and engaged in full-time firefighting. Consequently, we revised the AD to clarify that those airplanes were not affected.

AD 2002–11–05: In response to AD 2001–10–04 R1, we received a comment from the National Transportation Safety Board (NTSB) to recommend an eddy-current inspection requirement immediately before doing the two-part modification described in Snow Engineering Service letter #202, revised March 26, 2001. Doing the eddy current inspection before the modification makes the crack easier to detect and gives the mechanic an area to concentrate on during any post-modification inspections. We issued AD 2002–11–05 to minimize the possibility that a crack existing in a bolt hole before doing the modification was still present after doing the modification. Additional analysis by the manufacturer also indicated the need to further reduce the safe life for certain AT–400 series airplanes and certain AT–500 series airplanes that either incorporate or have incorporated Marburger winglets. These winglets were installed following Supplemental Type Certificate (STC) No. SA00490LA. We developed criteria for determining what the new safe life would be for airplanes that either incorporate or have incorporated these winglets. The safe life was reduced for airplanes that either incorporate or have incorporated these winglets by a usage factor reduction that is applied to the basic safe life. We used this information and issued AD 2002–22–05 to supersede AD 2001–10–04 R1 and require eddy-current inspections of the wing lower spar cap immediately before doing the replacement/modification to detect and correct any crack in a bolt hole before it extends to the modified center section of the wing. This AD further reduced the safe life for certain Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, and AT–501 airplanes that incorporate or have incorporated Marburger winglets and removed the Models AT–502, AT–502A, AT–502B, and AT–503A airplanes from the applicability.

AD 2002–26–05: To address the Models AT–502, AT–502A, AT–502B, and AT–503A airplanes that were removed from AD applicability by AD 2002–11–05, we issued AD 2002–26–05. This AD is still in effect and lowers the safe life and requires the eddy-current inspections of the wing lower spar cap immediately before doing the replacement/modification. This would allow you to detect and correct any crack in a bolt hole before it extends to the modified center section of the wing.

What has happened to initiate this AD action?

The FAA received reports of fatigue cracking found on three AT–400 series airplanes and on three Model AT–802A airplanes that were below the reduced safe life established in AD 2002–11–05. One of the AT–400 series airplanes had Marburger winglests and the other incident airplanes did not. Specifically:

- One AT–400 series airplane equipped with winglets cracked at 5,340 hours TIS where the reduced safe life was 5,380 hours TIS. A second AT–400 series airplane cracked at 3,359 hours TIS where the reduced safe life was 4,589 hours TIS. A third AT–400 series airplane cracked at 4,176 hours TIS where the reduced safe life was 4,589 hours TIS. A third AT–400 series airplane cracked at 4,176 hours TIS where the reduced safe life was 4,589 hours TIS, and the cracks were severe enough to not allow modification and required immediate wing spar replacement; and
- One AT–802A airplane cracked at 2,378 hours TIS where the reduced safe life was 4,531 hours TIS. A second AT–802A airplane cracked at 3,809 hours TIS where the reduced safe life was 4,531 hours TIS. A third AT–802A airplane cracked at 4,479 hours TIS where the reduced safe life was 4,531 hours TIS.

Further analysis shows the continued operation of these airplanes without inspection and/or modification could severely jeopardize the safety of the fleet.

What is the potential impact if the FAA took no action?

This condition could result in fatigue cracks in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in wing separation and loss of control of the airplane.

Is there service information that applies to this subject?

Snow Engineering Co. has issued Process Specification #197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002; Process Specification #204, Rev. C, dated November 16, 2004; Service Letter #215, page 5, titled ''802 Spar Inspection Holes and Vent Tube Mod,'' dated November 19, 2003; Service Letter #240, dated September 30, 2004; Service letter #244, dated April 25, 2005; Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004; Drawing Number 20975, Sheet 3, dated January 6, 2005; and Drawing Number 20995, Sheet 2, Rev. C., dated September 28, 2004.

Snow Engineering Co. has a licensing agreement with Air Tractor that allows them to produce technical data to be used for Air Tractor products.

What are the provisions of this service information?

The service letters, process specifications, and drawings include procedures for:

- Preparing the airplane and the eddy current machine for inspection of the lower wing spar caps;
- Inspecting the lower wing spar caps for cracks;
- Verifying suspected cracks for steel lower wing spar caps;
- Installing a web plate and 8-bolt splice block to repair cracks and as terminating action for inspections; and
- Replacing the spar caps and associated hardware.

The FAA's Determination and Requirements of the AD

What has the FAA decided?

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other Air Tractor Model AT–802 and AT–802A airplanes of the same type design. Therefore, we are issuing this AD to prevent fatigue cracks from occurring in the wing lower spar cap before the originally established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and

corrected, could result in wing separation and loss of control of the airplane. The FAA is also issuing a similar AD on the AT–400 series airplanes and revising AD 2002–11–05 to retain the applicability of the Model AT–501 airplanes.

What does this AD require?

This AD requires you to incorporate the actions in the previously referenced service information. This AD requires you to use the service information described previously to perform these actions.

This AD changes the inspection interval to address the additional cracking found and base the inspection intervals on damage tolerance analysis. It also provides a terminating action to the inspection requirement and adds serial numbers produced after we issued AD 2002–11–05. It also retains the safe life for the AT–800 series airplanes currently addressed in AD 2002–11–05.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

Comments Invited

Will I have the opportunity to comment before you issue the rule?

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20591; Directorate Identifier 2005–CE–14–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a non-written communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does the FAA have for issuing this rulemaking action?

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

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

Regulatory Findings

Will this AD impact various entities?

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

Will this AD involve a significant rule or regulatory action?

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–20591; Directorate Identifier 2005–CE–14–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–08–09 Air Tractor, Inc.: Amendment 39–14565; Docket No. FAA–2005–20591; Directorate Identifier 2005–CE–14–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on April 21, 2006.

What Other ADs Are Affected by This Action?

(b) As of the issuance of this action, AD 2002–11–05 applies to Models AT–400, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–802, and AT–802A airplanes. The FAA is revising AD 2002–11–05 to remove the AT–400 series and AT–800 series airplanes from the applicability. The FAA is also issuing another similar AD on the AT–400 series airplanes.

What Airplanes Are Affected by This AD?

(c) This AD affects Model AT–802A airplanes, all serial numbers beginning with 802–0001, that are:

(1) Certificated in any category;

(2) Engaged in agricultural dispersal operations including those airplanes that have been converted between fire fighting and agricultural dispersal;

(3) Not equipped with the factory-supplied computerized fire gate (part number 80540); and

(4) Not engaged in full-time fighting only.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of fatigue cracking of the wing main spar lower cap at the center splice joint outboard fastener hole. The actions specified in this AD are intended to detect and correct cracks in the wing main spar lower cap, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

What Service Information Must I Use To Do the Actions Required by This AD?

(e) You must use the following Snow Engineering Co. service information to do the actions required by this AD:

(1) Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002;

(2) Process Specification #204, Rev. C, dated November 16, 2004;

(3) Service Letter #215, page 5, titled ''802 Spar Inspection Holes and Vent Tube Mod,'' dated Novembe 19, 2003;

(4) Service Letter #420, dated September 30, 2004;

(5) Service Letter #244, dated April 25, 2005;

(6) Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004;

(7) Drawing Number 20975, Sheet 3, dated January 6, 2005; and

(8) Drawing Number 20995, Sheet 2, Rev. C., dated September 28, 2005.

What Must I Do To Address This Problem?

(f) At the initial inspection time specified in paragraph (f)(2) of this AD, do the following:

(1) For the affected airplanes listed in Table 1 in paragraph (f)(2) of this AD, gain access for the required inspection listed below by installing cover plates following Service Letter #215, page 5, titled ''802 Spar Inspection Holes and Vent tube mod,'' dated November 19, 2003.

(2) For the following airplanes, eddy current inspect the center splice joint outboard two fastener holes in both the right and left wing main spar lower caps for cracks following Process Specification #197. For these airplanes, use the following wing spar lower cap hours time-in-service (TIS) schedule to do the initial and repetitive inspections:

TABLE 1.—INSPECTION TIMES

Serial No.	Condition	Initially inspect:	Repetitively inspect thereafter at intervals not to exceed:
(i) 802–0001 through 802–0091.	As manufactured	Upon accumulating 1,700 hours TIS or within 50 hours TIS after April 21, 2006 (the effective date of this AD), whichever occurs later.	850 hours TIS.
(ii) 802–0001 through 802–0091.	Modified with cold-worked fastener holes following Service Letter #244.	If performing the cold-working procedure in Service Letter #244, it includes the eddy current inspection.	1,700 hours TIS.

(3) One of the following must do the inspection:

(i) A level 2 or 3 inspector certified in eddy current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or

(ii) A person authorized to perform AD work and who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.

(g) For all affected airplanes listed in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD as terminating action for the inspection requirements, you may modify your wing by installing part number (P/N) 20997–2 web plate and P/N 20985–1 and 20985–2 extended 8-bolt splice blocks following Drawing 20995, Sheet 2, and cold-working the outboard two fastener holes in both the left and right hand lower spar caps at the center splice joint following Service Letter #240.

(h) For all affected airplanes listed in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, repair or replace any cracked spar cap before further flight after the inspection in which cracks are found. For repair or replacement, do whichever of the following that applies:

(1) For cracks that can be repaired by incorporating the terminating action specified in paragraph (g) of this AD, do the actions in paragraphs (g) of this AD before further flight after the inspection in which cracks are found.

(2) For cracks that cannot be repaired by incorporating the terminating action specified in paragraph (g) of this AD, replace the lower spar caps and associated parts listed in paragraph (i) of this AD before further flight after the inspection in which cracks are found.

(i) For all AT–802 and AT–802A airplanes, upon accumulating the hours TIS on the wing spar lower caps listed in paragraph (i)(3) of this AD or within 50 hours TIS after April 21, 2006 (the effective date of this AD), whichever occurs later, replace the wing main spar lower spar caps, the center joint splice blocks and hardware, the wing attach angles and hardware, and install the steel web splice plate (P/N 21106–1 for serial numbers 0001 through –0091, and P/N 20094–2 for all serial numbers beginning with 0092), unless already done. Replace as follows:

(1) For airplane serial numbers 802–0001 through 802–0091, follow Drawing Number 20975, Sheet 3, and Process Specification #204.

(2) For airplane serial numbers beginning with 802–0092, follow Drawing Number 20975, Sheet 2, and Process Specification #204.

(3) The following presents the safe life and replacements times as required in paragraph (i) of this AD:

TABLE 2.—SAFE LIFE AND REPLACEMENT TIMES

Serial No.	Wing spar lower cap safe-life
AT–802–0001 through AT–802–0059	4,132 hours TIS.
AT–802–0060 through AT–802–0091	4,188 hours TIS.
All begining with AT–802–0092	8,163 hours TIS.
AT–802A–001 through AT–802A–0059	4,969 hours TIS.
AT–802A–0060 through AT–802–0091	4,531 hours TIS.
All beginning with AT–802A–0092	8,648 hours TIS.

(j) After replacing the wing spar lower caps and hardware, installing the web splice plate, and cold working the fastener holes by following Drawing Number 20975, Sheet 3 (serial numbers 802–0001 through 802–0091), or Sheet 2 (all serial numbers beginning with 802–0092), and Process Specification #204, the new safe-life for wing spar lower caps is as follows:

TABLE 3.—NEW SAFE LIFE FOR WING SPAR LOWER CAPS

Serial No.	Wing spar lower cap safe-life
All beginning with AT–802–0001	8,163 hours TIS.
All beginning with AT–802A–0001	8,648 hours TIS.

(k) Report any cracks you find within 10 days after the cracks are found or within 10 days after April 21, 2006 (the effective date of this AD), whichever occurs later.

(1) Include in your report the aircraft serial number, aircraft TIS, wing spar cap TIS, crack location and size, corrective action taken, and a point of contact name and phone number. Send your report to Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fascimile: (210) 308–3370.

(2) The Office of Management and Budget (OMB) approved the information collection requirements contained in ths regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056.

May I Request an Alternative Method of Compliance?

(l) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to aprove alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19. For information on any already approved alternative methods of compliance or for information pertaining to this AD, contact Andrew McAnual, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

(m) AMOCs approved for AD 2001–10–04, AD 2001–10–04 R1, or AD 2002–11–05 for the Models AT–802 and AT–802A airplanes are not considered approved for this AD.

Special Flight Permit

(n) Under 14 CFR part 39.23, we are allowing special flight permits for the purpose of compliance with this AD under the following conditions:

(1) Only operate in day visual flight rules (VFR).

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

Does This AD Incorporate Any Material by References?

(o) You must do the actions required by this AD following the instructions in Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002; pages 2 through 4, dated February 23, 2001; and page 5, dated May 3, 2002; Snow Engineering Co. Process Specification #204, Rev. C, dated November 16, 2004; Snow Engineering Co. Service Letter #215, page 5, titled ''802 Spar Inspection Holes and Vent Tube Mod,'' dated November 19, 2003; Snow Engineering Co. Service #240, dated September 30, 2004; Snow Engineering Co. Service Letter #244, dated April 25, 2005; Snow Engineering Co. Drawing Number 20975, Sheet 2, Rev. A, dated September 1, 2004; Snow Engineering Co. Drawing Number 20975, Sheet 3, dated January 6, 2005; and Snow Engineering Co. Drawing Number 20995, Sheet 2, Rev. C., dated September 28, 2004. The Director of the Federal Register approved the incorporation by reference of this service information in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; US Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number FAA–2005–20591; Directorate Identifier 2005–20591; Directorate Identifier 2005–CE–14–AD.

Issued in Kansas City, Missouri, on April 10, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3613 Filed 4–18–06; 8:45am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19220; Directorate Identifier 2004–CE–27–AD; Amendment 39–14568; AD 2006–08–11]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 airplanes equipped with certain crew seat bucket assemblies with and without a backrest recline system. This AD requires you to replace the backrest tubes on these crew seat bucket assemblies at a specified time and adds a life limit for these backrest tubes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to prevent cracks in the backrest tubes of certain crew seat bucket assemblies, which could result in failure of the seat system. This failure could lead to the pilot and co-pilot's reduced ability to control the airplane. This failure could also affect the proper function of the seat restrain system in the case of an emergency landing.

DATES: This AD becomes effective on June 2, 2006.

ADDRESSES: For information identified in this AD, contact Pilatus Aircraft Ltd., Customer Support Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; fax: +41 41 619 7311; or Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; fax: (303) 465–6040.

To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19220; Directorate Identifier 2004–CE–27–AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

On February 7, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes equipped with certain crew seat bucket assemblies with and without a backrest recline system. This proposal

was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 14, 2006 (71 FR 7698). The NPRM proposed to require you to replace the backrest tubes on certain crew seat bucket assemblies at a specified time and add a life limit for the backrest tubes.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Remove Reference to PC12 Maintenance Manual Temporary Revision No. 04–13, Dated June 15, 2005

The manufacturer states that PC–12 Interactive Electronic Technical Publication (IETP) Revision 9 (which will include Aircraft Maintenance Manual (AMM) Revision 17) will supersede PC12 Maintenance Manual Temporary Revision No. 04–13, dated June 15, 2005, by March 31, 2006, by incorporating the information into the IETP.

The commenter requests to remove the reference to PC12 Maintenance Manual Temporary Revision No. 04–13, dated June 15, 2005, from the final rule AD action.

We agree with the commenter and will change the final rule AD action.

Comment Issue No. 2: Change the Compliance Time for Replacing Certain Crew Seat Bucket Assemblies

The manufacturer states the life limit and the compliance time for replacing crew seat bucket assemblies without a recline system, part numbers (P/Ns) 959.30.01.131, 959.30.01.132, 959.30.01.133, and 959.30.01.134 (or FAA-approved equivalent P/Ns), is too conservative. The manufacturer states there have not been any of these seats found with cracks and they have confidence the life limit could be increased from 10,000 hours time-in-service (TIS) to 12,163 hours TIS.

The manufacturer requests the compliance time for initial replacement be increased from ''upon the accumulation of 10,000 TIS or within the next 100 hours TIS after the effective date of the AD, whichever occurs later,'' to ''upon the accumulation of 10,000 TIS or within the next 500 hours TIS after the effective date of the AD, whichever occurs later.''

We partially agree with the commenter. Since there have not been any reported cracks on the above referenced crew seat bucket assemblies and there is confidence from the manufacturer that there is a 2,163-hour TIS ''cushion,'' we agree that increasing the threshold compliance time from 100 hours TIS to 500 hours TIS can be done without compromising the safety of crew seat bucket assemblies with 10,000 hours or less TIS. For crew seat bucket assemblies with more than 10,000 hours TIS, we have established a compliance time for initial replacement of 100 hours TIS or upon the accumulation of 10,500 hours TIS, whichever occurs later.

We will change the final rule AD action to reflect this change.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for incorporating the concerns addressed by the commenter and minor editorial corrections. We have determined that we should incorporate the concerns addressed by the commenter, and that these minor changes:

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

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

Cost of Compliance

We estimate that this AD affects 260 airplanes in the U.S. registry.

We estimate the following costs to do the replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $65 per hour = $195 per seat bucket assembly.	$600 per seat bucket assembly. 2 seats on each airplane.	$195 + $600 = $795 per seat bucket assembly.	$795 per seat bucket assembly × 2 per airplane = $1,590. $1,590 × 260 = $413,400.

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 AD.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19220; Directorate Identifier 2004–CE–27–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding the following new AD:

2006–08–11 Pilatus Aircraft Ltd.: Amendment 39–14568; Docket No. FAA–2004–19220; Directorate Identifier 2004–CE–27–AD.

Effective Date

(a) This AD becomes effective on June 2, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects Models PC–12 and PC–12/45 airplanes, all serial numbers, that are equipped with the following crew seat bucket assemblies and are certificated in any category:

(1) *Crew seats with a recline system, part numbers (P/N):* 959.30.01.111, 959.30.01.112, 959.30.01.121, and 959.30.01.122

(2) *Crew seats without recline system, P/Ns:* 959.30.01.131, 959.30.01.132, 959.30.01.133, and 959.30.01.134

Unsafe Condition

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to prevent cracks in the backrest tubes of certain crew seat bucket assemblies, which could result in failure of the seat system. This failure could lead to the pilot and co-pilot's reduced ability to control the airplane. This failure could also affect the proper function of the seat restrain system in the case of an emergency landing.

Compliance

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

Actions	Compliance	Procedures
(1) For crew seat bucket assemblies with a recline system, P/Ns 959.30.01.111, 959.30.01.112, 959.30.01.121, and 959.30.01.122 (or FAA-approved equivalent P/Ns), replace the backrest tubes.	Initially replace upon the accumulation of 5,000 hours time-in-service (TIS) or within the next 100 hours TIS after June 2, 2006 (the effective date of this AD), whichever occurs later, unless already done. Thereafter, replace the backrest tubes upon the accumulation of 5,000 hours TIS (the life limit established in this AD).	Replace following the procedures in the applicable component maintenance manual (CMM).
(2) For crew seat bucket assemblies without a recline system, P/Ns 959.30.01.131, 959.30.01.132, 959.30.01.133, and 959.30.01.134 (or FAA-approved equivalent P/Ns), and with less than or equal to 10,000 hours TIS replace the backrest tubes.	Initially replace upon the accumulation of 10,000 hours TIS or within the next 500 hours TIS after June 2, 2006 (the effective date of this AD), whichever occurs later, unless already done. Thereafter, replace the backrest tubes upon the accumulation of 10,000 hours TIS (the life limit established in this AD).	Replace following the procedures in the CMM.
(3) For crew seat bucket assemblies without a recline system, P/Ns 959.30.01.131, 959.30.01.132, 959.30.01.133, and 959.30.01.134 (or FAA-approved equivalent P/Ns), and with greater than 10,000 hours TIS replace the backrest tubes.	Initially upon the accumulation of 10,500 hours TIS or within the next 100 hours TIS after June 2, 2006 (the effective date of this AD), whichever occurs later, unless already done. Thereafter, replace the backrest tubes upon the accumulation of 10,000 hours TIS (the life limit established in this AD).	Replace following the procedures in the CMM.
(4) Do not install:	As of June 2, 2006 (the effective date of this AD). The life limits specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD apply to all parts installed as spares.	Not applicable.
(i) Any crew seat bucket assembly with a recline system, P/N 959.30.01.111, 959.30.01.112, 959.30.01.121, and 959.30.01.122, (or FAA-approved equivalent P/Ns), with unknown hours TIS or which has accumulated 5,000 or more hours TIS; or		
(ii) Any crew seat bucket assembly without a recline system, P/N 959.30.01.131, 959.30.01.132, 959.30.01.133, and 959.30.01.134 (or FAA-approved equivalent P/Ns), with unknown hours TIS or which has accumulated 10,000 or more hours TIS.		
(5) 14 CFR 21.303 allows for replacement parts through parts manufacturer approval(PMA). The phrase "or FAA-approved equivalent part number" in this AD is intended to signify those parts that are PMA parts approved through identicality to the design of the part under the type certificate and replacement parts to correct the unsafe condition under PMA (other than identicality). If parts are installed that are identical to the unsafe parts, then the corrective actions of the AD affect these parts also. In addition, equivalent replacement parts to correct the unsafe condition under PMA (other than identicality) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.	Not applicable	Not applicable.
(6) You must contact the type certificate holder any time a modification or repair is done that affects the parts listed in paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this AD to determine the effect, if any, the modification or repair may have on the life limits established in this AD.	As of June 2, 2006 (the effective date of this AD)	Not applicable.

Note 1: The FAA recommends that you return all replaced backrest tubes to Pilatus Aircraft Ltd., Structural Analysis Group ECE, Ch–6371 Stans, Switzerland. Include the following information: crew seat P/N and serial number, aircraft manufacturer serial number, aircraft flying hours, number of flights, and replacement date of the replaced backrest tubes.

Note 2: Pilatus PC–12 Aircraft Maintenance Manual Revision 17/Interactive Electronic Technical Publication (IETP) Revision 9, Chapter 4, section 04–00–00, references the crew seat bucket assembly replacements.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Swiss AD Number HB–2005–470, Effective Date: December 30, 2005, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on April 12, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3725 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23705; Directorate Identifier 2005–NE–45–AD; Amendment 39–14567; AD 2006–08–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT64–820–4 Turboprop Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CT64–820–4 turboprop engines with certain part number (P/N) rotating parts. The parts are in the compressor rotor assembly, gas generator turbine rotor assembly, and power turbine rotor assembly that are subject to low-cycle fatigue. This AD requires removing from service these affected rotating parts at reduced compliance times. This AD results from the manufacturer's discovery of cracks in some rotating parts. We are issuing this AD to prevent cracks in the rotating parts that could cause compressor and turbine wheel fracture and uncontained engine failure. An uncontained engine failure could cause possible damage to the airplane.

DATES: This AD becomes effective May 24, 2006.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; e-mail address: *GEAE.csc@ae.ge.com*, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Anthony W. Cerra Jr., Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7128; fax 781–238–7199; e-mail address: *anthony.cerra@faa.gov.*

SUPPLEMENTARY INFORMATION: GE has informed us that cracks have been found in certain P/N rotating parts. The manufacturer reported that cracks were found in the outer rim of a stage 1 aft cooling plate, P/N 4022T37P01, installed on the gas generator turbine (GGT) rotor of a military T64 engine. They also found cracks in the sawcut slots of the GGT rear air seals of stage 2 aft cooling plates, P/N 4022T36P01, in the CT64–820–4 engine model and a similar military T64 engine model. There have been at least 13 reports of cracked GGT rear air seals.

Investigation by the manufacturer showed that compressor rotor assemblies, GGT rotor assemblies, and power turbine rotor assemblies have small feature locations. A ''small feature'' location is any rotating hardware feature with drawing radii less than 0.020 inch. Engineering analysis determined that the small feature locations and other life-limited locations of the rotating parts identified in this action have levels of stress during engine operation that are higher than originally anticipated and could result in cracks on these parts. This condition, if not corrected, could cause compressor and turbine wheel fracture and uncontained engine failure. An uncontained engine failure could cause possible damage to the airplane.

FAA's Determination and Requirements of This AD

Although no airplanes registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other GE CT64–820–4 turboprop engines of the same type design. We are issuing this AD to prevent cracks in the rotating parts that could cause compressor and turbine wheel fracture and uncontained engine failure. An uncontained engine failure could cause possible damage to the airplane. This AD requires removing from service these affected life-limited rotating parts at reduced compliance times.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2006–23705; Directorate Identifier 2005–NE–45–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site,

anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–08–10 General Electric Company: Amendment 39–14567. Docket No. FAA–2006–23705; Directorate Identifier 2005–NE–45–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CT64–820–4 turboprop engines that use any of the rotating parts listed in Table 1 of this AD. These engines are installed on, but not limited to, DeHavilland DHC–5D Buffalo airplanes.

TABLE 1.—AFFECTED ROTATING PARTS

Rotor assembly	Part nomenclature	Part No.
Compressor	Shaft, Front	5007T03P03
	Disk, Stage 1	5015T92P01
	Retainer, Disk, Stage 1	5013T71P01
	Disk, Stage 2	5015T93P01
	Spacer, Disk, Stage 2	5015T94P01
	Disk, Stage 3	5015T95P01
	Spool, Rotor, Front	6003T84P02
	Spool, Rotor, Rear	6005T18P01
	Shaft, Rear	6005T26P01
Gas Generator Turbine	Disk and Shaft, Stage 1	6014T70P02
	Disk, Stage 2	4007T83P02
	Ring, Torque	3008T60P02
	Seal, Air, Stage 1	4007T94G02
	Plate, Cooling	3008T52P02
	Plate, Cooling	4022T37P01
	Seal, Interstage	5006T54P02
	Seal, Air, Rear	4022T36P01
	Seal, Air, Rear	4022T36P03
Power Turbine	Disk, Stage 3	4008T65P02
	Disk, Stage 4	5006T16P03
	Disk, Stage 4	5006T16P04
	Seal, Interstage	4008T29P01
	Shaft, Main	5009T73P02
	Shaft, Main	6012T83P02
	Tiebolt, Power Turbine Rotor	3008T44P02

Unsafe Condition

(d) This AD results from the manufacturer's discovery of cracks in some rotating parts. We are issuing this AD to prevent cracks in the rotating parts that could cause compressor and turbine wheel fracture and uncontained engine failure. An uncontained engine failure could cause possible damage to the airplane.

Definition of "Data Fleet" and "No-Data" Fleet Engines

(e) For the purposes of this AD, "Data Fleet" is defined as a category of engines for which the engine serial numbers (SNs) are listed in Table 2 of this AD, and the following information has been provided to the manufacturer and included in the data analysis:

(1) Current configuration of all life-limited parts.

(2) Current cycles of life-limited parts.

(3) Engine utilization rate (hours/month).

TABLE 2.—ENGINE SNS IN THE DATA FLEET

268504	268565	268605	268646	268662
268505	268569	268606	268647	268666
268509	268573	268608	268648	268667
268511	268574	268620	268649	268669
268514	268575	268622	268650	268670
268529	268580	268636	268653	268672
268534	268583	268637	268655	268674
268535	268588	268638	268656	268679
268537	268589	268641	268658	268686
268545	268590	268642	268659	268689
268549	268596	268643	268660	268690
268562	268603	268644	268661	268691

(f) For the purposes of this AD, "No-Data Fleet" is defined as a category of engines for which the engine SNs are not listed in Table 2 of this AD. The operators of the "No Data Fleet" engines did not supply the data listed in paragraph (e) to the manufacturer.

Compliance

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

(h) If performing the actions required by this AD for "Data Fleet" engines, follow paragraphs (j) through (o).

(i) If performing the actions required by this AD for "No-Data Fleet" engines, follow paragraphs (p) through (u).

Data Fleet Rotating Part Removal Requirements

(j) For parts listed in Table 3 of this AD and installed in serviceable engines (those that are in service or have met the requirements for and have been approved for return to service) on the effective date of this AD, do the following:

(1) If the cycles-since-new (CSN) of a part listed in Table 3 of this AD are equal to or more than Table 3, Limit 2 as of the effective date of this AD, remove the part before exceeding 900 additional cycles-in-service (CIS) or Table 3, Limit 1, whichever occurs first, but not later than July 31, 2013.

(2) If the CSN for a part listed in Table 3 of this AD are fewer than Table 3, Limit 2 as of the effective date of this AD, remove the part from service before exceeding Table 3, Limit 3, but not later than July 31, 2013.

TABLE 3.—AFFECTED DATA FLEET ROTATING PART REMOVAL REQUIREMENTS

Rotor	Nomenclature	Part No.	Limit 1 (cycles)	Limit 2 (cycles)	Limit 3 (cycles)
Compressor	Shaft, Front	5007T03P03	30,000	29,100	30,000
	Disk, Stage 1	5015T92P01	13,000	8,100	9,000
	Retainer, Disk, Stage 1	5013T71P01	30,000	29,100	30,000
	Disk, Stage 2	5015T93P01	23,000	8,100	9,000
	Spacer, Disk, Stage 2	5015T94P01	30,000	8,100	9,000
	Disk, Stage 3	5015T95P01	9,000	8,100	9,000
	Spool, Rotor, Front	6003T84P02	5,100	2,100	3,000
	Spool, Rotor, Rear	6005T18P01	19,000	3,500	4,400
	Shaft, Rear	6005T26P01	30,000	8,100	9,000
Gas Generator Turbine	Disk and Shaft, Stage 1	6014T70P02	7,000	6100	7000
	Disk, Stage 2	4007T83P02	11,300	5,400	6,300
	Ring, Torque	3008T60P02	30,000	6,100	7,000
	Seal, Air, Stage 1	4007T94G02	30,000	11,700	12,600
	Plate, Cooling	3008T52P02	5,000	4,100	5,000
	Plate, Cooling	4022T37P01	5,000	4,100	5,000
	Seal, Interstage	5006T54P02	5,100	4,200	5,100
	Seal, Air, Rear	4022T36P01	5,000	4,100	5,000
	Seal, Air, Rear	4022T36P03	5,000	4,100	5,000
Power Turbine	Disk, Stage 3	4008T65P02	30,000	12,100	13,000
	Disk, Stage 4	5006T16P03	30,000	12,100	13,000
	Disk, Stage 4	5006T16P04	30,000	12,100	13,000
	Seal, Interstage	4008T29P01	30,000	12,100	13,000
	Shaft, Main	5009T73P02	13,000	12,100	13,000
	Shaft, Main	6012T83P02	13,000	12,100	13,000
	Tiebolt, Power Turbine Rotor	3008T44P02	13,000	12,100	13,000

(k) For all rotating parts listed in Table 3 of this AD and put into service after the effective date of this AD, remove from service before the CSN exceeds Table 3, Limit 3, but not later than July 31, 2013.

(l) After the effective date of this AD:

(1) Do not install any part listed in Table 3 of this AD that has a CSN equal to or more than Table 3, Limit 3.

(2) If the CSN for a part listed in Table 3 of this AD are fewer than Table 3, Limit 3:

(i) Until July 31, 2007, you may return the part to service, if the part passes the applicable inspections specified in the CT64–820–4 Engine Overhaul Manual, SEI–448.

(ii) You must remove the part from service before Table 3, Limit 3 is exceeded, but no later than July 31, 2013.

(iii) After July 31, 2007, do not install any part listed in Table 3 of this AD.

(m) On July 31, 2007, for engines in service that have a part listed in Table 3 of this AD, remove the affected part before exceeding Table 3, Limit 3, but no later than July 31, 2013.

(n) For main shafts, P/N 5009T73P02, and P/N 6012T83P02, and power turbine rotor tiebolt, P/N 3008T44P02, with unknown CSN do the following:

(1) Assign each part a CSN value of 7,400 CSN as of the effective date of this AD and refer to Table 3 of this AD for removal requirements.

(2) Continue to track the parts starting from 7,400 CSN and remove from service as specified in paragraphs (j) through (n) of this AD, but no later than July 31, 2013.

(o) For rear air seal, P/N 4022T36P03, and power turbine stage 4 disk, P/N 5006T16P04, with unknown CSN, remove the part before exceeding 10 additional cycles, but no later than July 31, 2013.

No-Data Fleet Rotating Part Removal Requirements

(p) For parts listed in Table 4 of this AD and installed in serviceable engines (those that are in service, or have met the requirements for and have been approved for return to service) on the effective date of this AD, do the following:

(1) If the CSN of a part listed in Table 4 of this AD are equal to or more than Table 4, Limit 2 as of the effective date of this AD, remove the part before exceeding 50 additional CIS or Table 4, Limit 1, whichever occurs first, but not later than July 31, 2013.

(2) If the CSN for a part listed in Table 4 of this AD are fewer than Table 4, Limit 2 as of the effective date of this AD, remove the part from service before exceeding Table 4, Limit 3, but not later than July 31, 2013.

(q) For all rotating parts listed in Table 4 of this AD and put into service after the effective date of this AD, remove from service before the CSN exceeds Table 4, Limit 3, but not later than July 31, 2013.

TABLE 4.—AFFECTED NO-DATA FLEET ROTATING PART REMOVAL REQUIREMENTS

Rotor	Nomenclature	Part No.	Limit 1 (cycles)	Limit 2 (cycles)	Limit 3 (cycles)
Compressor	Shaft, Front	5007T03P03	30,000	29,950	30,000
	Disk, Stage 1	5015T92P01	13,000	8,950	9,000
	Retainer, Disk, Stage 1	5013T71P01	30,000	29,950	30,000
	Disk, Stage 2	5015T93P01	23,000	8,950	9,000
	Spacer, Disk, Stage 2	5015T94P01	30,000	8,950	9,000
	Disk, Stage 3	5015T95P01	9,000	8,950	9,000
	Spool, Rotor, Front	6003T84P02	5,100	2,950	3,000
	Spool, Rotor, Rear	6005T18P01	19,000	4,350	4,400
	Shaft, Rear	6005T26P01	30,000	8,950	9,000
Gas Generator Turbine	Disk and Shaft, Stage 1	6014T70P02	7,000	6,950	7,000
	Disk, Stage 2	4007T83P02	11,300	6,250	6,300
	Ring, Torque	3008T60P02	30,000	6,950	7,000
	Seal, Air, Stage 1	4007T94G02	30,000	12,550	12,600
	Plate, Cooling	3008T52P02	5,000	4,950	5,000
	Plate, Cooling	4022T37P01	5,000	4,950	5,000
	Seal, Interstage	5006T54P02	5,100	5,050	5,100
	Seal, Air, Rear	4022T36P01	5,000	4,950	5,000
	Seal, Air, Rear	4022T36P03	5,000	4,950	5,000
Power Turbine	Disk, Stage 3	4008T65P02	30,000	12,950	13,000
	Disk, Stage 4	5006T16P03	30,000	12,950	13,000
	Disk, Stage 4	5006T16P04	30,000	12,950	13,000
	Seal, Interstage	4008T29P01	30,000	12,950	13,000
	Shaft, Main	5009T73P02	13,000	12,950	13,000
	Shaft, Main	6012T83P02	13,000	12,950	13,000
	Tiebolt, Power Turbine Rotor	3008T44P02	13,000	12,950	13,000

(r) After the effective date of this AD:

(1) Do not install any part listed in Table 4 of this AD that has a CSN equal to or more than Table 4, Limit 3.

(2) If the CSN for a part listed in Table 4 of this AD are fewer than Table 4, Limit 3:

(i) Until July 31, 2007, you may return the part to service, if the part passes the applicable inspections specified in the CT64–820–4 Engine Overhaul Manual, SEI–448.

(ii) You must remove the part from service before Table 4, Limit 3 is exceeded, but no later than July 31, 2013.

(iii) After July 31, 2007, do not install any part listed in Table 4 of this AD.

(s) On July 31, 2007, for engines in service that have a part listed in Table 4 of this AD, remove the affected part before exceeding Table 4, Limit 3, but no later than July 31, 2013.

(t) For main shafts P/N 5009T73P02, and P/N 6012T83P02, and power turbine rotor tiebolt, PN 3008T44P02, with unknown CSN, remove the part before exceeding 50 additional cycles

(u) For rear air seal, P/N 4022T36P03, and power turbine stage 4 disk, P/N 5006T16P04, with unknown CSN, remove the part before exceeding 10 additional cycles, but no later than July 31, 2013.

Log Book Entry

(v) For all engines, calculate the cycles remaining on the affected rotating parts and make an entry in the Engine Log Book marked with the engine S/N and its fleet category, either ''DATA FLEET'' or ''NO-DATA FLEET.''

(1) Date and file the record in the Engine Log Book.

(2) Note in the Engine Log Book that AD 2006–08–10 has been complied with.

Alternative Methods of Compliance

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

Related Information

(x) GE Aircraft Engines CT64 Alert Service Bulletin CT64 S/B 72–A0130, dated January 24, 2006, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on April 12, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–3724 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 101 and 122

USCBP–2005–0030 and [CBP Dec. 06–10]

Establishment of Port of Entry at New River Valley, VA, and Termination of the User-Fee Status of New River Valley Airport

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This document amends Department of Homeland Security regulations pertaining to the field organization of the Bureau of Customs and Border Protection by conditionally establishing a new port of entry at New River Valley, Virginia, and terminating the user-fee status of New River Valley Airport. The new port of entry consists of all the area surrounded by the continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the Commonwealth of Virginia, including New River Valley Airport, which currently is operated as a user-fee airport. These changes will assist the Bureau of Customs and Border Protection in its continuing efforts to provide better service to carriers, importers and the general public.

EFFECTIVE DATE: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–344–2776.

SUPPLEMENTARY INFORMATION:

Background

In a Notice of Proposed Rulemaking published in the **Federal Register** (70 FR 38637) on July 5, 2005, the Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP), proposed to amend 19 CFR 101.3(b)(1) by conditionally establishing a new port of entry at New River Valley, VA. The new port of entry, as proposed, would include the area surrounded by the continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the Commonwealth of Virginia. This area includes New River Valley Airport, located in the town of Dublin, Virginia, which currently operates and is listed as a user-fee airport at 19 CFR 122.15(b). The change of status for New River Valley Airport, from a user-fee airport to inclusion within the boundaries of a port of entry, would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

CBP proposed to establish the new port of entry based on its review of the level and pace of development in the New River Valley area. CBP evaluated whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service in the New River Valley area based on the criteria for port of entry designations set forth in Treasury Decision (T.D.) 82–37 (Revision of Customs Criteria for Establishing Ports of Entry and Stations, 47 FR 10137), as revised by T.D. 86–14 (51 FR4559) and T.D. 87–65 (52 FR 16328). New River Valley was proposed to be a conditional port of entry based on the potential of the area. The actual and potential workload statistics of the area were set forth in the Notice of Proposed Rulemaking. See 70 FR at 38637–38.

Analysis of Comments and Conclusion

Several comments were received in response to the Notice of Proposed Rulemaking. All of the comments were favorable to the proposal. Each comment was favorable in the entirety; no alternate courses of action, limitations or possible problems were presented by the commenters. Because CBP continues to believe that the potential volume of import business in New River Valley supports a new port of entry there, and that the establishment of the new port of entry will assist CBP in its continuing efforts to provide better service to carriers, importers and the general public, CBP is conditionally establishing the new port of entry as proposed. In three years, CBP will review the actual workload generated within the new port of entry. If that review indicates that the actual workload is below the criteria set forth under T.D. 82–37 standards (as amended), CBP may institute procedures to revoke the port of entry status. In such case, New River Valley airport may reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

Description of the New Port of Entry Limits

The geographical limits of the new New River Valley port of entry are as follows: The continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the Commonwealth of Virginia.

Authority

This change is made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624, and the Homeland Security Act of 2002, Public Law 107–296 (November 25, 2002).

The Regulatory Flexibility Act and Executive Order 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. The Office of Management and Budget has determined that this final rule is not a significant regulatory action under Executive Order 12866. This action also will not have a significant economic impact on a substantial number of small entities. Accordingly, it is certified that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of a new port of entry and the termination of the user-fee status of an airport are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security or his delegate.

List of Subjects

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

19 CFR Part 122

Customs duties and inspection, Airports, Imports, Organization and functions (Government agencies).

Amendments to CBP Regulations

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101), and part 122, CBP Regulations (19 CFR part 122), are amended as set forth below.

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

■ 2. The list of ports in § 101.3(b)(1) is amended by adding, in alphabetical order under the state of Virginia, ''New River Valley'' in the ''Ports of entry'' column and ''CBP Dec. 06–10'' in the ''Limits of Port'' column.

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

§ 122.15 [Amended]

■ 2. The list of user fee airports at 19 CFR 122.15(b) is amended by removing ''Dublin, Virginia'' from the ''Location'' column and, on the same line, ''New River Valley Airport'' from the ''Name'' column.

Dated: April 11, 2006.

Michael Chertoff,

Secretary.

[FR Doc. 06–3694 Filed 4–18–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 517

RIN 3141–AA21

Freedom of Information Act Procedures

AGENCY: National Indian Gaming Commissionl, Interior.

ACTION: Final rule.

SUMMARY: The purpose of this document is to amend the procedures followed by the National Indian Gaming Commission (Commission) when processing a request under the Freedom of Information Act (FOIA), as amended so that the Commission will be in compliance with the provisions of the amendment to FOIA.

DATES: *Effective Date:* These regulations take effect May 19, 2006.

FOR FURTHER INFORMATION CONTACT: Jeannie McCoy, FOIA Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005 at (202) 632–7003 or by fax (202) 632–7066 (these numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Congress enacted the FOIA in 1966 and last modified it with the Electronic Freedom of Information Act Amendments of 1996. This amendment addresses FOIA reading rooms and those documents available electronically, agency backlogs of requests, change in fees, and preservation of records among other things. The changes will bring the Commission in compliance with the FOIA, as amended.

Regulatory Flexibility Act: The Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that could be deemed impacts within the scope of the Act. For this reason, the Commission has concluded that the rule will not have a significant impact on those small entities subject to the rule.

Unfunded Mandates Reform Act: The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* Furthermore, this rule will not have a unique effect on tribal governments.

Small Business Regulatory Enforcement Fairness Act: The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

Paperwork Reduction Act: The rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act: The Commission has determined that this rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Comments: In response to our Notice of Proposed Rulemaking, published October 18, 2005 (70 FR 60470), we received comments from three separate Tribes. The comments from these three Tribes were identical.

Comment: The commenter casts doubt on the NIGCs status as an independent regulatory agency by arguing that, based on the NIGC's recent partnership with the Department of Justice, the NIGC might not be an independent regulatory agency. This comment was made in response to the agency's assertion that it is not subject to the Unfunded Mandates Reform Act.

Response: To the extent you have called into question the independence of the agency, we disagree. Although established ''within the Department of the Interior,'' Congress deemed the Commission to be an ''independent Federal regulatory authority,'' 25 U.S.C. 2702(3), and the Courts agree: *Sac and Fox Nation* v. *Norton*, 240 F.3d 1250, 1265 n.12 (10th Cir. 2001) (''Although the Commission is nominally part of the Department of the Interior, the Secretary conceded at oral argument that the Commission functions as an independent entity.''). Several courts have held as much. *See also United States ex rel. Hall* v. *Tribal Dev. Corp.*, 49 F.3d 1208 (7th Cir. 1995) (the NIGC is a ''three-member independent agency within the Department of the Interior''); *United States ex rel. Mosay* v. *Buffalo Bros. Management*, 20 F.3d 739 (7th Cir. 1994) (''Congress enacted the Indian Gaming Regulatory Act, which establishes a three-member independent agency within the Department of the Interior, the National Indian Gaming Commission, to supervise Indian gambling.''); *United Keetoowah Band of Cherokee Indians* v. *Oklahoma*, 927 F.2d 1170 (10th Cir. 1991) (''Gaming over which the federal government holds jurisdiction is subject to the supervision of a[n] * * * independent regulatory authority, the National Indian Gaming Commission'').

Comment: The commenter was concerned that the definition of ''Requester'' included an, ''Indian Tribe'' thereby requiring Tribes to pay the same fees as other requestors. Additionally, they inquire if Tribes could be exempt from the FOIA entirely.

Response: The inclusion of ''Indian tribe'' in the definition of ''Requestor'' is not a change to our current regulations. Tribes have always been considered requestors for the purposes of FOIA.

Comment: The commenter was concerned that the NIGC did not consult with Tribes in accordance with Executive Order 13715 and President Bush's Memorandum for the Heads of Executive Departments and Agencies, dated September 23, 2004, as well as the NIGC's own Government to Government Tribal Consultation Policy.

Response: Since the amendments to the regulations were simply updating agency information as well as to formally implement the Electronic Freedom of Information Act Amendments of 1996, the Commission did not feel it necessary to waste time and resources meeting with every Tribe in the United States. Additionally, as an independent regulatory agency, Executive Order 13715 is not applicable.

Commenter: The commenter questions what authority the NIGC has to waive tribal sovereignty for Debt Collection Act purposes.

Response: This rule does purport to waive tribal sovereignty.

Dated: April 13, 2006.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 517

Freedom of information.

■ Accordingly for the reasons set forth above, 25 CFR part 517 is to be revised to read as follows:

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

517.1 General provisions.
517.2 Public reading room.
517.3 Definitions.
517.4 Requirements for making requests.
517.5 Responsibility for responding to requests.
517.6 Timing of responses to requests.
517.7 Confidential commercial information.
517.8 Appeals.
517.9 Fees.

The authority citation continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

§ 517.1 General provisions.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended. These regulations provide procedures by which you may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records. These regulations should be read together with the FOIA, which provides additional information about access to records maintained by the Commission.

§ 517.2 Public reading room.

Records that are required to be maintained by the Commission shall be available for public inspection and copying at 1441 L Street, NW., Suite 9100 Washington, DC. Reading room records created on or after November 1, 1996, shall be made available electronically via the Web site.

§ 517.3 Definitions.

(a) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of himself or the person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a request properly belongs in this category, the FOIA Officer shall determine the use to which the requester will put the documents requested. Where the FOIA Officer has reasonable cause to doubt the use to which the requester will put the records sought, or where that use is not clear from the request itself, the FOIA Officer shall contact the requester for additional clarification before assigning the request to a specific category.

(b) *Confidential commercial information* means records provided to the government by a submitter that arguably contains material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(c) *Direct costs* mean those expenditures by the Commission actually incurred in searching for and duplicating records in response to the FOIA request. Direct costs include the salary of the employee or employees performing the work (the basic rate of pay for the employee plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of space, heating, or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a document necessary to fulfill the FOIA request. Such copies can take the form of, among other things, paper copy, microfilm, audio-visual materials, or machine readable documentation. The copies provided shall be in a form that is reasonably usable by the requester.

(e) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institute of undergraduate higher education, an institute of graduate higher education, an institute of professional education, or an institute of vocational education which operates a program of scholarly research. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as that term is used in paragraph (a) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(h) *Record* means all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by the Commission under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Commission or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. For a ''freelance journalist'' to be regarded as working for a news organization, the requester must demonstrate a solid basis for expecting publication through that organization, such as a publication contract. Absent

such showing, the requester may provide documentation establishing the requester's past publication record. To qualify for this category, the requester must not be seeking the requested records for a commercial use. However, a request for records supporting a news-dissemination function shall not be considered to be for a commercial use.

(j) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the Commission.

(k) *Review* means the process of examining a record in response to a FOIA request to determine if any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. Review time includes time spent considering any formal objection to disclosure made by a business submitter under Sec. 517.7 (c). Review time does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(l) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Officer shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(m) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to, corporations, Indian tribal governments, state governments and foreign governments.

(n) *Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

§ 517.4 Requirements for making requests.

(a) *How to make a FOIA request.* Requests for records made pursuant to the FOIA must be in writing. Requests should be sent to the National Indian Gaming Commission, Attn: FOIA Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Requests may be mailed, dropped off in person, or faxed to (202) 632–7066 (not a toll free number). If the requester is making a request for records about himself/herself, the requester should see 25 CFR 515.3 for additional information. If the requester is making a request for records about another individual, the requester must provide either a written authorization signed by that individual authorizing disclosure of the records to the requester or provide proof that the individual is deceased (for example, a copy of the death certificate or a copy of the obituary).

(b) *Description of records sought.* Requests for records shall describe the records requested with as much specificity as possible to enable Commission employees to locate the information requested with a reasonable amount of effort.

(c) *Agreement to pay fees.* Requests shall also include a statement indicating the maximum amount of fees the requester is willing to pay to obtain the requested information, or a request for a waiver or reduction of fees. If the requester is requesting a waiver or reduction of fees the requester must include justification for such waiver or reduction (see Sec. 517.9 (c) for more information). If the request for a fee waiver is denied, the requester will be notified of this decision and advised that fees associated with the processing of the request will be assessed. The requester must send an acknowledgment to the FOIA Officer indicating his/her willingness to pay the fees. Absent such acknowledgment within the specified time frame, the request will be considered incomplete, no further work shall be done, and the request will be administratively closed.

(d) *Types of records not available.* The FOIA does not require the Commission to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or disposed.

§ 517.5 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, the Commission ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the FOIA Officer shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer shall make initial determinations either to grant or deny in whole or in part a request for records.

(c) *Consultations and referrals.* (1) When a requested record has been created by another Federal Government agency that record shall be referred to the originating agency for direct response to the requester. The requester shall be informed of the referral. As this is not a denial of a FOIA request, no appeal rights accrue to the requester.

(2) When a requested record is identified as containing information originating with another Federal Government agency, the record shall be referred to the originating agency for review and recommendation on disclosure.

§ 517.6 Timing of responses to requests.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The FOIA Officer may use multi-track processing in responding to requests. Multi-track processing means placing simple requests requiring rather limited review in one processing track and placing more voluminous and complex requests in one or more other tracks. Request in either track are processed on a first-in/first-out basis.

(2) The FOIA Officer may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of faster track(s). The FOIA Officer will do so either by contacting the requester by letter or telephone, whichever is more efficient in each case.

(c) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and notify the requester within twenty (20) working days after receipt of the request. This 20 day period may be extended if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly stating the reasons for the extension, and estimating when the FOIA Officer will respond. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the

request, which consultation shall be conducted with all practicable speed.

(2) If the FOIA Officer decides that an initial determination cannot be reached within the time limits specified in paragraph (c)(1) of this section, the FOIA Officer shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made. The requester will then have the opportunity to modify the request or arrange for an alternative time frame for completion of the request.

(3) If the FOIA Officer has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Multiple requests involving unrelated matters will not be aggregated.

(4) If no initial determination has been made at the end of the 20 day period provided for in paragraph (a)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(5) If the FOIA Officer determines that another agency is responsible for the records, the FOIA Officer shall refer such records to the appropriate agency for direct response to the requester. The FOIA Officer shall inform the requester of the referral and of the name and address of the agency or agencies to which the request has been referred.

(d) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, the FOIA Officer shall notify the requester in writing and provide copies of the requested records in whole or in part once any fees charged under Sec. 517.9 have been paid in full. Records disclosed in part shall be marked or annotated to show the exemption applied to the withheld information and the amount of information withheld unless to do so would harm the interest protected by an applicable exemption. If a requested record contains exempted material along with nonexempt material, all reasonable segregable material shall be disclosed.

(e) *Denial of requests.* When the FOIA Officer determines that access to requested records should be denied, the FOIA Officer shall notify the requester of the denial, the grounds for the denial, and the procedures for appeal of the denial.

(f) *Expedited processing of request.* The FOIA Officer must determine whether to grant the request for expedited processing within (10) calendar days of its receipt. Requests will receive expedited processing if one of the following compelling needs is met:

(1) The requester can establish that failure to receive the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is primarily engaged in disseminating information and can demonstrate that an urgency to inform the public concerning actual or alleged Federal Government activity exists.

§ 517.7 Confidential commercial information.

(a) *Notice to submitters.* The FOIA Officer shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the FOIA Officer, with prompt notice of a FOIA request or administrative appeal encompassing the confidential commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The FOIA Officer shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *Where notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate, either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Opportunity to object to disclosure.* The FOIA Officer shall afford a submitter a reasonable period of time to provide the FOIA Officer with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. In the event a submitter fails to respond to the notice in the time specified, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is received after the disclosure decision has been made will not be considered. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specific disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* If the requester files a lawsuit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action. If a submitter files a lawsuit seeking to prevent disclosure of confidential commercial information, the FOIA Officer shall notify the requester.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed pursuant to Exemption 4 and/or any other exemption of the FOIA;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe

that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date, but no opportunity to object to disclosure will be offered.

§ 517.8 Appeals.

(a) *Right of appeal.* The requester has the right to appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.* (1) *Time for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access or after the time limit for response by the FOIA Officer has expired. Prior to submitting an appeal any outstanding fees associated with FOIA requests must be paid in full.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and initial denial. To expedite the appellate process and give the requester an opportunity to present his/her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial to have been in error. The appeal shall be addressed to the National Indian Gaming Commission, Attn: FOIA Appeals Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for its decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination and his/her right to obtain judicial review in the appropriate Federal district court.

§ 517.9 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Commission in response to requests for records under this part. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Payment of fees should be by check or money order made payable to the Treasury of the United States.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Copies.* The FOIA Officer shall charge $0.15 per page for copies of documents up to 8½ x 14. For copies prepared by computer, the FOIA Officer will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the FOIA Officer shall charge the actual costs of producing the documents.

(2) *Searches.* (i) *Manual searches.* Whenever feasible, the FOIA Officer will charge at the salary rate (basic pay plus a percent for benefits) of the employee or employees performing the search. However, where a homogenous class of personnel is used exclusively in a search (e.g. all administrative/clerical or all professional/executive), the FOIA Officer shall charge $4.45 per quarter hour for clerical time and $7.75 per quarter hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The FOIA Officer will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. The Commission is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the same rates as those listed under paragraph (b)(2)(i) of this section. Review fees shall be assessed only for the initial record review, for example, review undertaken when the FOIA Officer analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraph (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) The subject of the request. Whether the subject of the requested records concerns the operations or activities of the government;

(2) The informative value of the information to be disclosed. Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure. Whether disclosure of the requested information will contribute to public understanding;

(4) The significance of the contribution to public understanding. Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) The existence and magnitude of commercial interest. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) The primary interest in disclosure. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutional requesters; representative of the news media; and all other requesters. These terms are defined in Sec. 517.3. The following specific levels of fees are prescribed for each of these categories:

(1) *Commercial use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The

FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the categories in paragraphs (d)(1) through (3) of this section fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total costs exceeds $15.00, except that the first 100 pages and the first two hours of manual search time shall not be charged. To apply this term to computer searches, the FOIA Officer shall determine the total hourly cost of operating the central processing unit and the operator's salary (plus 16 percent for benefits). When the cost of the search equals the equivalent dollar amount of two hours of the salary of the person performing the search, the FOIA Officer will begin assessing charges for the computer search.

(e) *Charges for unsuccessful searches.* Ordinarily, no charges will be assessed when requested records are not found or when records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Charges for interest.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting the 31st day following the day on which the bill was sent to you. A fee received by the FOIA Officer, even if not processed, will result in a stay of the accrual of interest. The Commission shall follow the provisions of the Debt Collection Act of 1982, as amended, and the implementing procedures to recover any indebtedness owed to the Commission.

(g) *Aggregating requests.* The requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment may be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed $250.00. When payment is required in advance of the processing of a request, the time limits prescribed in § 517.6 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee.

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed $25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than $25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requester an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

[FR Doc. 06–3712 Filed 4–18–06; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–130]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chesapeake Bay; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** on March 9, 2006 (71 FR 12132), establishing special local regulations during the ''Volvo Ocean Race 2005–2006'', sailboat races to be held on the Chesapeake Bay in the vicinity east of Gibson Island, Maryland, and near the William Preston Lane Jr. Memorial (Chesapeake Bay) Bridge. The document contained incorrect coordinates to describe the regulated area.

DATES: The correction to this rule is effective April 29, 2006. The rule itself is effective April 29 through May 7, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Recreational Boating Safety Specialist, Fifth Coast Guard District, telephone 757–398–6204, Fax 757–398–6203.

SUPPLEMENTARY INFORMATION: In FR Doc. 06–2204 appearing on page 12132 in the **Federal Register** of March 9, 2006, the following correction is made:

PART 100—[AMENDED]

§ 100.35–T05–130 [Corrected]

■ 1. On page 12134, in the third column, and on page 12135, in the first column, in § 100.35–T05–130 Chesapeake Bay, near Annapolis, MD, in amendment (2), revise paragraph (a)(2) to read as follows: ''(2) The second segment for the ''Leg 6 Re-Start'' is a rectangle-shaped area, approximately six nautical miles long and 1.5 nautical miles wide, bounded by a line drawn from a position at latitude, 38°54′21″ N, longitude 076°26′42″ W, thence easterly to a position at latitude 38°53′42″ N, longitude 076°24′48″ W, thence northerly to a position at latitude 38°59′40″ N, longitude 076°21′42″ W, thence westerly to a position at latitude 39°00′05″ N, longitude 076°23′33″ W, thence southerly to a position at latitude 38°54′21″ N, longitude 076°26′42″ W, the point of origin. The spectator areas will be designated around the perimeter of the race course and marked by picket boats and inflatable buoys. No spectators will be allowed within the actual race course.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 06–3713 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP St. Petersburg 06–063]

RIN 1625–AA00

Safety Zone; Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Tampa Bay, Florida in the vicinity of the Gandy Bridge, while bridge repairs are made. This rule is necessary to ensure the safety of the construction workers and mariners on the navigable waters of the United States.

DATES: This rule is effective from 2:30 p.m. on March 30, 2006 through 12 a.m. on May 1, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP 06–063] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waterways Management Division at Coast Guard Sector St. Petersburg (813) 228–2191 Ext 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The information regarding the damage to the bridge was not received with sufficient time to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the construction workers and mariners transiting the area. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

Background and Purpose

On March 30, 2006 at approximately 12:20 p.m. local time, the tug CROSBY SKIPPER and an LPG barge collided with the Gandy Bridge. Damage to the bridge included pieces of concrete debris falling into the water. Florida Department of Transportation (FDOT) will need to make emergency repairs to the bridge that will include having divers in the water. The repairs to the bridge will require vessels to be located in the area to effect repairs. The nature of the damage also presents a hazard to mariners transiting under the bridge due to falling debris. This work presents a hazard to the construction workers and mariners transiting the area. This safety zone is being established to ensure the safety of life on the navigable waters of the United States.

Discussion of Rule

The safety zone encompasses the following waters of Tampa Bay, Florida: all waters from surface to bottom, within a 50 yard radius of the following coordinates: 27°53′24″ N, 082°32′36″ W. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port St. Petersburg or his designated representative. The zone is effective from 2:30 p.m. on March 30, 2006 through 12 a.m. on May 1, 2006.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The location of this regulated area is expected to have minimal vessel traffic. Moreover, vessels may still enter the safety zone with the express permission of the Captain of the Port St. Petersburg or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit near the Gandy Bridge from 2:30 p.m. on March 30, 2006 through 12 a.m. on May 1, 2006. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced in an area where marine traffic is expected to be minimal. Additionally, traffic will be allowed to enter the zone with the permission of the Captain of the Port St Petersburg or designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T07–063 is added to read as follows:

§ 165.T07–063 Safety Zone; Tampa, Florida.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone on the waters of Tampa Bay, Florida, in the vicinity of the Gandy bridge, that includes all the waters from surface to bottom, within a 50 yard radius of the following coordinates: 27°53′24″ N, 082°32′36″ W. All coordinates referenced use datum: NAD 83.

(b) *Definitions.* The following definitions apply to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) St. Petersburg, Florida, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit the Regulated Area without the prior permission of the Captain of the Port St Petersburg, Florida, or his designated representative.

(d) *Date.* This rule is effective from 2:30 p.m. on March 30, 2006 through 12 a.m. on May 1, 2006.

Dated: March 30, 2006.

J.A. Servidio,

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

[FR Doc. 06–3716 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–003]

RIN 1625–AA87

Security Zone; Chesapeake Bay, Between Sandy Point and Kent Island, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters of the Chesapeake Bay. This action is necessary to provide for the security of a large number of participants during the 2006 Bay Bridge Walk across the William P. Lane, Jr. Memorial Bridge between Sandy Point and Kent Island, Maryland. The security zone will allow for control of a designated area of the Chesapeake Bay and safeguard the public at large.

DATES: This rule is effective from 7 a.m. to 5 p.m. local time on May 7, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–06–003 and are available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 27, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Chesapeake Bay, between Sandy Point and Kent Island, MD'' in the **Federal Register** (71 FR 9744). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The William P. Lane Jr. Memorial Bridge (Chesapeake Bay Bridge) near Annapolis, Maryland crosses the Chesapeake Bay as part of highway US–50/US–301 and has been the site of a Bay Bridge Walk almost every year since 1975. The 4.5-mile walk, from Kent Island on the eastern shore to Sandy Point on the western shore of Maryland, attracts approximately 40,000 to 60,000 people. In 2005, the Bay Bridge Walk was cancelled while the Maryland Transportation Authority reevaluated the practice of holding the event annually. During the event, the eastbound span is closed to traffic for use by the walkers, and the westbound three-lane span has two-way vehicular traffic that is controlled by overhead lane control signals. The 2006 Bay Bridge Walk will be held on Sunday, May 7, 2006, but may be canceled in the event of rain, high winds or extreme temperatures. If the event is canceled, it will not be rescheduled this year. This year, the Bay Bridge Walk is being held on the same date, during the same times, and at the same general location as the highly-publicized, internationally-held Volvo Ocean Race 2005–2006 Leg 6 Restart event. The Coast Guard anticipates a large recreational boating fleet during this event. Operators should expect significant vessel congestion along their planned route.

In this particular rulemaking, to take steps to prevent the catastrophic impact that a terrorist attack against a large number of participants and the public at large during the 2006 Bay Bridge Walk would have on the public interest, the Coast Guard is establishing a security zone upon all waters of the Chesapeake Bay, from the surface to the bottom, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland.

The rule will assist the Coast Guard in preventing vessels or persons from engaging in terrorist actions against the public at large by providing a buffer around the walkers while they are participating in the Bay Bridge Walk. The rule will impact the movement of all vessels operating in the specified areas of the Chesapeake Bay and its tributaries. Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life, property, and the surrounding area and communities, on the navigable waters immediately before, during, and after the scheduled event.

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rule during the comment period published in the NPRM. No public meeting was requested and none was held. As a result, no change to the proposed regulatory-text was made.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard received no comments on the proposed rule during the comment period published in the NPRM. As a result, no change to the proposed regulatory text was made.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland from 7 a.m. to 5 p.m. on May 7, 2006.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for approximately ten hours. Although the security zone will apply to the entire width of the Chesapeake Bay, smaller vessels not constrained by their draft, which are more likely to be small entities, may request permission from the Captain of the Port Baltimore, Maryland to enter the zone. Additionally, before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. Because the zone is of limited size, it is expected that there will be minimal disruption to the maritime community.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from any small entities.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–003 to read as follows:

§ 165.T05–003 Security Zone; Chesapeake Bay, between Sandy Point and Kent Island, MD.

(a) *Definitions.* (1) For purposes of this section, Captain of the Port, Baltimore, Maryland means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(b) *Location.* The following area is a security zone: All waters of the Chesapeake Bay, from the surface to the bottom, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in § 165.33 of this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective period.* This section will be effective from 7 a.m. to 5 p.m. local time on May 7, 2006.

Dated: April 7, 2006.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 06–3714 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2006–0261, EPA–HQ–SFUND–2006–0263, EPA–HQ–SFUND–2006–0264, EPA–HQ–SFUND–2006–0265, EPA–HQ–SFUND–2006–0266, EPA–HQ–SFUND–2006–0268; FRL–8159–5]

RIN 2050–AD75

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds six new sites to the General Superfund Section of the NPL.

DATES: The effective date for this amendment to the NCP is May 19, 2006.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 et seq.

B. What is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required

under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

D. How are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to

change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *http://www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	Location	FDMS docket ID No.
Klau/Buena Vista Mine	San Luis Obispo County, CA	EPA–HQ–SFUND–2006–0266.
Alternate Energy Resources	Augusta, GA	EPA–HQ–SFUND–2006–0263.
Olin Chemical	Wilmington, MA	EPA–HQ–SFUND–2006–0261.
Parkview Well	Grand Island, NE	EPA–HQ–SFUND–2006–0265.
West Highway 6 & Highway 281	Hastings, NE	EPA–HQ–SFUND–2006–0264.
Quendall Terminals	Renton, WA	EPA–HQ–SFUND–2006–0268.

B. What Documents are Available for Review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What Documents are Available for Review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; 303/312–6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3097.

Denise Baker, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–4303.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following six sites to the NPL; all to the General Superfund Section:

State	Site name	City/county
CA	Klau/Buena Vista Mine	San Luis Obispo County.
GA	Alternate Energy Resources	Augusta.
MA	Olin Chemical	Wilmington.
NE	Parkview Well	Grand Island.
NE	West Highway 6 & Highway 281	Hastings.
WA	Quendall Terminals	Renton.

B. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. EPA received negative comments on the following sites: West Highway 6 & Highway 281, Parkview Well, and Klau/Buena Vista Mine. EPA's responses to these comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—April 2006.''

EPA received a comment related to four of the sites in this rule suggesting that EPA should delay listing because of a Supreme Court decision related to cost and liability issues for Potentially Responsible Parties (PRPs). This comment is not relevant to the HRS scoring of the sites or the underlying basis for the NPL listing and is therefore not included or addressed in the ''Support Document for the Revised National Priorities List Final Rule—April 2006.''

For the remainder of sites in this rule, EPA received no comments or only comments supporting the listing of the sites to the NPL and therefore, EPA is placing them on the NPL at this time. All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at *http://www.regulations.gov* (see table above for the appropriate FDMS Docket identification number).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a 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.

2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substance depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where 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.

2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this 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 by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Final Rule?

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 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. EPA also 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. This final 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

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'' 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.''

2. Does Executive Order 13175 Apply to This Final Rule?

This final 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 final rule.

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

1. What Is Executive Order 13045?

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.

2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

1. What Is the 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 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.

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the Federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded Federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222

(D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 12, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* *	* *	* *	*
CA	Klau/Buena Vista Mine	San Luis Obispo County.	
* *	* *	* *	*
GA	Alternate Energy Resources	Augusta.	
* *	* *	* *	*
MA	Olin Chemical	Wilmington.	
* *	* *	* *	*
NE	Parkview Well	Grand Island.	
* *	* *	* *	*
NE	West Highway 6 & Highway 281	Hastings.	
* *	* *	* *	*
WA	Quendall Terminals	Renton.	
* *	* *	* *	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be ≤ 28.50)
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 06–3666 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2006–23934]

RIN 2127–AJ89

Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2007 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2007

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

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination that no new model year (MY) 2007 light duty truck lines are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard because they have been determined by the agency to be high-theft or that they have a majority of interchangeable parts with those of a passenger motor vehicle line. This final rule also identifies those vehicle lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria pursuant to the statute relating to motor vehicle theft prevention.

EFFECTIVE DATE: The amendment made by this final rule is effective April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Standards Division, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: On April 6, 2004, the agency published in the **Federal Register** (69 FR 17960) a final rule extending the parts marking requirements to certain vehicle lines that were not previously subject to these requirements: (1) All low-theft passenger car lines; (2) all low-theft multipurpose passenger vehicle (MPV) lines with a gross vehicle weight rating (GVWR) of 6,000 pounds or less; and (3) low-theft light-duty truck (LDT) lines with a GVWR of 6,000 pounds or less that have major parts that are interchangeable with a majority of the covered major parts of passenger cars or MPVs. The high-theft vehicle lines that were previously exempted under 49

CFR part 543 on the grounds that they were equipped with an antitheft device as standard equipment were unaffected by the April 2004 final rule. The agency also stated that it would continue to grant exemptions for one vehicle line per model year. The final rule is effective September 1, 2006.

The purpose of the theft prevention standard (49 CFR part 541) is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines subject to the requirements of the standard.

Section 33104(d) provides that once a line has become subject to the theft prevention standard, the line remains subject to the requirements of the standard unless it is exempted under section 33106. Section 33106 provides that a manufacturer may petition to have a line exempted from the requirements of section 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of those vehicle lines that are exempted from the theft prevention standard for a given model year under section 33104. Appendix A to Part 541 identifies those new light-duty truck lines listed for the first time that will be subject to the theft prevention standard beginning in a given model year. Appendix A–I to Part 541 identifies those vehicle lines that are or have been exempted from the theft prevention standard.

On May 19, 2005, the final listing of MY 2006 high-theft vehicle lines was published in the **Federal Register** (70 FR 20481). The final listing identified that there were no new vehicle lines that became subject to the theft prevention standard beginning with the 2006 model year. For MY 2007, there were no new light-duty truck lines identified that became subject to the theft prevention standard in accordance with the procedures published in 49 CFR part 542. However, beginning September 1, 2006, all passenger cars, all MPVs (with a gross vehicle weight rating of 6,000 pounds or less), all light duty trucks (with a gross vehicle weight rating of 6,000 pounds or less) determined to be high-theft in accordance with 49 CFR 542.1, and all low-theft light duty trucks (with a gross vehicle weight rating of 6,000 pounds or less) having a majority of its major parts interchangeable with those of a passenger motor vehicle line in accordance with 49 CFR 542.2 will be subject to the parts marking requirements. At least 50 percent of the production volume not subject to the current parts marking requirements (excluding light duty trucks) must be marked by September 1, 2006. The remaining production volume not subject to the current parts marking requirements must be marked by September 1, 2007 (see 70 FR 28843, May 19, 2005).

Subsequent to publishing the 2006 final rule, eight manufacturers petitioned the agency for an exemption from the parts marking requirements of the Federal motor vehicle theft prevention standard. The agency granted petitions for exemptions to the DaimlerChrysler Corporation (DC) for the 300C vehicle line, Ford Motor Company for the Focus vehicle line, General Motors Corporation for the Chevrolet Malibu/Malibu Maxx vehicle line, Mazda Motor Corporation (Mazda) for the 3 vehicle line, Mercedes-Benz USA, LLC for the E-Line Chassis (E-Class/CLS Class) vehicle line, Mitsubishi Motors Corporation (Mitsubishi) for the Endeavor vehicle line, Nissan North America, Inc., for the Nissan Quest and Fuji Heavy Industries, USA for the Subaru B9 Tribeca vehicle line, all beginning with the 2006 model year.

Additionally, petitions for exemption from the parts marking requirements were withdrawn from the DaimlerChrysler Corporation for the Jeep Liberty (See 70 FR 53713) and Ford Motor Company for its Thunderbird vehicle line (See 70 FR 53714) beginning with the 2006 model year.

For MY 2007, the list of lines that have been exempted by the agency from the parts-marking requirements of Part 541 includes seven vehicle lines newly exempted in full. The seven exempted vehicle lines are the DaimlerChrysler Dodge Charger, General Motors Pontiac G6, the Mazda CX–7, the Mercedes-Benz S-Line Chassis (S-Class/CL-Class), the Nissan Sentra, the Volkswagen Audi A4 and the Suzuki XL–7.

We note that the agency is removing from the list being published in the **Federal Register** certain vehicles lines that have been discontinued more than 5 years ago. The agency will continue to maintain a comprehensive database of all exemptions on our Web site. However, we believe that re-publishing a list containing vehicle lines that have not been in production for a considerable period of time is unnecessary.

The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

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

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

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

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

This final rule was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and

Procedures. It will not impose any new burdens on vehicle manufacturers. This document informs the public of previously granted exemptions. Since the only purpose of this final rule is to inform the public of previous actions taken by the agency no new costs are burdens will result.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their rules on small businesses, small organizations and small governmental jurisdictions. I have considered the effects of this rulemaking action under the Regulatory Flexibility Act and certify that it would not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is only to inform the public of agency's previous actions.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment. Accordingly, no environmental assessment is required.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually ($120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be combined with other assessments, as it is here.

This final rule will not result in expenditures by State, local or tribal governments or automobile manufacturers and/or their suppliers of more than $120.7 million annually. This document informs the public of previously granted exemptions. Since the only purpose of this final rule is to inform the public of previous actions taken by the agency, no new costs or burdens will result.

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' [1], the agency has considered whether this final rule has any retroactive effect. We conclude that it would not have such an effect. In accordance with § 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR part 541 is amended as follows:

PART 541—[AMENDED]

■ 1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

■ 2. In part 541, Appendix A–I is revised. Appendix A–I is revised to read as follows:

Appendix A–I to Part 541—Lines With Antitheft Devices Which Are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Subject lines
BMW	MINI.
	X5.
	Z4.
	3 Car Line.
	5 Car Line.
	6 Car Line.
	7 Car Line.
DAIMLERCHRYSLER	300C.[2]
	Jeep Grand Cherokee.
	Chrysler Conquest.
	Chrysler Town and Country MPV.
	Dodge Charger.[1]
FORD MOTOR CO	Focus.[2]
	Lincoln Town Car.
	Mustang.
	Mercury Sable (2001–2004).
	Mercury Grand Marquis.
	Taurus (2000–2004).
GENERAL MOTORS	Buick Lucerne.
	Buick LeSabre.
	Buick LaCrosse/Century.
	Buick Park Avenue.
	Buick Regal/Century.
	Cadillac DTS/Deville.
	Cadillac STS/Seville.
	Chevrolet Cavalier.
	Chevrolet Classic.
	Chevrolet Cobalt.[3]

[1] *See* 61 FR 4729, February 7, 1996.

Manufacturer	Subject lines
	Chevrolet Corvette.
	Chevrolet Impala/Monte Carlo.
	Chevrolet Lumina/Monte Carlo (1996–1999).
	Chevrolet Malibu (2001–2003).
	Chevrolet Malibu/Malibu Maxx.[2]
	Chevrolet Uplander.
	Chevrolet Venture (2002–2004).
	Oldsmobile Alero.
	Oldsmobile Aurora.
	Pontiac Bonneville.
	Pontiac G6.[1]
	Pontiac Grand Am.
	Pontiac Grand Prix.
	Pontiac Sunfire.
HONDA	Acura CL.
	Acura NSX.
	Acura RL.
	Acura TL.
ISUZU	Axiom.
JAGUAR	XK.
MAZDA	3.[2]
	6.
	CX–7.[1]
	MX–5 Miata.
	RX–7/8.
	Millenia.
MERCEDES-BENZ	SL-Class (the models within this line are):
	300SL.
	500SL.
	600SL.
	SL500.
	SL550.
	SL600.
	SL55.
	SL65.
	S-Class/CL-Class [1] (the models within this line are):
	S450.
	S500.
	S550.
	S600.
	S55.
	S65.
	CL500.
	CL600.
	CL55.
	CL65.
	C-Class (the models within this line are):
	C220/230.
	C240.
	C280/320.
	C36/43/55.
	E-Class/CLS Class [2] (the models within this line are):
	E320/E320DT CDi.
	E350/E500/E55.
	CLS500/CLS55.
MITSUBISHI	Endeavor [2].
	Galant.
	Diamante.
NISSAN	Altima.
	Maxima.
	Pathfinder.
	Quest.[2]
	Sentra.[1]
	350Z.
	Infiniti G35.
	Infiniti I30.
	Infiniti J30.
	Infiniti M30.
	Infiniti M45.
	Infiniti QX4.
	Infiniti Q45.
PORSCHE	911.
	Boxster/Cayman.
SAAB	9–3.

Manufacturer	Subject lines
SUBARU	B9 Tribeca.[2]
SUZUKI	XL–7.[1]
TOYOTA	Lexus ES.
	Lexus GS.
	Lexus LS.
	Lexus SC.
VOLKSWAGEN	Audi 5000S.
	Audi A4.[1]
	Audi Allroad.
	A6.
	Cabrio.
	Golf/GTI.
	Jetta.
	Passat.

[1] Granted an exemption from the partsmarking requirements beginning with MY 2007.
[2] Granted an exemption from the partsmarking requirements beginning with MY 2006.
[3] Granted an exemption from the partsmarking requirements beginning with MY 2005.

Issued on: April 13, 2006.

H. Keith Brewer,

Director, Office of Crash Avoidance Standards.

[FR Doc. 06–3692 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–06–24488]

RIN 2127–AJ85

Federal Motor Vehicle Safety Standards; Low-Speed Vehicles

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

ACTION: Final rule.

SUMMARY: This final rule amends the definition of ''low-speed vehicle'' (LSV) by increasing the Gross Vehicle Weight Rating (GVWR) limit for the class of LSVs to those vehicles with a GVWR of less than 1,361 kilograms (3,000 pounds).

DATES: *Effective Date:* This rule becomes effective June 5, 2006.

Petitions: If you wish to submit a petition for reconsideration of this rule, your petition must be received by June 5, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

For legal issues: Christopher M. Calamita, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

For other issues: Ms. Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123 (Telephone: 202–366–5559) (Fax: 202–493–2739).

SUPPLEMENTARY INFORMATION:

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I. Background
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III. Today's Final Rule in Response to Petitions for Reconsideration
IV. Regulatory Analyses and Notices

I. Background

On June 17, 1998, the National Highway Traffic Safety Administration (NHTSA) published a final rule establishing a new Federal Motor Vehicle Safety Standard (FMVSS) No. 500, ''Low-speed vehicles,'' and added a definition of ''low-speed vehicle'' (LSV) to 49 CFR 571.3 (63 FR 33194). This new FMVSS and vehicle class definition responded to the growing public interest in using golf cars and other similarly sized small vehicles to make short trips for shopping, social, and recreational purposes primarily within retirement or other planned, self-contained communities. These vehicles, many of which are electric-powered, offer comparatively low-cost, energy-efficient, low-emission, quiet transportation.[1] The definition of LSV established by that rulemaking was, ''a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.''

In a notice of proposed rulemaking (NPRM) published on December 8, 2003 (68 FR 68319), we granted the petitions by Global Electric Motorcars (GEM) and Solectria, and tentatively agreed with the petitioners that the then-current exclusion of trucks from the LSV definition was too broad and did not fully reflect current interpretations of that definition.[2] In the NPRM, we proposed to drop the exclusion of trucks from the definition, but limit the class to small vehicles by limiting the Gross Vehicle Weight Rating (GVWR) to less than 1,134 kilograms (2,500-pounds) and requiring a rated cargo load of at least 36 kilograms (80 pounds). On August 17, 2005 (70 FR 48313) we published a final rule dropping the truck restriction from the LSV class, but limiting the class to vehicles with less than 2,500-pounds GVWR. In the preamble to the final rule, we explained the rationale for adopting this definition:

> By removing the truck exclusion we recognize that the LSV requirements are applicable to some vehicles designed for more work-related operation. Manufacturers and the public are provided the advantages of LSVs that may be designed primarily to carry cargo. By limiting the GVWR, vehicles for which the LSV requirements are not appropriate are excluded from the LSV definition, *i.e.*, vehicles designed for use outside of planned communities or that could be designed to meet the FMVSS requirements for cars, trucks, and multi-purpose vehicles.
>
> The GVWR limit prevents attempts to circumvent FMVSSs for cars, trucks, and multi-purpose passenger vehicles by applying the LSV classification to vehicle types that are able to meet the standards. Defining a LSV as having a maximum GVWR of less than 2,500 pounds also provides an objective means for delineating between the

[1] Electric LSVs are commonly referred to as Neighborhood Electric Vehicles (NEVs). However, NEVs are not specifically defined in the Federal motor vehicle safety standards.

[2] Docket No. NHTSA–03–16601.

vehicles for which the LSV requirements are appropriate and those vehicles that can be designed to meet the full set of FMVSSs. This approach will also ensure that heavier, slow moving trucks (*i.e.*, street sweepers) continue to be excluded from the LSV definition.

The final rule did not include the rated cargo load requirement proposed in the NPRM. The new definition became effective October 3, 2005 and it reads:

Low-speed vehicle (LSV) means a motor vehicle,
(1) that is 4-wheeled,
(2) whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and
(3) whose GVWR is less than 1,134 kilograms (2,500 pounds).

II. Petitions for Reconsideration

In October of 2005, NHTSA received two petitions for reconsideration of the final rule published in August. The petitioners were Dynasty Electric Car Corporation and GEM. Both petitioners took issue with the 2,500-pound GVWR limit in the new definition.

Dynasty Electric Car Corporation explained that it is a manufacturer and distributor of fully electric LSVs, including a utility-cargo bed model, an open model, a sedan and a van. It believes that for an electric LSV to compete with an internal combustion LSV on the basis of payload capacity as a utility vehicle and also meet the 2,500-pound GVWR restriction it ''* * * would be forced to re-evaluate the design of our vehicle I.E. chassis and running gear to see where we can lighten the vehicle. Not only will this prove costly to us in terms of redesign and production delay but could quite possibly have the opposite effect of that desired by NHTSA—increased safety for the end user.'' Dynasty Electric Car Corporation proposed a 2,500-pound GVWR restriction for internal combustion engine LSVs and a 2,800-pound GVWR restriction for electric LSVs. It believes this would level the playing field between the two types of LSV and allow for the development of emerging technologies, such as solar and hydrogen drives.

In its petition GEM noted that it agrees that GVWR is an appropriate method to limit the LSV class, but the limit should not be ''arbitrarily low''. ''This is especially so in the case of LSV trucks, where payload in [sic] critical to the utility of the vehicle.'' GEM believes that the 2,500-pound limit is insufficient for LSV trucks to serve their intended purpose, and gives as an example:

* * * assuming that LSVs were limited to operation within planned communities (such as time share resorts or retirement communities), there is adequate demand for using LSVs to transport landscaping supplies and maintenance supplies to require the design of LSVs to handle such payloads. For example, if a resort or gated community wants to use an LSV to transport landscaping supplies, the LSV must be capable of carting a payload of nearly 1000 pounds of fertilizer, top soil, tools or other supplies. NHTSA simply did not address these practical requirements when it concluded that 2500 lbs. GVWR was adequate for the ''intended function'' of LSV trucks * * *

GEM also does not believe that the 2,500-pound GVWR limit adequately compensates for the weight needed by an electric LSV for its battery power supply. GEM noted:

Today's marketplace is driven by such temporary realities as the price of gasoline, which currently favors electric vehicles. But, other things being equal (including the price of gasoline), an [internal combustion] LSV vehicle enjoys an advantage if a GVWR maximum is being established because it naturally has a payload cushion of about 300 pounds relative to an electric LSV vehicle when the weight of the battery pack is taken into account * * *. '' All that GEM seeks in the U.S. market is a comparable ''level playing field'' by allowing LSV trucks to weigh as much as 3000 pounds GVWR, which would accommodate the electric batteries and an appropriate payload for LSV trucks.

III. Today's Final Rule in Response to Petitions for Reconsideration

After considering the issues raised by the petitioners, we have determined that a GVWR limit of less than 3,000 pounds for LSVs, coupled with the 40 km/h (25 mph) speed limitation, represents an effective balance of limiting this class to small vehicles intended for use in controlled, low-speed environments while permitting functional truck-like vehicles with a useful cargo capacity.

Limiting LSVs to those with a GVWR less than 3,000 lbs is consistent with the safety and practicability concerns that gave rise to the original LSV definition, much in the same manner as the 2,500 lbs limit. The 3,000 lbs GVWR limit continues to exclude vehicles from the LSV definition for which the LSV requirements are not appropriate, *i.e.*, vehicles that would be used outside planned communities and controlled low-speed environments.

In the August 2005 final rule, we stated that the agency was incorporating a 2,500 lbs GVWR limit to prevent possible attempts to circumvent FMVSSs for passenger cars, trucks, and multi-purpose passenger vehicles. Today's increase of the GVWR limit by 500 pounds will not have a significant effect on that goal.

We note that, in the NPRM, the agency presented the results of a survey of the GVWR of lighter rated vehicles. The agency identified only one passenger car, the model year 2003 Honda Insight, that had a GVWR below 2,500 lbs (68 FR 683221).[3] Further, the 2003 Honda Insight was the only vehicle with a GVWR below 3,000 lbs. Moreover, in reviewing the current light truck fleet, we have identified the Ford Ranger as the lightest rated light truck, with a GVWR of 4,380 pounds, a rating well above the limit established in this rule.

As such, we do not believe that a 3,000 lbs GVWR limit will be more likely to result in attempts to circumvent the FMVSSs for passenger cars and light trucks, than a 2,500 lbs GVWR limit. Moreover, the 3,000 lbs limit continues to provide an objective delineation between vehicles for which the LSV requirements are appropriate and those that can be designed to comply with the full set of FMVSSs.

In the final rule, we stated that one of the reasons the agency set the maximum GVWR at 2,500-pounds for the new LSV definition was that there are currently no performance requirements for service brakes and tires that are appropriate for these vehicles. We believe that the difference in GVWR between 2,500-pounds and 3,000 pounds is not significant with respect to this issue, particularly given that the vehicles at issue will have a maximum speed capability of 40 km/h (25 mph).

We believe the limit of less than 3,000 pounds GVWR represents an effective balance of our desire to keep this class of motor vehicles narrow—limited to small vehicles—without completely precluding truck-like vehicles with a useful cargo capacity. Accordingly, in response to the petitions for reconsideration, this rule revises the definition of LSV to read as follows:

Low-speed vehicle means a vehicle,
(a) that is 4-wheeled,
(b) whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and
(c) whose GVWR is less than 1,361 kilograms (3,000 pounds).

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making

[3] The model year 2003 Honda Insight had a GVWR of approximately 2200 lbs. GEM commented that the current model year Insight has a GVWR of almost 2,400 lbs.

determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This rulemaking document was not reviewed under Executive Order 12866, ''Regulatory Planning and Review.'' Since this rule will make the LSV definition less restrictive it will not result in an annual effect on the economy of $100 million or more.

This final rule will permit current LSV manufacturers to produce LSVs for more work-oriented functions. In the petitions for reconsideration received by the agency, manufacturers stated that the definition adopted today will allow them to expand production to meet a consumer need.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I certify that the proposed amendment will not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule directly affects motor vehicle manufacturers, specifically, manufacturers of LSVs. North American Industry Classification System Codes (NAISC) code number 336111, Automobile Manufacturing, prescribes a small business size standard of 1,000 or fewer employees. NAISC code number 336211, Motor Vehicle Body Manufacturing, prescribes a small business size standard of 1,000 or fewer employees.

The establishment of the new category of motor vehicles, low-speed vehicles, under FMVSS No. 500, in 1998, provided small business with the opportunity to expand into a new market. This final rule will further permit the manufacture of LSVs to meet additional needs, by increasing the GVWR of the LSV class from 2,500 pounds to 3,000 pounds.

Paperwork Reduction Act

NHTSA has analyzed this final rule under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and determined that it will not impose any new information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

The National Environmental Policy Act

NHTSA has also considered this final rule under the National Environmental Policy Act and determined that it will have no significant impact on the human environment. LSV usage is very small in comparison to that of motor vehicles as a whole; therefore, any change to the LSV segment does not have a significant environmental effect.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This final rule does not result in annual expenditures exceeding the $100 million threshold.

Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The Executive Order defines this phrase 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 agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement.

This 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, as specified in Executive Order 13132.

In the 1998 final rule, which established the LSV definition, the agency noted that:

> Under the preemption provisions of 49 U.S.C. 30103(b)(1), with respect to those areas of a motor vehicle's safety performance regulated by the Federal Government, any state and local safety standards addressing those areas must be identical. Thus, the state or local standard, if any, for vehicles classified as LSVs must be identical to Standard No. 500 in those areas covered by that standard. For example, since Standard No. 500 addresses the subject of the type of lights which must be provided, state and local governments may not require additional types of lights. Further, since the agency has not specified performance requirements for any of the required lights, state and local governments may not do so either.

63 FR at 33215. In a 1998 NPRM we revised this discussion by stating that:

> [W]e have re-examined our statements about preemption in the preamble of the final rule. In those statements, we explained that, in view of our conscious decision not to adopt any performance requirements for most of the types of equipment required by Standard No. 500, the states were preempted from doing so * * *. As a result of re-examining our views, we have concluded that we should not assert * * * preemption in this particular situation. Accordingly, we agree that the states may adopt and apply their own performance requirements for required LSV lighting equipment, mirrors, and parking brakes until we have established performance requirements for those items of equipment. However, the states remain precluded from adopting additional equipment requirements in areas covered by Standard No. 500.

65 FR 53219, 53220; September 1, 2000.

Today's rule revises the definition of the term ''low-speed vehicle'' (LSV) in 49 CFR part 571. We note that California's definition of ''low-speed vehicle'' establishes a maximum ''unladen weight of 1,800 pounds'' (Cal. Vehicle Code § 385.5).[4] Unlike GVWR, the unladen weight is the weight of the vehicle without occupants or cargo. (See, Cal. Vehicle Code § 289).

A difference in the definition of LSV between State and Federal laws could have implications with respect to preemption of State laws. Under Federal law, a vehicle that meets the Federal definition of ''low-speed vehicle'' must be manufactured to conform to FMVSS No. 500. Similarly, a vehicle that meets the Federal definition of ''passenger car,'' ''multipurpose passenger vehicle,'' or ''truck,'' must be manufactured to meet the FMVSSs applicable to that vehicle type, regardless of how the vehicle may be classified under State law.

Under 49 U.S.C. 30103(b), when a Federal motor vehicle safety standard is in effect, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. Different motor vehicle safety standards apply depending on how a vehicle is classified, i.e., its vehicle type. If a State law classifies a vehicle differently than Federal law, preemption is an issue under 49 U.S.C. 30103(b) if: (1) The State classification results in the vehicle being subject to a State standard applicable to the same aspect of performance regulated by a FMVSS, and (2) the State standard is not identical to the FMVSS. In such an instance, the State safety standard would be preempted.

Executive Order 12988 (Civil Justice Reform)

This rule does not have any retroactive effect. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court. The issue of preemption is discussed below in the section on Federalism.

Regulation Identifier Number (RIN)

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

Data Quality Guidelines

After reviewing the provisions of the final rule, pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (''Guidelines'') issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and published in final form by the Department of Transportation on October 1, 2002 (67 FR 61719), NHTSA has determined that nothing in this rulemaking action would result in ''information dissemination'' to the public, as that term is defined in the Guidelines.

Executive Order 13045

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 NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us. As noted earlier, this rule is not economically significant, nor does it concern a safety risk with a disproportionate effect on children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that available and potentially applicable voluntary consensus standard, we are required by the Act to provide Congress, through OMB, with an explanation of the reasons for not using such standards. The agency specifically considered SAE J–2358 in the development of this final rule.

Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Low-speed vehicles.

■ For reasons set forth in the preamble, NHTSA amends 49 CFR part 571 to revise § 571.3 to read as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 2. Section 571.3(b) is amended by revising the term ''low-speed vehicle'' to read as follows:

§ 571.3 Definitions.

* * * * *

(b) *Other definitions.* * * *

Low-speed vehicle (LSV) means a motor vehicle,

(1) That is 4-wheeled,

(2) Whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and

(3) Whose GVWR is less than 1,361 kilograms (3,000 pounds).

* * * * *

Issued: April 11, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 06–3590 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–59–P

[4] We also note that Hawaii has incorporated a maximum ''unladen weight'' in its definition of NEV, which is limited to electrically powered motor vehicles (HRS § 286–2).

Proposed Rules

Federal Register
Vol. 71, No. 75
Wednesday, April 19, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

9 CFR Part 94

[Docket No. 05–002–2]

Interstate Movement of Garbage From Hawaii; Municipal Solid Waste

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to certain garbage to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the dissemination of plant pests into noninfested areas of the continental United States. We are proposing this action upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action would not result in the introduction of plant or animal pests or diseases into the continental United States from Hawaii. We are also proposing to make other amendments to the garbage regulations to clarify their intent and make them easier to understand.

DATES: We will consider all comments that we receive on or before May 19, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0047 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–002–2, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–002–2.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Hamm, Assistant Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737–1231; (301) 734–4957.

SUPPLEMENTARY INFORMATION:

Background

Under 7 CFR 330.400 and 9 CFR 94.5 (referred to elsewhere in this document as the regulations), the Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of garbage that may pose a risk of introducing or disseminating animal or plant pests or diseases that are new to or not widely distributed within the United States. Not all movements of waste material are regulated by APHIS; [1] only movements of waste that meets APHIS's definition of ''garbage'' are regulated, and even then, only under certain circumstances. Under the regulations, the term ''garbage'' is defined as ''all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on means of conveyance.'' Garbage also means ''meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.''

Waste material that meets the definition of garbage is regulated by APHIS if it is removed from a means of conveyance that:

- Within the last 2 years, has been in any port outside the United States or Canada; or
- Within the last year, has moved from Hawaii or a U.S. Territory to another U.S. State.[2]

However, garbage onboard a conveyance that meets one of the two conditions above may be exempted from regulation if the conveyance is cleared of all regulated garbage, and after cleaning and disinfection, an inspector certifies that the conveyance contains no garbage that poses a risk of pest introduction into the United States. Garbage from Canada is also exempted from regulation.

The regulations were established to address the risk posed by garbage that originates on or is onboard conveyances that have been located in areas where exotic animal or plant pests or diseases are present. Such garbage includes waste generated during the course of commercial and private air travel and commercial or private transit of goods or persons by sea. The regulations were not intended to address risks posed by movements of municipal solid waste.

Due to a limited availability of landfill space in Hawaii, business interests and public officials are exploring other options for disposal of the State's waste. These persons have requested that APHIS allow the interstate movement of municipal solid waste from Hawaii. We believe the regulations require amendment to provide for the movement of garbage generated in Hawaii.

[1] The operation of landfills and incinerators and the intrastate and interstate movement of garbage are regulated predominantly by State and local governments. The U.S. Environmental Protection Agency (EPA) regulates the interstate movement of hazardous wastes. See EPA's Web site for additional information: *http://www.epa.gov/epaoswer/osw/index.htm.*

[2] ''State'' is defined as any of the 50 States and any U.S. territory or possession.

Therefore, in this document, we are proposing to amend our regulations to clearly provide for the interstate movement of garbage from Hawaii to the continental United States. We are also proposing to make miscellaneous amendments to the regulations to clarify their intent and make them easier to understand.

Proposed Amendments to the Regulations

Under the proposed regulations, waste from Hawaii that does not pose plant health risks, such as industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other waste, would not be regulated by APHIS.[3] We would also propose that only municipal solid waste may be imported from Hawaii under the regulations, and that such waste may not include agricultural wastes or yard wastes.[4] The exclusion of agricultural wastes and yard wastes reduces plant pest risk by limiting the amount of Hawaiian waste material that is likely to contain plant pests. If waste moved interstate from Hawaii contained exclusively or mostly plant material, the plant pest risk associated with the waste would be considerably higher. These conditions are consistent with the assumptions of our risk analysis and an environmental assessment (described later in this document), as well as with the requests to allow the interstate movement of municipal solid waste from Hawaii.

The proposed regulations, which would be contained in both new 7 CFR 330.402 and revised 9 CFR 94.5(d), would require that all municipal solid waste moved interstate from Hawaii to any area of the continental United States must be:

- Processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction or dissemination of plant pests into noninfested areas of the United States;
- Moved under a compliance agreement between the person handling or disposing of garbage and APHIS, and in accordance with any conditions that are stipulated in the compliance agreement to address particular pest risks or environmental hazards. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied its obligations under the National Environmental Policy Act (NEPA) and other statutes to assess the impacts associated with the movement of garbage to be allowed under the compliance agreement; and
- Moved in compliance with all applicable laws for environmental protection.

Approved Methodologies

In response to requests by private waste disposal companies, we have evaluated the risk of plant pest introduction posed by the movement of municipal solid waste that is shredded, compressed, and wrapped in adhesive-backed plastic film barriers, and that would then be shipped under certain safeguards from Hawaii to the continental United States. Our analysis did not evaluate the risk posed by animal pests or diseases because there are no quarantine significant animal pests or diseases in Hawaii.

Our analysis of the risks associated with movement of municipal solid waste by this means is contained in a risk assessment entitled, ''The Risk of Introduction of Pests to the Continental United States via Plastic-Baled Municipal Solid Waste from Hawaii'' (March 2006). The risk assessment is available from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov.).

Airtight enclosure of municipal solid waste while in transit from Hawaii until burial in the United States would mitigate the risks of introduction and dissemination of plant pests that might be present inside of the bales, provided the bales remain intact throughout movement, and until burial in a landfill. Therefore, the risk assessment focused upon the soundness of baling technology and the safety of the general pathway. It considered only those processes likely to apply to all future proposals to transport baled solid waste from Hawaii, since some aspects of the shipping and disposal pathway cannot be evaluated until the actual destination is known, and as such, risks posed by shipment to individual disposal sites would need to be evaluated separately for each particular proposal to identify any significant risk factors.

Manufacturer and independent research indicates that the baling technology performs well and will mitigate the risk from all types of plant pests. In particular, insects and some pathogens are unlikely to survive in the bales because of compression, anoxia, and the absence of hosts. Other procedures, such as staging of bales prior to transport, bale construction, monitoring during transport, and burial in regulated landfills, should adequately protect against escapes via accidental ruptures and punctures during handling and transport. It is worth noting that the risk assessment considers not only pests contained inside the bales, but also those that might attach themselves as hitchhikers on the outside of bales, such as snails and slugs.

The proposed regulations are designed to allow for the approval of various safeguarding methodologies for garbage shipped interstate from Hawaii, including the methodology evaluated in the risk assessment. Persons seeking to move municipal solid waste interstate from Hawaii using a methodology different from that evaluated in the risk assessment are advised that such movements would likely require the completion of another risk assessment. Any shipments of municipal solid waste under the proposed regulations would only be allowed subject to a compliance agreement approved by the Administrator, based on his or her determination that the waste would be packaged and shipped using a method equivalent to that evaluated in the risk assessment, or using another method that has been formally evaluated, and on which public comment has been solicited prior to its approval.

We previously made our risk assessment available for public review and comment in conjunction with a notice of availability of an environmental assessment published in the **Federal Register** on May 20, 2005 (70 FR 29269).

Compliance Agreements

The risk assessment concluded that if proper procedures are followed, transportation of municipal solid waste from Hawaii in bales poses an insignificant risk of pest introduction and dissemination. The risk assessment also contains a recommendation that the pathway be monitored to ensure that pathway processes and compliance do not differ significantly from what was analyzed in the assessment. One of the functions of any compliance agreement would be to ensure that the pathway is monitored.

The existing regulations require that persons engaged in the business of handling or disposing of regulated garbage operate in accordance with a compliance agreement. Persons operating under a compliance agreement are allowed to move garbage without the direct supervision of an inspector. Under this proposed rule, persons moving municipal solid waste from Hawaii would be required to enter into a compliance agreement. However,

[3] Such waste becomes regulated garbage if it is associated or commingled with other waste material that meets the definition of garbage contained in the proposed regulations.

[4] Definitions for agricultural waste and yard waste can be found in the proposed regulations.

as stated elsewhere in this document, under the proposed regulations, APHIS would only enter into a compliance agreement for the interstate movement of garbage from Hawaii if the pest and environmental risks posed by such movements have been analyzed by APHIS, subjected to public comment, and subsequently approved by the Administrator. This matter is described in detail in the following section.

Environmental Protection

Under the proposed regulations, any movement of municipal solid waste from Hawaii to the continental United States would also have to be in compliance with all applicable laws for environmental protection. While APHIS is not responsible for the enforcement of specific Federal, State, and local environmental laws, we are responsible for ensuring that our regulations and programs are subjected to proper analysis under the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Endangered Species Act, and other statutes that are intended to protect the environment.

In accordance with NEPA, we have prepared an environmental assessment, titled ''Movement of Plastic-Baled Municipal Solid Waste from Hawaii to the Continental United States (May 2005),'' that examines the potential environmental effects associated with moving garbage interstate from Hawaii to the continental United States subject to the same pest risk mitigation measures described in the risk assessment. We made a draft of this environmental assessment available to the public for comment through a notice published in the **Federal Register** on May 20, 2005 (70 FR 29269). We received two comments on the environmental assessment.[5] In response to one comment, we revised the description of the purpose and need for the action in the environmental assessment to reflect that this action is intended simply to provide an alternative means of dealing with disposal of municipal solid waste in Hawaii, as requested by businesses and public officials in that State. The second commenter requested that APHIS provide additional information on the potential environmental consequences of allowing garbage to move interstate from Hawaii. We developed a list of exotic and quarantine-significant plant pests that exist in Hawaii; however, any environmental effects that could result from the introduction of pests contained in that list, as well as any response to the other issues raised by the commenter will be addressed as we prepare site-specific environmental assessments for movements of garbage from Hawaii. Those assessments will be prepared and made available for public comment as requests for compliance agreements are made.

In this document, we are again making our environmental assessment, titled ''Movement of Plastic-Baled Municipal Solid Waste from Hawaii to the Continental United States (March 2006),'' available to the public for review and comment. The environmental assessment is available from the person listed under **FOR FURTHER INFORMATION CONTACT** and on the Regulations.gov Web site. Copies of the environmental assessment are also available for public inspection in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule).

The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the proposed action and has been prepared in accordance with: (1) NEPA, (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment is designed to consider the environmental effects, of adopting the proposed rule. Given the fact that a thorough analysis of the particular risks associated with moving garbage interstate to a specific destination in the continental United States is not possible without knowing the precise destination and handling protocol for such garbage, any specific proposed movements must be evaluated in detail under NEPA, and APHIS will not issue compliance agreements to parties to allow the movement of garbage as such until site-specific NEPA processes are complete. These analyses are necessary to ensure proper evaluation of localized risks and environmental hazards and compliance with NEPA.

Persons seeking to move municipal solid waste interstate from Hawaii using a method different from that evaluated in the risk assessment and environmental assessment are advised that such movements may require the completion of another environmental assessment or other NEPA analysis.

Other Amendments to the Regulations

In conjunction with the proposed changes described above, we are also proposing to revise the regulations to clarify their applicability and to make them easier to understand. As stated earlier in this document, the regulations were designed to address the risk posed by garbage that originates on or is onboard conveyances that have been in areas where exotic animal and plant pests and diseases are present. This proposal would amend the regulations to clarify what provisions apply to garbage generated onboard conveyances, and what provisions apply to garbage generated prior to interstate movement of conveyances (*e.g.*, municipal solid waste from Hawaii). Provisions pertaining to garbage generated onboard a conveyance would be contained in 7 CFR 330.401 and 9 CFR 94.5(c), and provisions pertaining to garbage generated in Hawaii would be contained in 7 CFR 330.402 and 9 CFR 94.5(d).

We would also add provisions to the regulations that make it clear that imports of certain garbage (*e.g.*, municipal solid waste) from foreign countries other than Canada are prohibited due to their potential for introducing exotic plant and animal pests into the United States. The current regulations provide that certain imports of garbage are regulated in accordance with 7 CFR part 330 and 9 CFR part 94, but they do not specifically state that imports of garbage are prohibited unless they are imported in accordance with the provisions of those parts. We are proposing to clarify that the importation of garbage[6] that the Administrator determines presents a risk of introducing animal or plant pests or diseases is prohibited.

Provisions pertaining to compliance agreements would be contained in revised 7 CFR 300.403 and 9 CFR 94.5(e). Those provisions currently provide, among other things, that where a compliance agreement is denied or cancelled, regulated garbage may continue to be unloaded from a means of conveyance and disposed of at an approved facility in accordance with § 330.401(g)(1) and § 94.5(f)(1). We are proposing to clarify that, in cases where compliance agreements have been denied or cancelled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the

[5] These comments and the previous draft of the environmental assessment may be viewed on the Regulations.gov Web site. Go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0047 then click on ''Submit.''

[6] Except garbage generated onboard conveyances.

Administrator, from continuing to handle regulated garbage. This change is necessary to provide APHIS with suitable discretion to ensure that persons who do not abide by the conditions of compliance agreements may not be allowed to continue to move or handle regulated garbage.

We are also proposing to amend the regulations to provide that compliance agreements may be cancelled orally, and that oral cancellations and the reasons therefore would be confirmed in writing as promptly as circumstances allow. This provision is consistent with other APHIS requirements pertaining to compliance agreements, and provides discretion necessary for APHIS to take immediate action to suspend compliance agreements of persons whose actions present a risk of introducing animal or plant pests or diseases into the United States.

A table showing the proposed new locations of all current provisions follows.

Current provision 7 CFR	Current provision 9 CFR	Revised provision 7 CFR	Revised provision 9 CFR
330.400	94.5	330.400 through 330.403	94.5
330.400(a)	N/A	330.400(a)(1) & (a)(2)	94.5(a)(1) & (a)(2)
330.400(b)	94.5(a)	330.400(b) & 330.401(a) & (a)(1)	94.5(b) & (c)(1) & (c)(1)(i)
330.400(c)	94.5(b)	330.401(b)	94.5(c)(2)
330.400(c)(1)	94.5(b)(1)	330.401(b)(2)	94.5(c)(2)(ii)
330.400(c)(1)(i)	94.5(b)(1)(i)	330.401(b)(2)(i)	94.5(c)(2)(ii)(A)
330.400(c)(1)(i)(A)	94.5(b)(1)(i)(A)	330.401(b)(2)(i)(A)	94.5(c)(2)(ii)(A)(*1*)
330.400(c)(1)(i)(B)	94.5(b)(1)(i)(B)	330.401(b)(2)(i)(B)	94.5(c)(2)(ii)(A)(*2*)
330.400(c)(1)(ii)	94.5(b)(1)(ii)	330.401(b)(2)(ii)	94.5(c)(2)(ii)(B)
330.400(c)(2)	94.5(b)(2)	330.401(b)(1)	94.5(c)(2)(i)
330.400(c)(2)(i)	94.5(b)(2)(i)	330.401(b)(1)(i)	94.5(c)(2)(i)(A)
330.400(c)(2)(ii)	94.5(b)(2)(ii)	330.401(b)(1)(ii)	94.5(c)(2)(i)(B)
330.400(d)	94.5(c)	330.401(c)	94.5(c)(3)
330.400(d)(1)	94.5(c)(1)	330.401(c)(2)	94.5(c)(3)(ii)
330.400(d)(1)(i)	94.5(c)(1)(i)	330.401(c)(2)(i)	94.5(c)(3)(ii)(A)
330.400(d)(1)(ii)	94.5(c)(1)(ii)	330.401(c)(2)(ii)	94.5(c)(3)(ii)(B)
330.400(d)(2)	94.5(c)(2)	330.401(c)(1)	94.5(c)(3)(i)
330.400(d)(2)(i)	94.5(c)(2)(i)	330.401(c)(1)(i)	94.5(c)(3)(i)(A)
330.400(d)(2)(ii)	94.5(c)(2)(ii)	330.401(c)(1)(ii)	94.5(c)(3)(i)(B)
330.400(e)	94.5(d)	330.401(a)(2)	94.5(c)(1)(ii)
330.400(f)	94.5(e)	330.401(d)	94.5(c)(4)
330.400(f)(1)	94.5(e)(1)	330.401(d)(1)	94.5(c)(4)(i)
330.400(f)(2)	94.5(e)(2)	330.401(d)(2)	94.5(c)(4)(ii)
330.400(g)(1)	94.5(f)(1)	330.401(d)(3)	94.5(c)(4)(iii)
330.400(g)(2)	94.5(f)(2)	330.401(d)(3)(i) & (d)(3)(ii)	94.5(c)(4)(iii)(A) & (B)
330.400(h)	94.5(g)	330.401(e)	94.5 (c)(3)(iv)
330.400(i)	94.5(h)	330.400(c)	94.5(b)
N/A	N/A	330.400(b) (def. for interstate)	94.5(b) (def. interstate)
330.400(i)(1)	94.5(h)(2)	330.400(b)	94.5(b)
330.400(i)(2)	94.5(h)(3)	330.400(b)	94.5(b)
330.400(i)(3)	94.5(h)(4)	330.400(b)	94.5(b)
330.400(i)(4)	94.5(h)(5)	330.400(b)	94.5(b)
330.400(i)(5)	94.5(h)(6)	330.400(b)	94.5(b)
N/A	94.5(h)(7)	N/A	N/A
N/A	94.5(h)(8)	N/A	N/A
N/A	94.5(h)(9)	330.400(b)	94.5(b)
N/A	94.5(h)(10)	330.400(b)	94.5(b)
330.400(j)	94.5(i)	330.403	94.5(e)
330.400(j)(1)	94.5(i)(1)	330.403(a)	94.5(e)(1)
330.400(j)(2)	94.5(i)(2)	330.403(b)	94.5(e)(2)
330.400(j)(2)(i)	94.5(i)(2)(i)	330.403(b)(1)	94.5(e)(2)(i)
330.400(j)(2)(ii)	94.5(i)(2)(ii)	330.403(b)(2)	94.5(e)(2)(ii)
330.400(j)(2)(iii)	94.5(i)(2)(iii)	330.403(b)(3)	94.5(e)(2)(iii)
330.400(j)(2)(iv)	94.5(i)(2)(iv)	330.403(b)(4)	94.5(e)(2)(iv)
330.400(j)(2)(v)	94.5(i)(2)(v)	330.403(b)(5)	94.5(e)(2)(v)
330.400(j)(3)	94.5(i)(3)	330.403(c)	94.5(e)(3)
330.400(j)(4)	94.5(i)(4)	330.403(d)	94.5(e)(4)
330.400(j)(5)	94.5(i)(5)	330.403(e)	94.5(e)(5)
N/A	N/A	330.402	94.5(d)
N/A	N/A	330.402(a)	94.5(d)(1)
N/A	N/A	330.402(b)	94.5(d)(2)
N/A	N/A	330.402(b)(1)	94.5(d)(2)(i)
N/A	N/A	330.402(b)(2)	94.5(d)(2)(ii)
N/A	N/A	330.402(b)(3)	94.5(d)(2)(iii)

We are also proposing to reorganize the order of requirements and to reconcile nonsubstantive inconsistencies between 7 CFR 330.400 and 9 CFR 94.5 to ensure their contents would be identical.

The current provisions in 7 CFR 330.100 and 330.400 and 9 CFR 94.0 and 94.5 do not contain definitions for the same terms, and in some cases, the meaning of terms used in those sections is ambiguous. We would therefore add, remove, and revise definitions for terms used in the regulations to provide for

greater clarity of the regulations. All definitions can be found in proposed 7 CFR 330.400(b) and 9 CFR 94.5(b) of the rule portion of this document. However, a new definition for *State* and a revised definition for *United States* would be located in 7 CFR 330.100 and 9 CFR 94.0.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations pertaining to garbage to provide for the interstate movement of certain garbage from Hawaii subject to measures designed to protect against the introduction and dissemination of plant pests into noninfested areas of the continental United States. We are proposing this action upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action would not result in the introduction of plant or animal pests or diseases into the continental United States from Hawaii.

If this proposal is adopted, the island of Oahu (where Honolulu is located) is expected to be the source of most, if not all, of any municipal solid waste (MSW) that is moved to the continental United States under the regulations. Oahu has only one municipal landfill (Waimanalo Gulch), and there is no alternative landfill on the island at the present time.

Oahu generates approximately 1.6 million tons of MSW per year. That figure is expected to rise an additional 20,000 tons and remain at that level for the next 10 years. Of the current total, 500,000 tons are recycled, 600,000 tons are burned for electricity, and 500,000 tons are landfilled. Of the 500,000 tons that are landfilled, 200,000 tons go to a privately operated construction and demolition landfill and 300,000 tons go to Waimanalo Gulch municipal landfill. Waimanalo Gulch landfill is owned by the City of Honolulu and managed by a private company.

The island of Hawaii (where Hilo is located) is another potential source of MSW that would move to the continental United States if the proposal is adopted. The island's only two landfills are located approximately 75 miles apart, and one (South Hilo Sanitary Landfill) may be nearing capacity. To date, one waste management service company has proposed to bale and move (for a fee) at least some of the island's MSW to a landfill in Washington State. Approximately 200 tons of garbage per day is landfilled at the South Hilo facility.[7]

The proposed rule would allow for the garbage to be compacted into bales, and then wrapped in plastic for transport to the mainland (the baling and wrapping would take place in the State of Hawaii). Estimates of the annual volume of MSW that would be shipped from Oahu to the continental United States range from 100,000 tons to 350,000 tons.[8]

Need for Rule and Alternatives Considered

The rule is being proposed upon request to provide public officials in Hawaii another option for disposal of the State's waste. The only other regulatory alternative would be to leave the regulations unchanged, but that alternative would unnecessarily limit Hawaiian officials' disposal options.

Small Entity Impact

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of proposed rules on small entities, i.e., small businesses, organizations, and governmental jurisdictions. The proposed changes would allow for the movement of MSW from Hawaii to the continental United States.

The proposed changes would not have a significant economic impact on a substantial number of small entities, because few entities, large or small, are likely to be affected. Only a handful of businesses are potentially affected by the rule—e.g., the company or companies that would secure the contract to move the waste from Hawaii, the barge line or lines that would physically move the waste to the mainland, the trucking company/railroad on the mainland that would physically move the waste to the interior landfill locations, and perhaps a few companies on Hawaii that would be forced to discontinue participation (or play a reduced role) in the State's waste disposal process once shipments to the mainland began. Those businesses that would participate in the movement of the waste to the mainland could be expected to benefit, since they would generate additional revenue and, presumably, profits from the increased business activity. Conversely, those businesses that would either no longer participate or would play a reduced role in Hawaii's waste disposal process could be expected to suffer lost revenue.

The revenues generated by the private company that manages the Waimanalo Gulch landfill, for example, are presumably tied to the volume of waste that is landfilled there. If waste is diverted from Waimanalo Gulch to the mainland, that company's revenues are likely to be reduced. The City of Honolulu and the County of Hawaii are also potentially affected by the proposed changes.

The preceding discussion assumes that the rule would not have significant environmentally related economic consequences for small entities. There are several reasons. First, the environmental assessment in this document concludes that the movement of MSW from Hawaii to the continental United States (using the plastic-baled methodology) will not have a significant impact on the environment. Second, site-specific environmental assessments will also be prepared as requests for compliance agreements are made. The site-specific assessments, which will be made available for public comment, will allow APHIS to address any environmental issues that may arise based on precise destination and handling protocols for the proposed movements, which are now unknown.

Although the size of virtually all of the businesses potentially affected by the rule is unknown, it is reasonable to assume that at least some could be small. This assumption is based on composite data for providers of the same and similar services in the United States. As an example, North American Industry Classification System (NAICS) category 562 (''Waste Management and Remediation Services'') consists of establishments engaged in the collection, treatment, and disposal of waste materials. Under the U.S. Small Business Administration's (SBA) size standards, the small entity threshold for establishments that fall into most of the activity subcategories under NAICS 562 is annual receipts of $10.5 million. For all 18,405 U.S. establishments in NAICS 562 in 2002, average per-establishment receipts that year were $2.8 million, an indication that most waste management service companies are small entities.[9] Annual receipt data for three of the four firms that have proposed to move Hawaii's waste to the mainland are not available. Although annual receipt data for the fourth company are also not available, that company is considered

[7] Source: News accounts in the *Honolulu Star-Bulletin*.

[8] Source: News accounts in the *Honolulu Star-Bulletin* and APHIS staff. Similar estimates for the island of Hawaii are not available.

[9] Source: U.S. Census Bureau (2002 Economic Census) and SBA.

large by virtue of it being a subsidiary of a publicly owned firm with receipts (operating revenues) of over $13 billion in 1999.[10] The private company that currently manages the Waimanalo Gulch landfill is also a subsidiary of that publicly owned firm.

As another example, there were 677 U.S. entities in NAICS category 483113 in 2002. NAICS 483113 consists of entities primarily engaged in providing deep sea transportation of cargo to and from domestic ports. For all 677 entities, average per-entity employment that year was 36, well below the SBA's small entity threshold of 500 employees for entities in that NAICS category.[11]

Under the RFA, the term ''small governmental jurisdiction'' generally means cities, counties, townships, etc., with a population of less than 50,000. The City of Honolulu, which owns the Waimanalo Gulch landfill, does not qualify as a small entity because its population exceeds 50,000. The County of Hawaii, where Hilo is located, also has a population that exceeds 50,000.

The proposed changes would not, as noted previously, have a significant economic impact on a substantial number of small entities, because few entities, large or small, are likely to be affected. The size of virtually all of the businesses potentially affected by the proposed changes is unknown, but it is reasonable to assume that at least some could be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

[10] Source: Various Internet sites.

[11] Source: U.S. Census Bureau (2220 Economic Census) and SBA.

Executive Order 13175

Adoption of this proposed rule as a final rule, and activities that could occur if compliance agreements are issued under such a final rule, may have tribal implications as defined by Executive Order 13175. We have entered into consultations with Indian tribes that may be affected by the specific proposals presented to us. Those consultations are ongoing and will be concluded prior to entering into compliance agreements for municipal solid waste moving from Hawaii.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 05–002–2. Please send a copy of your comments to: (1) Docket No. 05–002–2, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under the regulations in 7 CFR 330.400 and 9 CFR 94.5, APHIS regulates the importation and interstate movement of garbage that may pose a risk of introducing or disseminating animal or plant pests or diseases that are new to or not widely distributed within the United States. Not all movements of waste material are regulated by APHIS; only movements of waste that meets the definition of ''garbage'' are regulated, and even then, only under certain circumstances.

APHIS is proposing to amend the regulations to provide for the interstate movement of garbage from Hawaii subject to measures designed to protect against the introduction and dissemination of plant pests into noninfested areas of the continental United States. APHIS is proposing this action upon request in order to provide the State of Hawaii with additional waste disposal options, and after determining that the action would not result in the introduction of plant or animal pests or diseases into the continental United States from Hawaii. Under the proposed regulations, all municipal solid waste moved interstate from Hawaii to any area of the continental United States would have to be moved under a compliance agreement between the person handling or disposing of garbage and APHIS, and thus would require the completion of a PPQ Form 519, ''Compliance Agreement.''

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Companies that handle or dispose of garbage.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 20 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option

of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR part 330 and 9 CFR part 94 as follows:

TITLE 7—[AMENDED]

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for part 330 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

2. In § 330.100, a definition for *State* would be added and the definition for *United States* would be revised to read as follows:

§ 330.100 Definitions.

* * * * *

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

United States. All of the States.

3. Subpart-Garbage would be revised to read as follows:

Subpart—Garbage

Sec.
330.400 Regulation of certain garbage.
330.401 Garbage generated onboard a conveyance.
330.402 Garbage generated in Hawaii.
330.403 Compliance agreement and cancellation.

§ 330.400 Regulation of certain garbage.

(a) *Certain interstate movements and imports.* (1) *Interstate movements of garbage from Hawaii and U.S. territories and possessions to other States.* Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the U.S. Virgin Islands, Republic of the Marshall Islands, and the Republic of Palau are hereby quarantined, and the movement of garbage therefrom to any other State is hereby prohibited except as provided in this subpart in order to prevent the introduction and spread of exotic plant pests and diseases.

(2) *Imports of garbage.* In order to protect against the introduction of exotic animal and plant pests and diseases, the importation of garbage from all foreign countries except Canada is prohibited except as provided in § 330.401(b).

(b) *Definitions.*

Agricultural waste. Byproducts generated by the rearing of animals and the production and harvest of crops or trees. Animal waste, a large component of agricultural waste, includes waste (e.g., feed waste, bedding and litter, and feedlot and paddock runoff) from livestock, dairy, and other animal-related agricultural and farming practices.

Approved facility. A facility approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that it has equipment and uses procedures that are adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Approved sewage system. A sewage system approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that the system is designed and operated in such a way as to preclude the discharge of sewage effluents onto land surfaces or into lagoons or other stationary waters, and otherwise is adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Carrier. The principal operator of a means of conveyance.

Garbage. All waste material that is derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material.

Incineration. To reduce garbage to ash by burning.

Interstate. From one State into or through any other State.

Sterilization. Cooking garbage at an internal temperature of 212 °F for 30 minutes.

Stores. The food, supplies, and other provisions carried for the day-to-day operation of a conveyance and the care and feeding of its operators.

Yard waste. Solid waste composed predominantly of grass clippings, leaves, twigs, branches, and other garden refuse.

§ 330.401 Garbage generated onboard a conveyance.

(a) *Applicability.* This section applies to garbage generated onboard any means of conveyance during international or interstate movements as provided in this section and includes food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on the means of conveyance. This section also applies to meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

(1) Not all garbage generated onboard a means of conveyance is regulated for the purposes of this section. Garbage regulated for the purposes of this section is defined as ''regulated garbage'' in paragraphs (b) and (c) of this section.

(2) Garbage that is commingled with regulated garbage is also regulated garbage.

(b) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (d) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs;

and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After the garbage and stores referred to in paragraph (b)(1)(i) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(2) *Exception 2: Other conveyances.* Garbage on or removed in the United States from a means of conveyance other than an aircraft is exempt from requirements under paragraph (d) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(B) That the means of conveyance had then been cleaned and disinfected in the presence of the inspector; and

(ii) Since being cleaned and disinfected, the means of conveyance has not been in a non-Canadian foreign port.

(c) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous 1-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii, to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had been previously cleared of all garbage and all fresh fruits and vegetables, and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After the garbage and stores referred to in paragraph (c)(1)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2: Other conveyances.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (d) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by certificate from an inspector, saying that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables; and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (d)(2) and (d)(3) of this section.

(ii) After being cleared of the garbage and stores referred to in paragraph (c)(2)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(d) *Restrictions on regulated garbage.* (1) Regulated garbage may not be disposed of, placed on, or removed from a means of conveyance except in accordance with this section.

(2) Regulated garbage is subject to general surveillance for compliance with this section by inspectors and to disposal measures authorized by the Plant Protection Act and the Animal Health Protection Act to prevent the introduction and dissemination of pests and diseases of plants and livestock.

(3) All regulated garbage must be contained in tight, covered, leak-proof receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft. Such regulated garbage shall not be unloaded from such means of conveyance in the United States unless such regulated garbage is removed in tight, covered, leak-proof receptacles under the direction of an inspector to an approved facility for incineration, sterilization, or grinding into an approved sewage system, under direct supervision by such an inspector, or such regulated garbage is removed for other handling in such manner and under such supervision as may, upon request in specific cases, be approved by the Administrator as adequate to prevent the introduction and dissemination of plant pests and animal diseases and sufficient to ensure compliance with applicable laws for environmental protection. *Provided that*, a cruise ship may dispose of regulated garbage in landfills at Alaskan ports only, if and only if the cruise ship does not have prohibited or restricted meat or animal products on board at the time it enters Alaskan waters for the cruise season, and only if the cruise ship, except for incidental travel through international waters necessary to navigate safely between ports, remains in Canadian and U.S. waters off the west coast of North America, and calls only at continental U.S. and Canadian ports during the entire cruise season.

(i) Application for approval of a facility or sewage system may be made in writing by the authorized representative of any carrier or by the official having jurisdiction over the port or place of arrival of the means of conveyance, to the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. The application must be endorsed by the operator of the facility or sewage system.

(ii) Approval will be granted if the Administrator determines that the requirements set forth in this section are met. Approval may be denied or withdrawn at any time, if the Administrator determines that such requirements are not met, after notice of the proposed denial or withdrawal of the approval and the reasons therefor, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the operator of the facility or sewage system and to the applicant for approval. However, approval may also be withdrawn without such prior procedure in any case in which the public health, interest, or safety requires immediate action, and in such case, the operator of the facility or sewage system and the applicant for approval shall promptly thereafter be given notice of

the withdrawal and the reasons therefor and an opportunity to show cause why the approval should be reinstated.

(e) The Plant Protection and Quarantine Programs and Veterinary Services, Animal, and Plant Health Inspection Service, will cooperate with other Federal, State, and local agencies responsible for enforcing other statutes and regulations governing disposal of the regulated garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection. The inspectors, in maintaining surveillance over regulated garbage movements and disposal, shall coordinate their activities with the activities of representatives of the Environmental Protection Agency and other Federal, State, and local agencies also having jurisdiction over such regulated garbage.

§ 330.402 Garbage generated in Hawaii.

(a) *Applicability*. This section applies to garbage generated in households, commercial establishments, institutions, and businesses prior to interstate movement from Hawaii, and includes used paper, discarded cans and bottles, and food scraps. Such garbage includes, and is commonly known as, municipal solid waste.

(1) Industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other wastes from Hawaii that the Administrator determines do not pose risks of introducing animal or plant pests or diseases into the continental United States are not regulated under this section.

(2) The interstate movement of agricultural wastes and yard waste from Hawaii to the continental United States is prohibited.

(3) Garbage generated onboard any means of conveyance during interstate movement from Hawaii is regulated under § 330.401.

(b) *Restrictions on interstate movement of garbage*. The interstate movement of garbage generated in Hawaii to the continental United States is regulated as provided in this section.

(1) The garbage must be processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction or dissemination of plant pests into noninfested areas of the United States.

(2) The garbage must be moved under a compliance agreement in accordance with § 330.403. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied all its obligations under the National Environmental Policy Act and all applicable Federal and State statutes to fully assess the impacts associated with the movement of garbage under the compliance agreement.

(3) All such garbage moved interstate from Hawaii to any of the continental United States must be moved in compliance with all applicable laws for environmental protection.

§ 330.403 Compliance agreement and cancellation.

(a) Any person engaged in the business of handling or disposing of garbage in accordance with this subpart must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Compliance agreement forms (PPQ Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(b) A person who enters into a compliance agreement, and employees or agents of that person, must comply with the following conditions and any supplemental conditions which are listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases:

(1) Comply with all applicable provisions of this subpart;

(2) Allow inspectors access to all records maintained by the person regarding handling or disposal of garbage, and to all areas where handling or disposal of garbage occurs;

(3)(i) If the garbage is regulated under § 330.401, remove garbage from a means of conveyance only in tight, covered, leak-proof receptacles;

(ii) If the garbage is regulated under § 330.402, transport garbage interstate in packaging approved by the Administrator;

(4) Move the garbage only to a facility approved by the Administrator; and

(5) At the approved facility, dispose of the garbage in a manner approved by the Administrator and described in the compliance agreement.

(c) Approval for a compliance agreement may be denied at any time if the Administrator determines that the applicant has not met or is unable to meet the requirements set forth in this subpart. Prior to denying any application for a compliance agreement, APHIS will provide notice to the applicant thereof, and will provide the applicant with an opportunity to demonstrate or achieve compliance with requirements.

(d) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(e) Where a compliance agreement is denied or canceled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the Administrator, from handling or disposing of regulated garbage.

(Approved by the Office of Management and Budget under control number 0579–0054).

TITLE 9—[AMENDED]

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

4. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

5. In § 94.0, a definition for *State* would be added and the definition for *United States* would be revised to read as follows:

§ 94.0 Definitions.

* * * * *

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin

Islands of the United States, or any other territory or possession of the United States.

* * * * *

United States. All of the States.

* * * * *

6. Section 94.5 would be revised to read as follows:

§ 94.5 Regulation of certain garbage.

(a) *General restrictions.* (1) *Interstate movements of garbage from Hawaii and U.S. territories and possessions to the continental United States.* Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the U.S. Virgin Islands, Republic of the Marshall Islands, and the Republic of Palau are hereby quarantined, and the movement of garbage therefrom to any other State is hereby prohibited except as provided in this section in order to prevent the introduction and spread of exotic plant pests and diseases.

(2) *Imports of garbage.* In order to protect against the introduction of exotic animal and plant pests, the importation of garbage from all foreign countries except Canada is prohibited except as provided in § 330.401(b).

(b) *Definitions. Agricultural waste.* Byproducts generated by the rearing of animals and the production and harvest of crops or trees. Animal waste, a large component of agricultural waste, includes waste (e.g., feed waste, bedding and litter, and feedlot and paddock runoff) from livestock, dairy, and other animal-related agricultural and farming practices.

Approved facility. A facility approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that it has equipment and uses procedures that are adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Approved sewage system. A sewage system approved by the Administrator, Animal and Plant Health Inspection Service, upon his determination that the system is designed and operated in such a way as to preclude the discharge of sewage effluents onto land surfaces or into lagoons or other stationary waters, and otherwise is adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that is certified by an appropriate Government official as currently complying with the applicable laws for environmental protection.

Carrier. The principal operator of a means of conveyance.

Continental United States. The 49 States located on the continent of North America and the District of Columbia.

Garbage. All waste material that is derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material.

Incineration. To reduce garbage to ash by burning.

Inspector. A properly identified employee of the U.S. Department of Agriculture or other person authorized by the Department to enforce the provisions of applicable statutes, quarantines, and regulations.

Interstate. From one State into or through any other State.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Shelf-stable. The condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product under nonrefrigerated conditions (over 50 °F or 10 °C).

Sterilization. Cooking garbage at an internal temperature of 212 °F for 30 minutes.

Stores. The food, supplies, and other provisions carried for the day-to-day operation of a conveyance and the care and feeding of its operators.

Yard waste. Solid waste composed predominantly of grass clippings, leaves, twigs, branches, and other garden refuse.

(c) *Garbage generated onboard a conveyance.* (1) *Applicability.* This section applies to garbage generated onboard any means of conveyance during international or interstate movements as provided in this section and includes food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on the means of conveyance. This section also applies to meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

(i) Not all garbage generated onboard a means of conveyance is regulated for the purposes of this section. Garbage regulated for the purposes of this section is defined as ''regulated garbage'' in paragraphs (c)(2) and (c)(3) of this section.

(ii) Garbage that is commingled with regulated garbage is also regulated garbage.

(2) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(i) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(A) The aircraft had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in § 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After the garbage and stores referred to in paragraph (c)(2)(i)(A) of this section were removed, the aircraft has not been in a non-Canadian foreign port.

(ii) *Exception 2: Other conveyances.* Garbage on or removed in the United States from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(A) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(*1*) That the means of conveyance had previously been cleared of all garbage and of all meats and meat products, whatever the country of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from countries designated in § 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(*2*) That the means of conveyance had then been cleaned and disinfected in the presence of the inspector; and

(B) Since being cleaned and disinfected, the means of conveyance has not been in a non-Canadian foreign port.

(3) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous 1-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii, to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(i) *Exception 1: Aircraft.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following two conditions are met when the garbage is on or removed from the aircraft:

(A) The aircraft had been previously cleared of all garbage and all fresh fruits and vegetables, and the items previously cleared from the aircraft as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After the garbage and stores referred to in paragraph (c)(3)(i)(A) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii, to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession.

(ii) *Exception 2: Other conveyances.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c)(4) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(A) The means of conveyance is accompanied by certificate from an inspector, saying that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables, and the items previously cleared from the means of conveyance as prescribed by this paragraph have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section.

(B) After being cleared of the garbage and stores referred to in paragraph (c)(3)(ii)(A) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(4) *Restrictions on regulated garbage.* (i) Regulated garbage may not be disposed of, placed on, or removed from a means of conveyance except in accordance with this section.

(ii) Regulated garbage is subject to general surveillance for compliance with this section by inspectors and to disposal measures authorized by the Plant Protection Act and the Animal Health Protection Act to prevent the introduction and dissemination of pests and diseases of plants and livestock.

(iii) All regulated garbage must be contained in tight, covered leak-proof receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft. Such regulated garbage shall not be unloaded from such means of conveyance in the United States unless such regulated garbage is removed in tight, covered, leak-proof receptacles under the direction of an inspector to an approved facility for incineration, sterilization, or grinding into an approved sewage system, under direct supervision by such an inspector, or such regulated garbage is removed for other handling in such manner and under such supervision as may, upon request in specific cases, be approved by the Administrator as adequate to prevent the introduction and dissemination of plant pests and animal diseases and sufficient to ensure compliance with applicable laws for environmental protection. *Provided that*, a cruise ship may dispose of regulated garbage in landfills at Alaskan ports only, if and only if the cruise ship does not have prohibited or restricted meat or animal products on board at the time it enters Alaskan waters for the cruise season, and only if the cruise ship, except for incidental travel through international waters necessary to navigate safely between ports, remains in Canadian and U.S. waters off the west coast of North America, and calls only at continental U.S. and Canadian ports during the entire cruise season.

(A) Application for approval of a facility or sewage system may be made in writing by the authorized representative of any carrier or by the official having jurisdiction over the port or place of arrival of the means of conveyance, to the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. The application must be endorsed by the operator of the facility or sewage system.

(B) Approval will be granted if the Administrator determines that the requirements set forth in this section are met. Approval may be denied or withdrawn at any time, if the Administrator determines that such requirements are not met, after notice of the proposed denial or withdrawal of the approval and the reasons therefor, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the operator of the facility or sewage system and to the applicant for approval. However, approval may also be withdrawn without such prior procedure in any case in which the public health, interest, or safety requires immediate action, and in such case, the operator of the facility or sewage system and the applicant for approval shall promptly thereafter be given notice of the withdrawal and the reasons therefore and an opportunity to show cause why the approval should be reinstated.

(iv) The Plant Protection and Quarantine Programs and Veterinary Services, Animal, and Plant Health Inspection Service, will cooperate with other Federal, State, and local agencies responsible for enforcing other statutes and regulations governing disposal of the regulated garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection. The inspectors, in maintaining surveillance over regulated garbage movements and disposal, shall coordinate their activities with the activities of representatives of the Environmental Protection Agency and other Federal, State, and local agencies also having jurisdiction over such regulated garbage.

(d) *Garbage generated in Hawaii.* (1) *Applicability.* This section applies to garbage generated in households, commercial establishments, institutions, and businesses prior to interstate movement from Hawaii, and includes used paper, discarded cans and bottles, and food scraps. Such garbage includes, and is commonly known as, municipal solid waste.

(i) Industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other wastes from Hawaii that the

Administrator determines do not pose risks of introducing animal or plant pests or diseases into the continental United States are not regulated under this section.

(ii) The interstate movement of agricultural wastes and yard waste from Hawaii to the continental United States is prohibited.

(iii) Garbage generated onboard any means of conveyance during interstate movement from Hawaii is regulated under paragraph (c) of this section.

(2) *Restrictions on interstate movement of garbage.* The interstate movement of garbage generated in Hawaii to the continental United States is regulated as provided in this section.

(i) The garbage must be processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction and dissemination of plant pests into noninfested areas of the United States.

(ii) The garbage must be moved under a compliance agreement in accordance with paragraph (e) of this section. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied all its obligations under the National Environmental Policy Act and all applicable Federal and State statutes to fully assess the impacts associated with the movement of garbage under the compliance agreement.

(iii) All such garbage moved interstate from Hawaii to any of the continental United States must be moved in compliance with all applicable laws for environmental protection.

(e) *Compliance agreement and cancellation.* (1) Any person engaged in the business of handling or disposing of garbage in accordance with this section must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Compliance agreement forms (PPQ Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(2) A person who enters into a compliance agreement, and employees or agents of that person, must comply with the following conditions and any supplemental conditions which are listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the introduction and dissemination into or within the United States of plant pests and livestock or poultry diseases:

(i) Comply with all applicable provisions of this section;

(ii) Allow inspectors access to all records maintained by the person regarding handling or disposal of garbage, and to all areas where handling or disposal of garbage occurs;

(iii)(A) If the garbage is regulated under paragraph (c) of this section, remove garbage from a means of conveyance only in tight, covered, leak-proof receptacles;

(B) If the garbage is regulated under paragraph (d) of this section, transport garbage interstate in sealed, leak-proof packaging approved by the Administrator;

(iv) Move the garbage only to a facility approved by the Administrator; and

(v) At the approved facility, dispose of the garbage in a manner approved by the Administrator and described in the compliance agreement.

(3) Approval for a compliance agreement may be denied at any time if the Administrator determines that the applicant has not met or is unable to meet the requirements set forth in this section. Prior to denying any application for a compliance agreement, APHIS will provide notice to the applicant thereof, and will provide the applicant with an opportunity to demonstrate or achieve compliance with requirements.

(4) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this section. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(5) Where a compliance agreement is denied or canceled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the Administrator, from handling or disposing of regulated garbage.

(Approved by the Office of Management and Budget under control number 0579–0054).

Done in Washington, DC, this 13th day of April 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–3738 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 381, and 442

[Docket No. 04–041C; FDMS Docket Number FSIS–2005–0032]

RIN 0583–AD17

Determining Net Weight Compliance for Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble and regulatory text to a proposed rule published in the **Federal Register** of March 28, 2006, concerning net weight compliance for meat and poultry products. These corrections reference the revised version of the National Institute of Standards and Technology (NIST) Handbook 133, dated January 2005. The March 28, 2006, proposed rule incorrectly referenced the NIST Handbook 133, dated January 2002. The standards in the January 2005 NIST Handbook 133 that are being proposed to be incorporated by reference in FSIS' meat and poultry inspection regulations remain substantively unchanged from those currently incorporated by reference in FSIS' regulations and are no different than the standards in the January 2002 version.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, PhD, Director, Labeling and Consumer Protection Staff, Office of Policy, Program, and Employee Development, FSIS, by telephone at (202) 205–0279 or by fax at (202) 205–3625.

Correction

In the proposed rule, entitled, ''Determining Net Weight Compliance for Meat and Poultry Products,'' (FSIS Docket No. 04–041P; FDMS Docket Number FSIS–2005–0032), beginning on page 15340 in the March 28, 2006, **Federal Register** make the following corrections. In the **SUPPLEMENTARY**

INFORMATION section, on page 15340, in the 3rd column, correct the sentence beginning ''In January 2002,'' to read ''In January 2005 * * *'' On page 15342, in the 1st column, in § 442.2(a), correct ''January 2002'' to read ''January 2005.''

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this correction, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done in Washington, DC, on April 14, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. E6–5866 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD). This proposed AD is for Pratt & Whitney (PW) PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines that were reassembled with certain previously used high pressure compressor (HPC) exit brush seal assembly parts and certain new or refurbished HPC exit diffuser air seal inner lands. This proposed AD would require replacing the HPC exit inner and outer brush seal packs with new brush seal packs, or replacing the HPC exit brush seal assembly with a new HPC exit brush seal assembly. This proposed AD results from a report of oil leaking into the high pressure turbine (HPT) interstage cavity and igniting, leading to an uncontained failure of the 2nd stage turbine air seal and engine in-flight shutdown. We are proposing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

DATES: We must receive any comments on this proposed AD by June 19, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5213; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments

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

Discussion

In June 2005, a PW4090 engine installed on a Boeing 777 airplane experienced an uncontained HPT interstage air seal failure, penetrating the engine case. The investigation revealed that the primary failure of this event was a fractured HPC exit diffuser air seal. The inner land of the HPC exit diffuser air seal was fractured, causing oil leakage from the No. 3 bearing compartment and an internal oil fire. This oil fire elevated the temperature in the HPT cavity that led to the failure of the HPT interstage air seal. The engine build configuration of this event included a previously used HPC exit inner brush seal pack assembled with a refurbished outer seal pack. Root cause investigation continues to focus on the operating environment surrounding the HPC exit diffuser air seal location. Further analysis performed on the seal system indicates its sensitivity to unsteady airflow through the system under specific brush seal geometry and operating conditions. This unsteady airflow contributes to an increase of the dynamic stress level on the HPC exit diffuser air seal inner land, causing it to crack. Based on these results of the ongoing investigation, PW recommends the replacement of the inner brush seal pack when the HPC exit brush outer seal pack is replaced. Any oil escape resulting from a fractured HPC diffuser air seal has the potential to ignite and compromise the integrity of the 1st and 2nd stage HPT disk. A disk failure would cause high kinetic energy material to release and penetrate the engine casing and airplane fuselage. This condition, if not corrected, could result in uncontained engine failure, damage to the airplane, and injury to passengers.

Relevant Service Information

We have reviewed and approved the technical contents of PW Service Bulletin (SB) No. PW4G–112–A72–280, Revision 1, dated March 21, 2006. That SB applies to engines that were reassembled with a previously used HPC exit brush seal pack, part number (P/N) 50J894–01, and a new or refurbished HPC exit diffuser air seal inner land, P/N 55H869. That SB describes procedures for replacing the inner and outer brush seal packs on the HPC exit brush seal assemblies.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing the HPC exit inner and outer brush seal packs with new HPC exit inner and outer brush seal packs, or replacing the HPC exit brush seal assembly with a new HPC exit brush seal assembly. The proposed AD would require you to use the service information described previously to perform the HPC exit inner and outer brush seal pack replacements.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 76 PW PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 9 work hours per engine to perform the proposed parts replacement, and that the average labor rate is $80 per work hour. Required parts would cost about $100,017 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $7,656,012.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 19, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines that were:

(1) Reassembled with a previously used high pressure compressor (HPC) exit inner brush seal pack, part number (P/N) 50J894–01; and

(2) Reassembled with a new or refurbished HPC exit diffuser air seal inner land, P/N 55H869.

(d) These engines are installed on, but not limited to, Boeing 777 airplanes.

Unsafe Condition

(e) This AD results from a report of oil leaking into the high pressure turbine interstage cavity and igniting, leading to an uncontained failure of the 2nd stage turbine air seal and engine in-flight shutdown. We are issuing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

Compliance

(f) You are responsible for having the actions required by this AD performed at the following compliance times, unless the actions have already been done.

(g) Replace the HPC exit inner and outer brush seal packs with new HPC exit inner and outer brush seal packs, or replace the HPC exit brush seal assembly with a new HPC exit brush seal assembly as follows:

(1) By 3,000 cycles-since-last-overhaul (CSLO) or by March 31, 2007, whichever occurs later; however

(2) If on March 31, 2007, the engine has not accumulated 3,000 CSLO, then by 3,000 CSLO, or December 31, 2008, whichever occurs first.

(h) Use the Accomplishment Instructions of PW Service Bulletin No. PW4G–112–A72–280, Revision 1, dated March 21, 2006, to do the inner and outer brush pack replacements.

Alternative Methods of Compliance

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

Related Information

(j) None.

Issued in Burlington, Massachusetts, on April 13, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–5843 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–148568–04]

RIN 1545–BE72

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to the annual filing of Federal employment tax deposits for employees in the Employers' Annual Federal Tax Program (Form 944) under sections 6302 and 31.6302–1 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Wednesday, April 26, 2006 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Tuesday, January 3, 2006 (71 FR 46), announced that a public hearing was scheduled for Wednesday, April 26, 2006, at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 6302 and 31.6302–1 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, April 3, 2006. Outlines of oral comments were due on Wednesday, April 5, 2006.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit outlines of the topics to be addressed. As of Wednesday, April 12, 2006, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, April 26, 2006, is cancelled.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–5814 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150313–01]

RIN 1545–BA80

Withdrawal of Proposed Regulations Relating to Redemptions Taxable as Dividends

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking relating to redemptions of stock in which the redemption proceeds are treated as a dividend distribution. The proposed regulations were published on October 18, 2002 (67 FR 64331). After consideration of the comments received, the IRS and Treasury Department have decided to withdraw the proposed regulations.

DATES: These proposed regulations are withdrawn April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish (202) 622–7750 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2002, the IRS and Treasury Department issued proposed regulations providing guidance under sections 302 and 304 of the Internal Revenue Code regarding the treatment of the basis of stock redeemed or treated as redeemed. Section 302 provides that a corporation's redemption of its stock is treated as a distribution in part or full payment in exchange for the stock if the redemption satisfies certain criteria. If the redemption does not satisfy any of these criteria, the redemption is treated as a distribution to which section 301 applies. Under section 301(c)(1), a distribution is first treated as a dividend to the extent of earnings and profits. The remaining portion of a distribution, if any, is applied against and reduces basis of stock, and finally is treated as gain from the sale or exchange of property pursuant to section 301(c)(2) and (3).

Section 304(a)(1) treats the acquisition of stock by a corporation from one or more persons that are in control of both the acquiring and issuing corporation as if the property received for the acquired stock was received in a distribution in redemption of the stock of the acquiring corporation. Accordingly, the proposed section 302 regulations also would apply to these transactions.

Section 302 does not prescribe the treatment of the basis of the redeemed stock if the redemption is treated as a distribution to which section 301 applies. In 1955, the IRS and Treasury Department promulgated § 1.302–2(c), which states that ''[i]n any case in which an amount received in redemption of stock is treated as a distribution of a dividend, proper adjustment of the basis of the remaining stock will be made with respect to the stock redeemed.'' The regulation contains three examples illustrating a proper adjustment. In two examples, the redeemed shareholder continues to own stock of the redeeming corporation immediately after the redemption. In those cases, the basis of the redeemed shares shifts to, and increases the basis of the shares still owned by, the redeemed shareholder. In the third example, the redeemed shareholder does not directly own any stock of the redeeming corporation immediately after the redemption. He does, however, constructively own stock of the redeeming corporation immediately after the redemption because of his wife's ownership of stock in the redeeming corporation. The example concludes that the redeemed shareholder's basis in the shares surrendered in the redemption shifts to increase his wife's basis in her shares of stock of the redeeming corporation.

The proposed regulations provide that the basis of redeemed stock will not shift to other shares directly owned by the redeemed shareholder or to shares owned by any other person whose ownership is attributed to the redeemed shareholder. Instead, the proposed regulations provide that when section 302(d) applies to a redemption of stock, to the extent the distribution is a dividend under section 301(c)(1), an amount equal to the adjusted basis of the redeemed stock is treated as a loss recognized on the date of the redemption. The loss, generally, would be taken into account either when the facts and circumstances that caused the redemption to be treated as a section 301 distribution no longer exist, or when the redeemed shareholder recognizes a gain on the stock of the redeeming corporation (to the extent of such gain).

The IRS and Treasury Department received many comments regarding the proposed regulations, several of which were critical of the approach of the proposed regulations. Generally, these comments expressed two predominant concerns. First, commentators stated that the approach of the proposed regulations was an unwarranted departure from current law. Second, commentators were concerned that the interaction of the proposed regulations with the consolidated return rules could create the potential for two levels of tax instead of one in certain transactions. After considering all the comments, the IRS and Treasury Department have decided to withdraw the proposed regulations.

The IRS and Treasury Department are continuing to study the approach of the proposed regulations and other approaches on the treatment of the basis of redeemed stock and request further comments. In particular, the IRS and Treasury Department are interested in comments on whether a difference should be drawn between a redemption in which the redeemed shareholder continues to have direct ownership of stock in the redeemed corporation (whether the same class of stock as that redeemed or a different class) and a redemption in which the redeemed shareholder only constructively owns stock in the redeemed corporation. The IRS and Treasury Department are also interested in comments in the following two areas: (i) Whether a different approach is warranted for corporations filing consolidated income tax returns; and (ii) whether a different approach is warranted for section 304(a)(1) transactions.

Additionally, the IRS and Treasury Department are studying other basis issues that arise in redemptions that are treated as section 301 distributions. Specifically, the IRS and Treasury Department are studying whether, under section 301(c)(2), basis reduction should be limited to the basis of the shares redeemed or whether it is appropriate to reduce the basis of both the retained and redeemed shares before applying section 301(c)(3). The preamble to TD 9250, 71FR 8802, indicated that the IRS and Treasury Department believe that the better view of current law is that only the basis of the shares redeemed may be recovered under section 301(c)(2). However, the IRS and Treasury Department are considering other approaches. For example, another approach would be to allocate the section 301(c)(2) portion of the distribution pro rata among the redeemed shares and the retained shares. A third approach would be to shift the basis of the shares redeemed to the remaining shares and then reduce the basis of those shares pursuant to section 301(c)(2). The IRS and Treasury Department request comments about these approaches or other approaches regarding circumstances in which section 301(c)(2) applies.

Drafting Information

The principal author of this withdrawal notice is Theresa M. Kolish of the Office of the Associate Chief Counsel (Corporate).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirement.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on October 18, 2002 (67 FR 64331) is hereby withdrawn.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–5811 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0232; FRL–8065–7]

Wheat Bran; Proposed Revocation of the Inert Ingredient Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke, under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(e)(1), the existing exemption from the requirement of a tolerance for residues of the inert ingredient ''wheat bran'' under 40 CFR 180.910. The regulatory action proposed in this document contributes toward the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory action proposed in this document pertains to the proposed revocation of one tolerance which would be counted as a tolerance reassessment toward the August 2006 review deadline.

DATES: Comments must be received on or before June 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0232, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0232. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111)

• Animal production (NAICS code 112)

• Food manufacturing (NAICS code 311)

• Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. Tips for preparing your comments. When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. Background and Statutory Findings

A. What Action is the Agency Taking?

The Agency is proposing to revoke the inert ingredient tolerance exemption for ''wheat bran'' under 40 CFR 180.910. This action completes EPA's revocation of the wheat bran tolerance exemption as initially discussed in the **Federal Register** Notice of January 15, 2002, (67

FR 1925) (FRL–6807–8). In that Notice, EPA identified several inert ingredients as allergen-containing food commodities, including wheat bran, and stated that their tolerance exemptions needed to be removed. Unfortunately, wheat bran's tolerance exemption was not revoked in the final rule (May 24, 2002, 67 FR 36534) (FRL–6834–8) because of an administrative error. No comments were received on the proposed or the final rule. Therefore, wheat bran's tolerance exemption was not revoked in the final rule for any reason but omission.

As background, EPA revoked the inert ingredient tolerance exemptions identified in the **Federal Register** of May 24, 2002 (67 FR 36534) (FRL–6834–8), in order to be protective of sub-populations that are known to be sensitive to allergen-containing food commodities. This action was done in concordance with the current science and medical understanding of the allergenic potential of these food commodities. The Federal Food, Drug, and Cosmetic Act (FFDCA) section 201(qq) defines a ''major food allergen'' as one of eight foods or a food ingredient that contains protein derived from one of the following foods: Milk, eggs, fish crustacean shellfish, tree nuts, peanuts, wheat, and soybeans. These foods and food ingredients are known to contain the allergenic protein that can cause allergic responses in some people, such as celiac disease. FFDCA section 202(6) states: ''(A) celiac disease is an immune-mediated disease that causes damage to the gastrointestinal tract, central nervous system, and other organs; (B) the current recommended treatment is avoidance of glutens in foods that are associated with celiac disease.'' As part of the Food Allergen Labeling and Consumer Protection Act (FALCPA), which amended FFDCA in 2004, the U.S. Food and Drug Administration is now in the process of defining the term ''gluten-free'' and is expected to issue the definition in a final rule in 2008.

EPA fully intended to revoke the tolerance exemption for wheat bran under 40 CFR 180.910 with the other allergen-containing food commodity tolerance exemptions in the 2002 proposed and final rules identified above. Therefore, the Agency is now moving to complete its original intended action and is proposing herein to revoke the exemption from the requirement of a tolerance for wheat bran under 40 CFR 180.910.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

C. When do These Actions Become Effective?

EPA is proposing the revocation of the current wheat bran tolerance exemption under 40 CFR 180.910 become effective on the date of publication of the final rule in the **Federal Register**. Any commodities listed in this proposal treated with pesticide products containing the inert ingredient wheat bran, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006, to reassess the tolerances and exemptions from tolerances that were in existence on August 2, 1996. This document proposes to revoke one inert ingredient tolerance exemption, which will be counted in a final rule as a tolerance reassessments toward the August 2006, review deadline under FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocation in this proposal is not discriminatory and is designed to ensure that both domestically produced and imported foods meet the food safety standard established by FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke a specific tolerance established under FFDCA section 408.

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 proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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 proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published in the **Federal Register** on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. Specifically, the Agency has concluded in a memorandum dated May 25, 2001 that for import tolerance revocation there is a negligible joint probability of certain defined conditions holding simultaneously which would indicate an RFA/SBREFA concern and require more analysis. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

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 proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed 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 proposed 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 proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 5, 2006.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be 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.

§ 180.910 [Amended]

2. Section 180.910 is amended by removing from the table the entry for ''Wheat bran.''

[FR Doc. E6–5877 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0253; FRL–8058–3]

Mono- and bis-(1H, 1H, 2H, 2H-perfluoroalkyl) phosphates where the alkyl group is even numbered and in the C6-C12 range; Proposed Revocation of Pesticide Inert Ingredient Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke, under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(e)(1), the existing exemption from the requirement of a tolerance for residues of the inert ingredient mono- and bis-(1H, 1H, 2H, 2H- perfluoroalkyl) phosphates where the alkyl group is

even numbered and in the C6-C12 range under 40 CFR 180.920 because EPA cannot determine that it meets the safety requirements of FFDCA section 408(b)(2). The regulatory action proposed in this document contributes toward the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory action proposed in this document pertains to the proposed revocation of 1 tolerance which would be counted as tolerance reassessment toward the August 2006 review deadline.

DATES: Comments must be received on or before June 19, 2006. Revocation would be effective 18 months after publication of the final rule.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0253, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0253. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background and Statutory Findings

A. What Action is the Agency Taking?

EPA is now in the process of reassessing all inert ingredient exemptions from the requirement of a tolerance (tolerance exemptions) established prior to August 2, 1996, as required by the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q). Under section 408(q), tolerance reassessment may lead to regulatory action under section 408(e)(1). When taking action under section 408(e)(1), EPA may leave a tolerance exemption in effect only if the Agency determines that the tolerance exemption is safe.

The existing tolerance exemption under 40 CFR 180.920 for the inert ingredient mono- and bis-(1H, 1H, 2H, 2H- perfluoroalkyl) phosphates where the alkyl group is even numbered and in the C6-C12 range allows for its use as a defoaming agent at not more than 0.5% of pesticide formulation. Due to potential risk from use of these perfluoroalkyl phosphates EPA is proposing to revoke the tolerance exemption at 180.920 under FFDCA section 408(e)(1) because the Agency is unable to determine that the tolerance exemption meets the safety requirements of FFDCA section 408(c)(2).

It has been demonstrated that compounds containing perfluoroalkyl chains (PFAC), such as the perfluoroalkyl phosphates described in § 180.920 will undergo degradation (chemical, microbial, or photolytic) of the non-fluorinated portion of the molecule leaving the remaining perfluorinated acid untouched (Ref.: A. Remde and R. Debus, Biodegradability of Fluorinated Surfactants Under Aerobic and Anaerobic Conditions, Chemosphere, 32(8), 1563–1574 (1996)). Among the degradation compounds that can be produced is perfluorooctanoic acid (PFOA). Further degradation of the perfluoroalkyl residual compounds is extremely difficult.

EPA has received significant and troubling data on PFOA. Biological sampling recently revealed the presence of PFOA in fish, birds, and mammals, including humans, across the United States and in other countries. The widespread distribution of the chemical suggests that PFOA may bioaccumulate. PFOA has shown liver, developmental, and reproductive toxicity at very low dose levels in exposed laboratory animals (Ref.: (AR226–1093) Seed, Jennifer. Hazard Assessment of Perfluorooctanoic Acid and Its Salts-USEPA/EPA/RAD. Washington, DC. November 4, 2002.).

EPA issued a draft preliminary risk assessment on PFOA in April 2003, and simultaneously initiated an enforceable consent agreement (ECA) process under section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603, and 40 CFR part 790 to develop information on the sources of PFOA in the environment and the pathways leading to exposure in order to reduce uncertainties in the assessment. (68 FR 18626, April 16, 2003 (FRL–7303–8)). The ECA process and PFOA risk assessment activity are still underway.

On January 25, 2006, EPA invited fluoropolymer and telomer manufacturers doing business in the United States to participate in a global stewardship program on PFOA and related chemicals. Participating companies will commit to reducing PFOA, PFOA precursors (meaning chemicals that can degrade to PFOA), and higher homologues from facility emissions and product content by 95 percent no later than 2010, and to work toward eliminating these chemicals from emissions and product content no later than 2015. More information on the global stewardship program, the enforceable consent agreement process, the PFOA risk assessment, and PFOA in general is found at: *http://www.epa.gov/oppt/pfoa*.

On March 7, 2006, EPA published a proposal to amend the polymer exemption rule to exclude certain perfluorinated polymers (71 FR 11484, March 7, 2006, FRL–7735–5). EPA believes this change to the current regulation is necessary because, based on recent information, including the data on PFOA and the potential for these perfluorinated polymers to degrade to PFOA, EPA can no longer conclude that these polymers will not present an unreasonable risk to human health or the environment, which is the determination necessary to support an exemption under section 5(h)(4) of TSCA, 15 U.S.C. 2604(h)(4), such as the Polymer Exemption Rule.

Because (1) PFOA and other PFACs are produced from the degradation of the perfluoroalkyl phosphates described in § 180.920 and (2) the potential risks to human health and the environment associated with PFOA, EPA is unable to determine that there is a reasonable certainty that no harm will result from exposure residues of the perfluoroalkyl phosphates described in § 180.920. Therefore, the tolerance exemption does not meet requirements of FFDCA section 408(c)(2), and EPA is proposing to revoke this tolerance exemption in § 180.920 in accordance with FFDCA section 408(e)(1).

B. What is the Agency's Authority for Taking this Action?

A tolerance represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408(e) of FFDCA, 21 U.S.C. 346a(e) authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Pursuant to section 408(c)(2), in action under section 408(e)(1), EPA may leave in effect an exemption from the requirement for a tolerance only if the Agency determines that the exemption is safe. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

C. When do These Actions Become Effective?

EPA is proposing to revoke the current tolerance exemption Mono- and bis-(1H, 1H, 2H, 2H- perfluoroalkyl) phosphates where the alkyl group is even numbered and in the C6-C12 range in 40 CFR 180.920 effective 18 months

after the date of publication of the final rule in the **Federal Register**. Any commodities listed in this proposal treated with pesticide products containing the inert ingredient, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances and exemptions from tolerances that were in existence on August 2, 1996. This document proposes to revoke one inert ingredient tolerance exemption, which will be counted in a final rule as a tolerance reassessment toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocation in this proposal is not discriminatory and is designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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 proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. Specifically, the Agency has concluded in a memorandum dated May 25, 2001 that for import tolerance revocation there is a negligible joint probability of certain defined conditions holding simultaneously which would indicate an RFA/SBREFA concern and require more analysis. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

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 proposed 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 proposed 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 proposed 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 proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.920 is amended by revising the entry for Mono- and bis-(1H, 1H, 2H, 2H- perfluoroalkyl) phosphates where the alkyl group is even numbered and in the C6-C12 range in the table as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * *

Inert ingredients	Limits	Uses
* * *	* * * * * *	
Mono- and bis-(1H, 1H, 2H, 2H-perfluoroalkyl) phosphates where the alkyl group is even numbered and in the C6-C12 range	Expires [*insert date 18 months after the date of publication of the final rule in the* FEDERAL REGISTER] Not more than 0.5% of pesticide formulation.	Defoaming agent.
* * *	* * * * * *	

[FR Doc. E6–5883 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2006–0242, EPA–HQ–SFUND–2006–0247, EPA–HQ–SFUND–2006–0250, EPA–HQ–SFUND–2006–0252, EPA–HQ–SFUND–2006–0255, EPA–HQ–SFUND–2006–0258; FRL–8159–4]

RIN 2050–AD75

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 44

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add four new sites to the NPL, all to the General Superfund Section. This rule also proposes to restore one site to the NPL and withdraws one site from proposal to the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before June 19, 2006.

ADDRESSES: Identify the appropriate FDMS Docket Number from the table below.

FDMS DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/state	FDMS docket ID number
ASARCO Taylor Springs	Taylor Springs, IL	EPA–HQ–SFUND–2006–0255
Sunflower Army Ammunition Plant	De Soto, KS	EPA–HQ–SFUND–2006–0258
Sherwin-Williams/Hilliards Creek	Gibbsboro, NJ	EPA–HQ–SFUND–2006–0242
Ringwood Mines/Landfill	Ringwood, NJ	EPA–HQ–SFUND–2006–0252
Matteo & Sons, Inc	Thorofare, NJ	EPA–HQ–SFUND–2006–0247
Maunabo Urbano Public Wells	Maunabo, PR	EPA–HQ–SFUND–2006–0250

Submit your comments, identified by the appropriate FDMS Docket number, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- E-mail: *superfund.Docket@epa.gov*
- Fax: (202) 566–0224
- Mail: Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- Hand Delivery or Express Mail: Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the appropriate FDMS Docket number (see table above). 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* website is an ''anonymous access'' system, that 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 Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also

includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. At Federal Facilities Section sites, EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), that EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones

company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) The site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public Dockets located both at EPA Headquarters in Washington, DC, in the Regional offices and by electronic access at *http://www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; 303/312–6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3097.

Denise Baker, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–4303.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

You may use the Docket at *http://www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters Docket for this rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score;

information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional Dockets for this rule contain all of the information in the Headquarters Docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add four new sites to the NPL; all to the General Superfund Section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in the table below.

State	Site name	City/county
IL	ASARCO Taylor Springs	Taylor Springs.
NJ	Sherwin-Williams/Hilliards Creek	Gibbsboro.
NJ	Matteo & Sons, Inc	Thorofare.
PR	Maunabo Urbano Public Wells	Maunabo.

B. Proposal To Restore Site to NPL

Pursuant to CERCLA § 105(e) and 40 CFR § 300.425(e)(3), whenever there has been a significant release of hazardous substances or pollutants or contaminants from a site that has been deleted from the NPL, EPA can restore the site to the NPL without application of the HRS.

EPA is proposing to restore to the NPL the Ringwood Mines/Landfill site in Passaic, New Jersey based on new data from a Field Reconnaissance Survey of the site completed in October 2005. The report is available through the Superfund Docket at *http://www.regulations.gov* (*see* Docket ID Number EPA–HQ–SFUND–2006–0252).

The Ringwood Mines/Landfill site was added to the NPL on September 1, 1983 and deleted from the NPL on November 2, 1994.

C. Withdrawal of Site From Proposal to the NPL

EPA is withdrawing the proposal to add the Sunflower Army Ammunition Plant in De Soto, Kansas to the NPL. The proposed rule can be found at 60 FR 8212 (February 13, 1995). Refer to the Docket ID Number EPA–HQ–SFUND–2006–0258 for supporting documentation regarding this action.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a 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.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where 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.

2. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this 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 by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a

site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

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 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. EPA also 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.

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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

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'' 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.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

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 proposed rule.

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

1. What Is Executive Order 13045?

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.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

1. What Is the 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 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.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: April 12, 2006.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 06–3667 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–726; MB Docket No. 06–66; RM–11321]

Radio Broadcasting Services; Normangee, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 299A at Normangee, Texas. The reference coordinates for Channel 299A at Normangee, Texas, are 30–56–00 NL and 96–11–30 WL. There is a site restriction 13.0 kilometers (8.1 miles) southwest of the community.

DATES: Comments must be filed on or before May 22, 2006, and reply comments on or before June 6, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 and Gene A. Bechtel, Law Office of Gene Bechtel, 1050 17th Street, NW., Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 06–66, adopted March 29, 2006, and released March 31, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Normangee, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–5562 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–727; MB Docket No. 06–65, RM–11320]

Radio Broadcasting Services; Ashland, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by OKAN Community Radio proposing a first local service at Ashland, Kansas. To avoid a conflict with a mutually exclusive proposal, we propose alternate Channel 288C3 at Ashland, consistent with the minimum distance separation requirements of the Commission's rules, at the center of the city reference coordinates at 37–11–12 North Latitude and 99–46–12 West Longitude.

DATES: Comments must be filed on or before May 22, 2006, and reply comments on or before June 6, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner's counsel, as follows: OKAN Community Radio, c/o Lee W. Shubert, Esq., Katten Muchin Rosenman LLP, 1025 Thomas Jefferson St., NW., East Lobby, Suite 700, Washington, DC 20007–5201.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 06–65, adopted March 29, 2006, and released March 31, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

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

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Ashland, Channel 288C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–5579 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–725; MB Docket No. 04–217; RM–10863]

Radio Broadcasting Services; Clayton, GA and Sylva, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In response to a *Notice of Proposed Rule Making (''Notice '')*, this *Report and Order* dismisses a rulemaking proceeding requesting that Channel 281A, FM Station WRBN, Clayton, Georgia, be reallotted to Sylva, North Carolina, and the license of Station WRBN be modified accordingly. Sutton Broadcasting Corporation (''Sutton''), the proponent of this rulemaking, requested Commission approval for the withdrawal of its Petition for Rule Making and its expression of interest in implementing its rulemaking proposal. Sutton filed a declaration that neither it nor any of its principals has received or will receive any consideration in connection with the withdrawal of its expression of interest in this proceeding.

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. 04–217, adopted March 29, 2006, and released March 31, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 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.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Report and Order* to GAO pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule is dismissed.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–5578 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–729; MB Docket No. 06–72; RM–11245

Radio Broadcasting Services; Boardman, OR and Clarkston, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by SSR Communications, Inc. (''Petitioner''), requesting the allotment of Channel 231C3 to Boardman, Oregon. To accommodate this allotment, Petitioner requested the reclassification of FM Station KCLK–FM, Channel 231C, Clarkston, Washington to specify operation on Channel 231C0, pursuant to the reclassification procedures adopted by the Commission. The Commission has recently reclassified Station KCLK–FM to Channel 231C0. Channel 231C3 can be allotted to Boardman, Oregon, with a site restriction of 18.5 kilometers (11.5 miles) west of Boardman, at reference coordinates of 45–53–51 NL and 119–55–21 WL.

DATES: Comments must be filed on or before May 22, 2006, and reply comments on or before June 6, 2006. Any counterproposal filed in this proceeding need only protect Station KCLK–FM, Clarkston, Washington, as a Class C0 allotment.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Matthew K. Wesolowski, General Manager; SSR Communications, Inc.; 5270 West Jones Bridge Road; Norcross, Georgia 30092–1628.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 06–72, adopted March 29, 2006, and released March 31, 2006. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Boardman, Channel 231C0.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–5577 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF24

Defense Federal Acquisition Regulation Supplement; Reports of Government Property (DFARS Case 2005–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD is extending the comment period for the proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) that were published in the **Federal Register** of Tuesday, March 21, 2006 (71 FR 14151). The proposed amendments addressed requirements for reporting of Government property in the possession of contractors.

DATES: The ending date for submission of comments is extended to May 22, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2005–D015.

SUPPLEMENTARY INFORMATION: The proposed DFARS amendments would replace existing DD Form 1662 property reporting requirements with requirements for contractors to electronically submit data to the Item Unique Identification Registry. The comment period is extended to provide additional time for interested parties to review the proposed changes.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E6–5857 Filed 4–18–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2006–2412; Notice 1]

RIN [2127–AJ87]

Schedule of Fees Authorized by 49 U.S.C. 30141

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year 2007 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than June 5, 2006.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket and notice number of this document. You can find the number at the beginning of this document.

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.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–5291). For legal issues, you may call Michael Goode, Office of Chief Counsel, NHTSA (202–366–5263). You may call Docket Management at 202–366–9324. You may visit the Docket in person from 9 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Introduction

On June 24, 1996, at 61 FR 32411, we published a notice that discussed in full the rulemaking history of 49 CFR part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562, since recodified as 49 U.S.C. 30141–47. The reader is referred to that notice for background information relating to this rulemaking action. Certain fees were initially established to become effective January 31, 1990, and have been in effect and occasionally modified since then.

The fees applicable in any fiscal year are to be established before the beginning of such year. We are proposing fees that would become effective on October 1, 2006, the beginning of FY 2007. The statute authorizes fees to cover the costs of the importer registration program, to cover the cost of making import eligibility decisions, and to cover the cost of processing the bonds furnished to the Department of Homeland Security (Customs). We last amended the fee schedule in 2004. See final rule published on September 28, 2004 at 69 FR 57869. Those fees apply to Fiscal Years 2005 and 2006.

The proposed fees are based on time and costs associated with the tasks for which the fees are assessed and reflect the slight increase in hourly costs in the past two fiscal years attributable to the approximately 3.71 and 3.44 percent raises (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective on January 1, 2005, and on January 1, 2006, respectively.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49, U.S. Code provides that RIs must pay the annual fees established ''* * * to pay for the costs of carrying out the registration program for importers. * * *'' This fee is payable both by new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also

file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct (49 CFR 592.5(f)).

In compliance with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We have tentatively determined that this fee should be decreased from $293 to $266 for new applications. We have also tentatively determined that the fee for the review of the annual statement should be decreased from $208 to $159. The proposed adjustments reflect reduced ''per hour'' computer costs, which are attributed to the implementation of client-server Information Technology (IT) systems based on user-friendly personal computers (PCs). The proposed adjustments also reflect our time expenditures in reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program that arise from the need for us to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to the possible revocation or suspension of registrations and reflect the amount of time that we have devoted to those matters in the past two years.

Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is approximately $411 for each RI, a decrease of $126. When this $411 is added to the $266 representing the registration application component, the cost to an applicant comes to $677, which is the fee we propose. This represents a decrease of $260 over the existing fee. When the $411 is added to the $159 representing the annual statement component, the total cost to the RI comes to $570, which represents a decrease of $175.

Section 594.6(h) enumerates indirect costs associated with processing the annual renewal of RI registrations. The provision states that these costs represent a pro rata allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and ''a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.'' For the purpose of establishing the fees that are currently in existence, indirect costs are $20.07 per man-hour. We are proposing to decrease this figure by $3.00, to $17.07. This proposed decrease is based on the difference between enacted budgetary costs within the Department of Transportation for the last two fiscal years, which were lower than the estimates used when the fee schedule was last amended, and takes account of further projected decreases over the next two fiscal years.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay other fees the Secretary of Transportation establishes to cover the costs of ''* * * (B) making the decisions under this subchapter.'' This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle that was originally manufactured for importation into and sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. certified motor vehicle, the decision is whether the safety features of the vehicle comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or such other evidence NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, or on the Administrator's own initiative.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated pro-rata share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and General Schedule raises must also be taken into account in the computation of costs. We have reduced costs by issuing a single **Federal Register** notice to announce import eligibility decisions made on multiple vehicles and realized reduced ''per hour'' computer costs, which are attributed to the implementation of client-server IT systems based on user-friendly PCs. Despite the cost savings that have accrued from these developments, RIs have imported fewer vehicles each year since we last amended the fee schedule. This has increased the pro-rata share of petition costs that are to be assessed against the importer of each vehicle covered by the decision to grant import eligibility. The agency has also devoted an increasing share of staff time in the past two years to the review and processing of import eligibility petitions owing to a proportionately greater number of comments being submitted in response to these petitions, as well as complications that result when the petitioner or one or more commenters request confidentiality for information they submit to the agency. Additional staff time is also needed to analyze the petitions and any comments received owning to new requirements being adopted in the FMVSS. Despite these factors, we are proposing no increase in the current fee of $175 that covers the initial processing of a ''substantially similar'' petition. Instead, as discussed below, we are proposing to address these additional costs by increasing the pro-rata share of petition costs that are assessed against the importer of each vehicle covered by the decision to grant import eligibility. Likewise, we are also proposing to maintain the existing fee of $800 to cover the initial costs for processing petitions for vehicles that have no substantially similar U.S.-certified counterpart.

In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection would remain $827 for vehicles that are the subject of either type of petition.

Importers of vehicles determined to be eligible for importation pay, upon the importation of those vehicles, a pro-rata share of the total cost for making the eligibility decision. The importation fee varies depending upon the basis on which the vehicle is determined to be eligible. For vehicles covered by an eligibility decision on the agency's own initiative (other than vehicles imported from Canada that are covered by VSA Nos. 80–83, for which no eligibility decision fee is assessed), the fee would remain $125. NHTSA determined that the costs associated with previous eligibility determinations on the agency's own initiative would be fully recovered by October 1, 2006. We would apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on or after October 1, 2006.

The agency's costs for making an import eligibility decision pursuant to a petition are borne in part by the petitioner and in part by the importers

of vehicles imported under the petition. In 2005, the most recent year for which complete data exists, the agency expended $79,626 in making import eligibility decisions based on petitions. The petitioners paid $8,575 of that amount in the processing fees that accompanied the filing of their petitions, leaving the remaining $71,051 to be recovered from the importers of the 192 vehicles imported that year under petition-based import eligibility decisions. Dividing $71,051 by 192 yields a pro-rata fee of $370 for each vehicle imported under an eligibility decision that resulted from the granting of a petition.

However, the agency believes that the volume of petition-based imports for the next two fiscal years should not be projected on the basis of a single year, particularly one in which the volume of petitioned-based imports was atypically low. The agency therefore took the average number of petition-based imports over the past 15 years to project the number of such vehicles that would be imported in Fiscal Years 2007 and 2008. Further, we anticipate that petitions filed during Fiscal Years 2007 and 2008 would also more closely reflect the average number of petitions received each year since 1991, the first year that the agency received RI petitions. Based on these estimates, we anticipate that nearly 600 vehicles would be imported under petition-based eligibility decisions and that 42 petition-based import eligibility decisions would be made.

Based on these estimates, the agency's costs for processing these petitions would increase to no more than $140,000. Petitioners would pay slightly more than $15,000 of that amount in the processing fees that accompany the filing of their petitions, leaving the remaining $125,000 to be recovered from the importers of the nearly 600 vehicles to be imported each year under petition-based import eligibility decisions. Dividing $125,000 by 600 yields a pro-rata fee of $208 for each vehicle imported under an eligibility decision that results from the granting of a petition.

Based on our estimates for Fiscal Years 2007 and 2008, the pro rata fee to be paid by the importer of each such vehicle would increase from $150 to $208, representing an increase of $58 from the existing fee for each vehicle imported. The same $208 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a U.S. certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with all applicable FMVSS.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay any other fees the Secretary of Transportation establishes "* * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury * * *" upon the importation of a nonconforming vehicle to ensure that the vehicle would be brought into compliance within a reasonable time, or if it is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States.

The Department of Homeland Security (Customs) now exercises the functions associated with the processing of these bonds. The statute contemplates that we would make a reasonable determination of the costs that Department incurs in processing the bonds. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Based on General Schedule salary and locality raises that were effective in January 2005 and 2006 and the inclusion of costs for benefits, we are proposing that the processing fee be increased by $0.47, from $9.30 per bond to $9.77. This fee would reflect the direct and indirect costs that are actually associated with processing the bonds.

Section 594.10—Fee for Review and Processing of Conformity Certificate

Each RI is currently required to pay $18 per vehicle to cover the costs the agency incurs in reviewing a certificate of conformity. We estimate that these costs would decrease to an average of $13 per vehicle because of lower contractor costs and reduced "per hour" computer costs, which are attributed to the implementation of client-server IT systems based on user-friendly PCs. Based on these estimates, we are proposing to reduce the fee charged for vehicles for which a paper entry and fee payment is made, from $18 to $13, a difference of $5 per vehicle. However, if an RI enters a vehicle through the Automated Broker Interface (ABI) system, has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the cost savings that we realize allow us to significantly reduce the fee to $6. We propose to maintain the fee of $6 per vehicle if all the information in the ABI entry is correct.

Errors in ABI entries not only eliminate any time savings, but also require additional staff time to be expended in reconciling the erroneous ABI entry information to the conformity data that is ultimately submitted. Our experience with these errors has shown that staff members must examine records, make time-consuming long distance telephone calls, and often consult supervisory personnel to resolve the conflicts in the data. We have calculated this staff and supervisory time, as well as the telephone charges, to amount to approximately $42 for each erroneous ABI entry. Adding this to the $6 fee for the review of conformity packages on automated entries yields a total of $48, representing no change in the fee that is currently charged when there are one or more errors in the ABI entry or in the statement of conformity.

Effective Date

The proposed effective date of the final rule is October 1, 2006.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

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

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

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

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of

Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There would be no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

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

The agency has considered the effects of this proposed rulemaking under the Regulatory Flexibility Act, and certifies that if the proposed amendments are adopted they would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendments would primarily affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies would be unable to pay the fees proposed by this action. In some instances, these fees would be only modestly increased (and in most instances decreased) from the fees now being paid by these entities. Moreover, consistent with prevailing industry practices, these fees should be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions would not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' Executive Order 13132 defines the term ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, 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 NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' this agency has considered whether this proposed rule would have any retroactive effect. NHTSA concludes that this proposed rule would not have any retroactive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because a final rule based on this proposal would not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal would require no information collections.

I. Executive Order 13045

Executive Order 13045 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 NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant.

J. 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) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have concluded that there are no voluntary consensus standards applicable to this proposed rule.

K. Comments

How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR, part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

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

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2000–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''pdf'' versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

L. Regulation Identifier Number (RIN)

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

in the heading on the first page of this document to find this action in the Unified Agenda.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 594 as follows:

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

1. The authority citation for part 594 would continue to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.6 would be amended by;

(a) Revising the introductory text of paragraph (a);

(b) Revising paragraph (b);

(c) Revising paragraph (d);

(d) Revising the final sentence of paragraph (h); and

(e) Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2006, must pay an annual fee of $677, as calculated below, based upon the direct and indirect costs attributable to:

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2006, is $266. The sum of $266, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2006, is set forth in paragraph (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

* * * * *

(h) * * * This cost is $17.07 per man-hour for the period beginning October 1, 2006.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2006, is $411. When added to the costs of registration of $266, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $677. The annual renewal registration fee for the period beginning October 1, 2006, is $570.

3. Section 594.7 would be amended by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2006, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $800. If the petitioner requests an inspection of a vehicle, the sum of $827 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

* * * * *

4. Section 594.8 would be amended by revising paragraph (b) and the first sentence of paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $208. The direct and indirect costs that determine the fee are those set forth in §§ 594.7(b), (c), and (d).

(c) If a determination has been made on or after October 1, 2006, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

5. Section 594.9 would be amended by revising paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2006, for which a certificate of conformity is furnished, is $9.77.

5. Section 594.10 would be amended by revising paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2006 is $13. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Department of Homeland Security through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $48.

Ronald Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E6–5740 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 71, No. 75
Wednesday, April 19, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0043]

Notice of Request for Approval of an Information Collection; Peer Reviewer's Certification Regarding Conflict of Interest

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a new information collection activity related to peer review of scientific information disseminated to the public by the Agency.

DATES: We will consider all comments that we receive on or before June 19, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0043 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0043, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0043.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on APHIS' peer review process or the peer reviewer's certification regarding conflict of interest, contact Dr. Natalie Roberts, APHIS Peer Review Officer, Planning, Evaluation, and Monitoring, PPD, APHIS, Station 3C–03.27, 4700 River Road Unit 120, Riverdale, MD 20737–1238; phone (301) 734–8937 or e-mail *natalie.a.roberts@aphis.usda.gov*. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: APHIS Peer Reviewer's Certification Regarding Conflict of Interest.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) is responsible for protecting and promoting U.S. agricultural health, administering the Animal Welfare Act, and carrying out wildlife damage management activities. In carrying out its mission, APHIS collects, generates, and disseminates a wide variety of scientific information.

Some of the information APHIS disseminates is ''influential''—that is, it has a clear and substantial impact on important public policies or important private sector decisions. A very small portion of APHIS' scientific information takes the form of ''highly influential scientific assessments,'' which have a potential impact of more than $500 million in any year, or are novel, controversial, precedent-setting, or of significant interagency interest.

In order to ensure the objectivity and highest level of quality of such scientific information, APHIS arranges for these documents to be peer reviewed in accordance with the Office of Management and Budget's (OMB's) ''Final Information Quality Bulletin for Peer Review,'' which was published in the **Federal Register** on January 14, 2005, and is available on the Web at *http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf*.

To ensure the effectiveness and integrity of the peer review process, APHIS pays careful attention to potential conflicts of interest when selecting peer reviewers. APHIS has developed a standard letter to prospective peer reviewers, which, among other things, asks them to consider whether they may have a conflict of interest related to review of a specific scientific document and, if not, asks them to sign a form certifying that they have no conflicting interests.

We are asking OMB to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Peer reviewers for agency scientific documents.

Estimated annual number of respondents: 50.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 50.

Estimated total annual burden on respondents: 12.5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 13th day of April 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–5880 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0015]

Availability of an Environmental Assessment and Finding of No Significant Impact for Field Release of Genetically Engineered Pink Bollworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed field trial of pink bollworm genetically engineered to express green fluorescence as a marker. The Animal and Plant Health Inspection Service (APHIS) proposes to use this marked strain to assess the effectiveness of lower doses of radiation to create sterile insects for its pink bollworm sterile insect program. This program, using sterile insect technique, has been conducted by APHIS, with State and grower cooperation, since 1968. Data gained from this field experiment will be used to improve the current program. APHIS has completed an environmental assessment and has concluded that this field test will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, APHIS has determined that an Environmental Impact Statement need not be prepared for this field test.

DATES: *Effective Date:* April 19, 2006.

ADDRESSES: You may read the environmental assessment (EA), the finding of no significant impact (FONSI), and any comments that we received on Docket No. APHIS–2006–0015 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. The EA, FONSI, and responses to comments are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/05_09801r_ea.pdf*.

FOR FURTHER INFORMATION CONTACT: Dr. Robyn Rose, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0489. To obtain copies of the EA, FONSI, and response to comments, contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On April 8, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 05–098–01r) from APHIS' Plant Protection and Quarantine (PPQ) Center for Plant Health Science and Technology (CPHST) Decision Support and Pest Management Systems Laboratory in Phoenix, AZ, for a field trial using the pink bollworm (PBW), *Pectinophora gossypiella* (Lepidoptera: Gelechiidae), that has been genetically engineered to express an enhanced green fluorescent protein (EGFP) derived from the jellyfish *Aequora victoria*. A piggyBac transposable element derived from the plant pest cabbage looper (*Trichoplusia ni*) was used to transform the subject PBW, and expression of the EGFP is controlled through use of a *Bombyx mori* cytoplasmic actin promoter.

The subject transgenic PBW is considered a regulated article under the regulations in 7 CFR part 340 because the recipient organism is a plant pest. The proposed field test will evaluate the feasability of using F1 sterility systems in a sterile insect program, which is designed to depress PBW populations. The transgenic PBW will be reared in the Phoenix PBW genetic rearing facility and treated with radiation levels suitable to induce F1 sterility. The irradiated insects will be released into no more than four 3-acre field sites of cotton that are adjacent to cotton expressing the Bt toxin, which is toxic to PBW. This release is part of CPHST's PBW sterile insect program. Information resulting from this research will be used in support of APHIS' efforts to eradicate the PBW in the United States.

Additional information on the PBW eradication plan for the United States may be found at *http://www.aphis.usda.gov/ppq/pdmp/cotton/pinkbollworm/eradication/eradication.pdf*. An environmental assessment (EA) prepared for the Southwest Pink Bollworm Eradication Program may be found at *http://www.aphis.usda.gov/ppd/es/pdf%20files/swpbwea.pdf*.

On February 13, 2006 APHIS published a notice [1] in the **Federal Register** (70 FR 7503–7504, Docket No. APHIS–2006–0015) announcing the availability of an EA for the proposed field trial. During the 30-day comment period, APHIS received two comments. One comment was from an individual and the other was from a government research scientist. One comment generally objected to the field release. The commenter made several unsupported, sweeping statements suggesting that the trial is poorly designed and will result in ''health problems.'' APHIS finds no basis for these statements and disagrees with the comment. Additionally, the commenter suggests that APHIS should be required to get ''sign off of the neighbors.'' APHIS has carefully evaluated the design of the field trial and has determined that it will not result in the establishment of the regulated article outside of the field test. Additionally, APHIS has informed the public of the proposed field test and requested comment on the EA. APHIS is confident that this field test will not

[1] To view the notice, EA, and the comments we received, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0015, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

impact the human environment, including the neighbors, and has given adequate notice of the field test. The second comment supported the field trial described in the EA and suggested that the ''* * * results will be vital to the progress of agricultural pest control.'' APHIS agrees with the comment.

Pursuant to its regulations (7 CFR part 340) promulgated under the Plant Protection Act, APHIS has determined that this field trial will not pose a risk of the introduction or dissemination of a plant pest for the following reasons:

EGFP transgenic insects will not persist in the environment. They will be sterilized by irradiation and the EGFP transgenic insect's fecundity in the EGFP PBW to be released is significantly lower than non-EGFP insects. Redundant mitigation measures are incorporated into the experimental procedures to ensure that genetically modified EGFP PBW will not become established in the environment. These measures are as follows:

- All the surrounding cotton expresses *Bacillus thuringiensis* (Bt) toxin that kills PBW larvae.
- There are no sexually compatible relatives of the PBW in the United States, so the transgene cannot spread via hybridization with other species.
- The *piggyBac*-derived transposable element used to make the transforming construct has no functional transposase gene, thereby eliminating its ability to mobilize itself.
- The release area will be monitored intensively with pheromone traps that attract and collect PBW male moths. Traps will be set up to 5 miles away from the site.
- The area of release is less than 12 acres with no more than 3 acres per plot.
- If adverse persistence is detected, unwanted bollworms will be killed with insecticides. Larvae from eggs oviposited on Bt cotton will not survive.
- PBW populations can be suppressed by flooding the area with a high ratio of sterilized bollworms to field insects.
- All moths will be securely managed and contained in production and transport using standard operating procedures with extremely high reliability developed for a long-running sterile insect technique program.
- All living bollworms reared for this field trial that are not used as part of the environmental release will be killed.

Based on the factors described above and the analysis contained in the EA, APHIS has determined that the proposed field trial will not have a significant impact on the quality of the human environment.

The EA and finding of significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of April 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–5878 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0010]

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on May 9, 2006. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the Twenty-seventh Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) of the Codex Alimentarius Commission (Codex), which will be held in Budapest, Hungary, May 15–19, 2006. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 27th Session of CCMAS and to address issues on the agenda.

DATES: The public meeting is scheduled for Tuesday, May 9, 2006 from 10:30 a.m. to 12 p.m.

ADDRESSES: The public meeting will be held in the Conference Room 1A 002, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD. Documents related to the 27th Session of CCMAS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The Food Safety and Inspection Service (FSIS) invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number FSIS–2006–0010 to submit or view public comments and to view supporting and related materials available electronically.

Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to FSIS Docket Room, Docket Clerk, USDA, Food Safety and Inspection Service (FSIS), 300 12th Street, SW., Room 102, Cotton Annex Building, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number FSIS–2006–0010.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

In addition to submitting comments by mail to the above address, the U.S. Delegate to the CCMAS, Dr. Gregory Diachenko of the Food and Drug Administration, invites U.S. interested parties to submit their comments electronically to the following e-mail address (*gregory.diachenko@fda.hhs.gov*).

Pre-Registration: To gain admittance to this meeting, individuals must present a photo ID for identification and also *are required to pre-register.* In addition, no cameras or videotaping equipment will be permitted in the meeting room. To pre-register, please

send the following information to this e-mail address (*gregory.diachenko@fda.hhs.gov*) by *May 4, 2006:*

—Your Name
—Organization
—Mailing Address
—Phone number
—E-mail address

For Further Information About the 27th Session of the CCMAS Contact: U.S. Delegate, Dr. Gregory Diachenko, Director, Division of Chemistry Research and Environmental Review, Center for Food Safety and Applied Nutrition, FDA, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740. Phone (301) 436–1898; Fax (301) 436–2634, E-mail: *gregory.diachenko@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Syed Amjad Ali, International Issues Analyst, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Phone (202) 205–7760; Fax (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Methods of Analysis and Sampling was established to perform multiple functions; defines criteria appropriate for Codex Methods of Analysis and Sampling; specifies reference methods of analysis and sampling; endorses methods of analysis and sampling proposed by Codex Committees; elaborates sampling plans; and considers specific sampling and analysis problems. The Committee is chaired by Hungary.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 27th Session of CCMAS will be discussed during the public meeting:

- Matters referred by the Codex Alimentarius Commission and other Codex Committees
- Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis
- Proposed Draft Guidelines for Settling Disputes on Analytical (Test) Results
- Recommendation for a Checklist of Information
- Further Review of Analytical Terminology for Codex Use (For inclusion in the Procedural Manual)
- Criteria for Methods of Detection and Identification of Foods Derived from Biotechnology
- Conversion of the Methods for Trace Elements into Criteria
- Methods of analysis for dioxins and PCBs

Each issue listed will be fully described in documents distributed, or to be distributed, by the Hungarian Secretariat prior to the meeting. Members of the public may access copies of these documents via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Public Meeting

At the May 9, 2006 public meeting, these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 27th Session of the CCMAS, Dr. Gregory Diachenko (See For Further Information About the 27TH Session of the CCMAS Contact). Written comments should state that they relate to activities of the 27th Session of the CCMAS.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web Page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS–FAIM customers to sign up for subscription options in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC on: April 14, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E6–5861 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0007]

Codex Alimentarius Commission: Meeting of the Codex Committee on Residues of Veterinary Drugs in Foods

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA) and the Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), are sponsoring a public meeting on Wednesday, April 26, 2006, to provide information and receive public comments on agenda items that will be discussed at the Sixteenth Session of the Codex Committee on Residues in Veterinary Drugs in Foods, which will be held in Cancun, Mexico, May 8–12, 2006. The Under Secretary and CVM recognize the importance of providing interested parties with information about the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) of the Codex Alimentarius Commission and to address items on the Agenda for the 16th Session of the Committee.

DATES: The public meeting is scheduled for Wednesday, April 26, 2006, from 10 a.m. to 1 p.m.

ADDRESSES: The public meeting will be held in Room 1160, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250. Documents related to the 16th Session of CCRVDF will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net.*

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number FSIS–2006–0007 to submit or view public comments and to view supporting and related materials available electronically.

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to FSIS Docket Room, Docket Clerk, USDA, Food Safety and Inspection Service (FSIS), 300 12th Street, SW., Room 102, Cotton Annex Building, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number FSIS–2006–0007.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the *regulations.gov* Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

For Further Information About the 16th Session of CCRVDF Contact: U.S. Delegate, Dr. Steven Vaughn, Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, FDA, 7500 Standish Place, Rockville, MD 20855, Phone: (301) 827–1796, Fax: (301) 594–2297. E-mail: *svaughn@cvm.fda.gov.*

For Further Information About the Public Meeting Contact: Edith E. Kennard, Staff Officer, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 720–5261, Fax: (202) 720–3157, E-mail: *edith.kennard@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency manage and carry out U.S. Codex.

The Codex Committee on Residues of Veterinary Drugs in Foods was established in 1985 by the 16th Session of the Codex Alimentarius Commission to determine priorities for the consideration of residues of veterinary drugs in foods, to recommend maximum levels of such substances, to develop codes of practice as may be required, and to consider methods of sampling and analysis for the determination of veterinary drug residues in foods. The Committee is chaired by the United States.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 16th Session of CCRVDF will be discussed during the public meeting:

- Draft Maximum Residue Limits for Veterinary Drugs at Steps 7, 6, 4 and 3
- Proposed Draft Revised Guidelines for the Establishment of a Regulatory Program for the Control of Veterinary Drug Residues in Foods
- Proposed Draft Revised Part I, II, and III of the Codex Guidelines for the Establishment of a Regulatory Program for the Control of Veterinary Drug Residues in Foods
- Risk Management Methodologies, Including Risk Assessment Policies, in the Codex Committee of Veterinary Drugs in Foods
- Review of Performance-based Criteria for Methods of Analysis
- Consideration of the Priority List of Veterinary Drugs Requiring Evaluation or Re-evaluation
- Report of the Working Group on Residues of Veterinary Drugs without ADI/MRL

Each issue listed will be fully described in documents distributed, or to be distributed, by the U.S. Secretariat to the Meeting. Members of the public may access or request copies of these documents via the World Wide Web at the following address: *http://www.codexalimentarius.net.*

Public Meeting

At the April 26, 2006 public meeting, draft U.S. positions on these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 16th Session of CCRVDF, Dr. Steven Vaughn, (see For Further Information About the 16th Session of CCRVDF Contact). Written comments should state that they relate to activities of the 16th Session of the CCRVDF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web Page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS–FAIM customers to sign up for subscription options in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and

have the option to protect their accounts with passwords.

Done at Washington, DC on April 14, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E6–5876 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Sumter National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Sumter National Forest proposes to begin charging a $3.00 fee for the use of the FORKS Mountain Bike Trail. Continued interest in mountain bike trails, especially in this area, have shown the public's interest in this activity will be appreciated and well received. Funds derived from this fee will be used for the continued maintenance of the trail, provide porta-potties for sanitation, provide drinking water to meet DHEC standards and maintain the trailhead. This project was made possible through a cooperative effort between the Forest Service, South Carolina Parks Recreation and Tourism, Southern Off Road Biking Association, Long Cane Trails, Michelin and Upper Savannah Land Trust.

DATES: The proposed fee will be initiated October 31, 2006. Comments, concerns or questions about this new fee must be submitted by May 30, 2006.

ADDRESSES: Submit comments, concerns or questions about the new fee associated with forks Mountain Bike Trail to: Forest Supervisor, Sumter National Forest, 4931 Broad River Road, Columbia, SC 29212–3530.

FOR FURTHER INFORMATION CONTACT: Libby Meadows, Outdoor Recreation Planner, 864, 746–6120.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The Sumter National Forest, Long Cane Ranger District, currently has a large mountain biking community. The Recreation Resource Advisory Committee will review consideration for new fee at least three months prior to proposed initiation date.

Dated: April 11, 2006.

Kerwin Dewberry,

Acting Ranger, Long Cane Ranger District.

[FR Doc. 06–3737 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Clarke County Water Supply Project, Clarke County, IA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement (EIS) is being prepared for the Clarke County Water Supply Project, Clarke County, Iowa.

FOR FURTHER INFORMATION CONTACT: Richard Van Klaveren, State Conservationist, or David Beck, Planning Leader, 210 Walnut Street, Room 693, Des Moines, IA 50309–2180.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this Federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard Van Klaveren, NRCS State Conservationist, has determined that the preparation and review of an environmental impact statement (EIS) is needed for this project.

This project involves the development of a plan to develop a multipurpose watershed plan near Osceola in southern Iowa. The Clarke County Water Supply project area is 32,946 acres northwest of Osceola including the upper portions of both Squaw Creek Watershed and South Squaw Creek Watershed.

The Clarke County Reservoir Commission is the project sponsor. The Commission includes members from the following entities: Cities of Murray, Osceola, and Woodburn; Osceola Water Board, Clarke County Board of Supervisors, Clarke County Conservation Board, Clarke County Soil and Water Conservation District, Clarke County Development Corporation, and Southern Iowa Rural Water Association.

The sponsors' main purposes are to develop a lake that will serve as a regional water supply and provide water-based recreation. Other objectives include fish and wildlife habitat development, agricultural pollution control, and water-based recreation.

The NRCS planning assistance is being provided under the authority of the Watershed Protection and Flood Prevention Act, Public Law 83–566. The NRCS has initiated studies to determine the extent of natural resource problems and needs in accordance with the sponsors' objectives.

The NRCS studies indicate that the sponsors' objectives of water supply, water-based recreation, fish and wildlife development, and agricultural pollution control are likely to be economically feasible. Additional study for these project purposes will be completed.

Five study sites on the main channel of North Squaw Creek were initially identified for possible multiple-purpose reservoir sites. An interdisciplinary team field review was conducted in 2004. Two study sites were dropped from further consideration in January, 2005, after it was determined that the sites provided insufficient water during dry periods to meet current and future water demands projected for the community of 3 million gallons per day. A preliminary alternative plan is being developed at each of the three remaining study sites. The three preliminary alternatives include permanent pool sizes of 590 acres, 692 acres, and 836 acres respectively.

Each of the three alternative plans that is carried through detailed planning will be compared against a no action plan as a basis to determine effects. The sponsors will select an alternative plan based on the effects, economic evaluation, and the extent that it meets their objectives. The project will include one multi-purpose reservoir with the purposes of water supply and water-based recreation. Fish and wildlife habitat development will be planned as a part of the reservoir and adjacent lands acquired for recreation, mitigation if required, and other public purposes. Best management practices may be included in the planned project in order to further protect both the new surface water supply and West Lake, which serves as the current water supply source for Osceola and rural water. West Lake is located on South Squaw Creek about two miles west of Osceola and is in the project area.

An open house informational meeting was held in Osceola on December 1, 2004, to initiate the planning process and obtain public input. State and federal agencies, private organizations,

and local individuals were invited to a scoping meeting on March 15, 2006. The public input received from these meetings and at meetings of the Clarke County Reservoir Commission will be considered as a draft Environmental Impact Statement is developed. The periodic meetings of the Commission as well as individual member sponsor meetings are open to the public and provide opportunity for citizen input.

Preliminary issues: Among the issues that the NRCS plans to consider in the scope of the EIS analysis are:

—Environmental, economic, and social impacts of the alternatives. Major categories are listed below.

Soil erosion; Flooding; Recreation; Water quantity/supply; Water quality; Cultural resources; Natural Areas ; Prime farmland; Agricultural/other rural land; Threatened and Endangered species; Wetlands; Fish and Wildlife habitat; Air quality.

—Costs and benefits of the alternatives will be studied.

—The Cumulative Impacts of federal action will be evaluated.

The Clarke County Water Supply Watershed Project Draft EIS will be developed and published in the **Federal Register** with a target date of February 1, 2007. A 45 day comment period will be available for the public to provide comments. A 30 day comment period will be available following publication of the final EIS. A meeting will be held in the Osceola area near the date of the draft EIS publication to inform the public about the draft watershed plan-EIS and to obtain comments.

The draft watershed plan—EIS will be prepared and circulated for review by agencies and the public. This review will be conducted concurrently with the publication of the draft EIS in the **Federal Register**. The Natural Resources Conservation Service invites participation and consultation of public agencies, any affected Indian tribe, and individuals who have special expertise, legal jurisdiction, or interest in providing data for consideration in preparing the draft EIS. Comments and other input received will be considered in plan development. Further information on the proposed action may be obtained from David Beck, Planning Leader, at the above address. This **Federal Register** Notice will also be available at the Iowa NRCS Web site at *http://www.ia.nrcs.usda.gov.* A map of the Clarke County Water Supply proposed study sites will also be posted.

Dated: April 12, 2006.

Richard Van Klaveren,

State Conservationist.

[FR Doc. E6–5869 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes for Section IV of the Field Office Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice and request for comments.

SUMMARY: It is the intention of NRCS in Maryland to issue new or revised conservation practice standards for Section IV of the Field Office Technical Guide. These standards include, but are not limited to, the following: Anaerobic Digester, Controlled Temperature (Code 366); Animal Mortality Facility (Code 316); Brush Management (Code 314); Closure of Waste Impoundments (Code 360); Composting Facility (Code 317); Feed Management (Code 592); Field Border (Code 386); Filter Strip (Code 393); Fishpond Management (Code 399); Forage Harvest Management (Code 511); Forest Stand Improvement (Code 666); Heavy Use Area Protection (Code 561); Hedgerow Planting (Code 422); Irrigation Water Management (Code 449); Lined Waterway or Outlet (Code 468); Manure Transfer (Code 634); Nutrient Management (Code 590); Pest Management (Code 595); Pond Sealing or Lining, Compacted Clay Treatment (Code 521D); Residue and Tillage Management (Codes 329, 345, and 346); Riparian Forest Buffer (Code 391); Sediment Basin (Code 350); Shallow Water Development and Management (Code 646); Streambank and Shoreline Protection (Code 580); Structure for Water Control (Code 587); Subsurface Drain (Code 606); Surface Drain, Field Ditch (Code 607); Tree/Shrub Establishment (Code 612); Upland Wildlife Habitat Management (Code 645); Use Exclusion (Code 472); Waste Storage Facility (Code 313); Waste Treatment Lagoon (Code 359); Waste Utilization (Code 633); Wastewater Treatment Strip (Code 635); Water and Sediment Control Basin (Code 638); Water Well (Code 642); Wetland Creation (Code 658); Wetland Restoration (Code 657); Wetland Wildlife Habitat Management (Code 644); Windbreak/Shelterbelt Establishment (Code 380). Some of these practice standards may be used in conservation systems to comply with Highly Erodible Land and Wetland Conservation provisions of the Farm Bill.

DATES: Revised standards and new standards will be issued periodically during calendar year 2006. There will be a 30-day public comment period for each draft standard. Conservation practice standards will be issued as final after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Electronic copies will be posted on the Internet at the following address: *http://www.md.nrcs.usda.gov/technical/draftcps_no.html.* Paper copies will be mailed to persons who do not have Internet access. Please submit requests for paper copies to Anne M. Lynn, State Resource Conservationist, Natural Resources Conservation Service, 339 Busch's Frontage Road, Suite 301, Annapolis, MD 21401.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. NRCS will provide a 30-day public review and comment period concerning the proposed changes. At the close of the comment period, NRCS will make a determination regarding any changes to the draft conservation practice standards, and will publish the final standards for use in NRCS field offices. The final standards will also be posted on the Internet at the following address: *http://www.nrcs.usda.gov/technical/efotg.*

Dated: April 10, 2006.

Virginia (Ginger) L. Murphy,

State Conservationist, NRCS, Annapolis, Maryland.

[FR Doc. E6–5867 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Utilities Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service and Rural Utilities Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1942, subpart A, ''Community Facility Loans.''

DATES: Comments on this notice must be received by June 19, 2006 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Derek L. Jones, Community Programs Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, telephone: (202) 720–1504.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.

OMB Number: 0575–0015.

Expiration Date of Approval: October 31, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities loan program is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community Facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small day care centers. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.9 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 3,768.

Estimated Number of Responses per Respondent: 8.15.

Estimated Total Annual Burden on Respondents: 58,265 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 31, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

Dated: April 3, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 06–3695 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1438]

Grant of Authority, Establishment of a Foreign–Trade Zone, Athens, Texas

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''. . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Athens Economic Development Corporation (the Grantee), a Texas non–profit corporation, has made application to the Board (FTZ Docket 29–2005, filed 6/9/05), requesting the establishment of a foreign–trade zone at sites in Athens, Texas, adjacent to the Dallas/Fort Worth Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 34744, 6/15/05); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign–trade zone, designated on the records of the Board as Foreign–Trade Zone No. 269, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of April 2006.

FOREIGN–TRADE ZONES BOARD, Secretary of Commerce, Chairman and Executive Officer.

Carlos M. Gutierrez,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–5678 Filed 4–18–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Tysonic Enterprises and Chan Heep Loong; In the Matter of: Tysonic Enterprises, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG, and, Chan Heep Loong, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG, 95 Havelock Road, #14–583, Singapore, 160095 SG; Respondents

Order Temporarily Denying Export Privileges

Pursuant to § 766.24 of the Export Administration Regulations (''EAR''),[1]

[1] 15 CFR parts 730–774 (2006). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273, (August 5, 2005)),

the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying the export privileges under the EAR of Tysonic Enterprises, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG, and Chan Heep Loong, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG and 95 Havelock Road #14–583, Singapore, 160095 SG, (hereinafter collectively referred to as the ''Respondents'') for 180 days.

In its request, BIS has presented evidence that shows that Chan Heep Loong (''Loong''), the owner and operator of Tysonic Enterprises (''Tysonic'') caused, aided or abetted the doing of an act prohibited by the EAR. Specifically, Loong purchased items subject to both the EAR and the Iranian Transactions Regulations of the Treasury Department's Office of Foreign Assets Control (OFAC),[2] from U.S. companies and caused those commodities to be shipped to Iran without authorization from OFAC as required by § 746.7 of the EAR.

Specifically, the evidence shows that, on or around February 14, 2005, Respondents caused a U.S. company to export GPS engines, items subject to the EAR and classified by Export Control Classification Number 7A994, from the United States to Respondents in Singapore. On or about February 24, 2005, Respondents then shipped these items to Iran Electronics Industries located in Shiraz, Iran. This shipment was a transaction subject to the Iranian Transactions Regulations, and was done without authorization from OFAC as required by § 746.7 of the EAR.

The evidence also shows that on or around March 28, 2005, Respondents caused a U.S. company to export an RF Power Meter, an item subject to the EAR and classified by Export Control Classification Number 3A992, from the United States to Respondents in Singapore. On or about May 12, 2005, Respondents then shipped this item to Iran Electronics Industries located in Shiraz, Iran. This shipment was a transaction subject to the Iranian Transactions Regulations, and was done without authorization from OFAC as required by § 746.7 of the EAR.

The evidence also demonstrates that the Respondents were aware of restrictions on the shipment of U.S. commodities to Iran and that Respondents would not deal with U.S. companies that requested information about Tysonic's intended end-users.

I find that the evidence presented by BIS demonstrates that the Respondents have violated the EAR, that such violations have been deliberate and covert, and that there is a likelihood of future violations, particularly given the nature of the transactions. As such, a Temporary Denial Order (''TDO'') is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that a TDO naming Tysonic and Loong as Respondents is necessary, in the public interest, to prevent an imminent violation of the EAR. This Order is issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

It is Therefore Ordered:

First, that the Respondents, Tysonic Enterprises, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG, and Chan Heep Loong, 10 Anson Road, 15–14 International Plaza, Singapore, 079903 SG and 95 Havelock Road, #14–583, Singapore, 160095 SG, (collectively the ''Denied Persons''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary

has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[2] *See* 31 CFR 560.204.

of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**.

This Order is effective upon date of publication in the **Federal Register** and shall remain in effect for 180 days.

Entered this 12th day of April, 2006.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 06–3726 Filed 4–18–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 2006.

FOR FURTHER INFORMATION CONTACT: John Drury or Dena Crossland, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On September 28, 2005, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cut–to-length carbon steel plate from Romania, covering the period August 1, 2004, through July 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). The preliminary results for this review are currently due no later than May 3, 2006.

Extension of Time Limits for Preliminary Results

On January 23, 2006, the Department initiated a sales–below-cost investigation in this review. *See* Memorandum to Richard O. Weible, Director, through Abdelali Elouaradia, Program Manager, from John Drury and Dena Aliadinov, Case Analysts, and Ernest Gziryan, Case Accountant, regarding IPSCO Steel Inc.'s Allegation of Sales Below the Cost of Production for Mittal Steel Galati S.A. On January 23, 2006, and March 15, 2006, respectively, the Department issued Section D of the Antidumping Questionnaire and the first Supplemental Section D Questionnaire. The Department requires additional time to review and analyze the Supplemental Section D Questionnaire response, issue additional supplemental sales and cost questionnaires, if necessary, and possibly verify the sales and cost information submitted by Mittal Steel Galati S.A. Therefore, we find that it is not practicable to complete this review within the originally anticipated time limit.

Section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 365 days from the last day of the anniversary month of the order. For the reasons noted above, the Department is extending the time limit for completion of the preliminary results to no later than August 31, 2006, in accordance with section 751(a)(3)(A) of the Act. We intend to issue the final results no later than 120 days after publication of the notice of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 12, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–5885 Filed 4–18–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor–Standing, Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Anya Naschak, Kristina Boughton, or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6375, (202) 482–8173, or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department of Commerce (''the Department'') published in the **Federal Register** an antidumping duty order covering floor standing, metal–top ironing tables and parts thereof from the People's Republic of China (''PRC''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004). The Department received timely requests from Since Hardware (Guangzhou) Co., Ltd. (''Since Hardware''), Shunde Yongjian Housewares Co., Ltd. (''Shunde Yongjiang''), and Forever Holdings Ltd. (''Forever Holdings''), in accordance with 19 CFR 351.213(b)(2), for an administrative review of the antidumping duty order on ironing tables and parts thereof from the PRC, which has an August annual anniversary month. On September 20, 2005, the Department initiated a review with respect to Since Hardware, Shunde Yongjiang, and Forever Holdings. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005).

The Department has issued its antidumping duty questionnaire and supplemental questionnaires to Since Hardware, Shunde Yongjiang, and Forever Holdings. The deadline for completion of the preliminary results is currently May 3, 2006.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and the 120–day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations, we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. The Department requires additional time to analyze the supplemental questionnaire responses, issue additional supplemental questionnaires, and conduct verifications. In particular, there are complex factors of production methodology issues, including tolling and production of intermediate inputs, which the Department requires additional time to review. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of these preliminary results by an additional 93 days to August 4, 2006. The final results, in turn, will be due 120 days after the date of issuance of the preliminary results, unless extended.

Dated: April 11, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–5890 Filed 4–18–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Meeting

AGENCY: Department of the Air Force, U.S. Air Force Academy Board of Visitors.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 9355, Title 10, United States Code, the U.S. Air Force Academy Board of Visitors will meet at the United States Air Force Academy, Colorado Springs, Colorado, 28 & 29 April 2006. The purpose of the meeting is to consider the morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in Paragraphs (2), (6), and Subparagraph (9)(B) of Subsection (c) of Section 552b, Title 5, United States Code. The determination to close certain sessions is based on the consideration that portions of the briefings and discussion will relate solely to the internal personnel rules and practices of the Board of Visitors or the Academy; involve information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or involve discussions of information the premature disclosure of which would be inconsistent with protection of the predecisional process by frustrating frank and open discussion. Meeting sessions will be held in the Superintendent's conference room, Fairchild Hall, USAFA, CO.

DATES: The U.S. Air Force Academy Board of Visitors will meet at the United States Air Force Academy, Colorado Springs, Colorado, 28 & 29 April 2006.

FOR FURTHER INFORMATION CONTACT: Contact Major Rich Cole, Chief, USAFA Programs Assessment, Directorate of Airman Development & Sustainment, Deputy Chief of Staff, Manpower & Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC, 20330–1040, (703) 695–4456.

Bao-anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–5845 Filed 4–18–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0216]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Bonds and Insurance

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through August 31, 2006. DoD proposes that OMB extend its approval for use for 3 additional years.

DATES: DoD will consider all comments received by June 19, 2006.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0216, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include OMB Control Number 0704–0216 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, at (703) 602–0296. The information collection requirement addressed in this notice is available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Mr. Euclides Barrera, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance, and related clauses at 252.228; OMB Control Number 0704–0216.

Needs and Uses: DoD uses the information obtained through this collection to determine the allowability of a contractor's costs of providing war-hazard benefits to its employees; to determine the need for an investigation regarding an accident that occurs in connection with a contract; and to determine whether a contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 859.

Number of Respondents: 49.

Responses Per Respondent: 1.

Annual Responses: 49.

Average Burden Per Response: 17.53 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.228–7000, Reimbursement for War-Hazard Losses, requires the contractor to provide notice and supporting documentation to the contracting officer regarding claims or potential claims for costs of providing war-hazard benefits to contractor employees.

The clause at DFARS 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, requires the contractor to report promptly to the administrative contracting officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with the contract.

The clause at DFARS 252.228–7006, Compliance with Spanish Laws and Insurance, requires the contractor to provide the contracting officer with a written representation that the contractor has obtained the required types of insurance in the minimum amounts specified in the clause, when performing a service or construction contract in Spain.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E6–5856 Filed 4–18–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Notice of Amendment to an Existing System of Records

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a, and the Office of Management and Budget (OMB) Circular A–130, the Department of Energy (DOE) is publishing a notice of a proposed amendment to an existing system of records. DOE proposes to amend the provisions for DOE–4, ''Form EIA–457 Survey Reports, Residential Energy Consumption Survey (RECS),'' to establish a new routine use provision that allows for disclosure of information to authorized agents as defined in the Confidential Information Protection and Statistical Efficiency Act of 2002, Title V of the E-Government Act of 2002 (Pub. L. 107–347, 116 Stat 2962), to use the information for exclusively statistical purposes.

DATES: The proposed amendment to this existing system of records will become effective without further notice June 5, 2006, unless in advance of that date, DOE receives adverse comments and determines that this amendment should not become effective.

ADDRESSES: Written comments should be directed to the following address: Jay Casselberry, EI–3, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Abel Lopez, Director, Freedom of Information Act and Privacy Act Group, ME–74, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–5955; Jay Casselberry, EI–3, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–8616; and Isiah Smith, Deputy Assistant General Counsel for Administrative Litigation and Information Law, GC–77, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–8618.

SUPPLEMENTARY INFORMATION: In accordance with the December 17, 2002, enactment of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), Title V of the E-Government Act of 2002 (Pub. L. 107–347, 116 Stat 2962), DOE proposes to amend the provisions for DOE–4, ''Form EIA–457 Survey Reports, Residential Energy Consumption Survey (RECS),'' to establish a new routine use provision that allows for disclosure of information to authorized agents, as defined in CIPSEA, to use the information for exclusively statistical purposes.

Section 512(a) of the CIPSEA provides an opportunity for statistical agencies and organizational units to designate agents (as defined in section 502(2)(A)) who may use Federal statistical data collected or acquired under a pledge of confidentiality for exclusively statistical purposes. The agency that possesses the confidential information must ensure that any agent provided access to the information will comply with CIPSEA.

The DOE proposes to amend DOE–4 to allow for the disclosure of identifiable information maintained in the system of records to agents approved by EIA that agree in writing to maintain the confidentiality of the information and to use the information for exclusively statistical purposes. At this time, DOE is also updating information in other sections of the system of records notice including the system location, purposes, and categories of users.

DOE is submitting the report required by OMB Circular A–130 concurrently with the publication of this notice. The text of this notice contains the information required by the Privacy Act, 5 U.S.C. 552a(e)(4).

Issued in Washington, DC on April 12, 2006.

Ingrid A. C. Kolb,

Director, Office of Management.

DOE–4

SYSTEM NAME:

Form EIA–457 Survey Reports, Residential Energy Consumption Survey (RECS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Energy Information Administration (EIA), 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons responding to the Form EIA–457, Residential Energy Consumption Survey (RECS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, age, gender, race, ethnicity, home address, home telephone number, income, family size and composition, characteristics of household, characteristics of housing unit, fuels used, household vehicles, name and address of landlord, names and addresses of energy suppliers, and records of energy purchases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

The information is collected and maintained by the DOE to measure the levels of energy consumption by homeowners and the cost of energy consumed. The information also is used for monitoring, analyzing, and modeling changes in the residential sector and its energy consumption.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties.

A record may be disclosed to an agent under a written agreement to maintain the confidentiality of the record, to use the information for exclusively statistical purposes, and to use the information consistent with the purposes cited above. Those provided information under the routine uses are subject to the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records may be retrieved by name and identification number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established computer center procedures (personnel screening and physical security), and they are password protected. Passwords are known only by authorized system users. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Administrator, Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the Director, Headquarters Freedom of Information Act and Privacy Act Group, U.S. Department of Energy. The request should include the requester's complete name, time period for which records are sought, and the office locations(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual and energy supply companies.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–5892 Filed 4–18–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–691–001]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Compliance Filing

April 12, 2006.

Take notice that on April 5, 2006, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2006:

Fifty-Sixth Revised Sheet No. 5
Fifty-Sixth Revised Sheet No. 6
Fifty-Third Revised Sheet No. 7
Twenty-Fifth Revised Sheet No. 8

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5829 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–14–000]

Crosstex LIG, LLC; Notice of Petition for Rate Approval

April 12, 2006.

Take notice that on April 3, 2006, Crosstex LIG, LLC filed a petition for rate approval for NGPA section 311 maximum transportation rates for firm and interruptible transportation services, pursuant to § 284.123(b)(2) of the Commission's regulations.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time April 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5825 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–010]

El Paso Natural Gas Company; Notice of Compliance Filing

April 12, 2006.

Take notice that on April 4, 2006, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed in Appendix A to the filing, to become effective April 4, 2006.

EPNG states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5827 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–684–001]

Southern Natural Gas Company; Notice of Compliance Filing

April 12, 2006.

Take notice that on March 31, 2006, Southern Natural Gas Company (Southern) tendered for filing its Maintenance Capital Surcharge report detailing the descriptions for the maintenance capital surcharge expenditures in excess of $50,000 that were included in the September 30, 2005 filing.

Southern states the filing is being made in compliance with the Commission's Order issued on March 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5828 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–297–000]

Tennessee Gas Pipeline Company; Notice of Petition for Declaratory Order

April 12, 2006.

Take notice that on March 31, 2006, Tennessee Gas Pipeline Company (Tennessee) filed a petition for declaratory order under Rule 207(a)(2) of the Commission's regulations (18 CFR 385.207(a)(2)) requesting that the Commission find that: (1) Columbia Gulf Transmission Company (Columbia Gulf) is violating the Commission's Orders issued in Docket No. RP04–215–000 [1] by refusing to allow installation of two taps necessary for the Commission-directed interconnection on the Blue Water Project, (2) Columbia Gulf must permit the taps to be installed and in service no later than ten days after the upstream facilities have been constructed by Tennessee; and (3) Columbia Gulf's compliance with (1) and (2), is not conditioned upon any other requirement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's regulations (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on Tennessee. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than Tennessee.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 28, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5817 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Co.* v. *Columbia Gulf Transmission Co.*, 112 FERC ¶ 61,118, *order denying reh'g, denying stay, and issuing clarification*, 113 FERC ¶ 61,200 (2005).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–105–000, et al.]

Coastal Carolina Clean Power LLC, et al.; Electric Rate and Corporate Filings

April 12, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Coastal Carolina Clean Power LLC; Riverstone Holdings LLC; TC Group, L.L.C.; United Cogen Fuel LLC

[Docket No. EC06–105–000]

Take notice that on April 4, 2006, Coastal Carolina Clean Power LLC, Riverstone Holdings LLC, TC Group, L.L.C. and United Cogen Fuel LLC submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities, whereby United Cogen Fuel LLC proposes to transfer to Coastal Carolina Clean Power LLC an undivided 100 percent in the 30 megawatt biomass fueled facility owned by United Cogen Fuel LLC, located in Kenansville, North Carolina.

Applicatants state that a copy of the application was served upon the North Carolina Utilities Commission.

Comment Date: 5 p.m. Eastern Time on April 25, 2006.

2. Midwest Independent Transmission System Operator Inc.

[Docket Nos. ER04–691–071, EL04–104–065]

Take notice that on March 27, 2006, the Midwest Independent Transmission System Operator, Inc.(Midwest ISO), submitted an information filing with regards to the methodology for the refund of overcollected marginal loss surpluses under the Midwest ISO's Open Access Transmission and Energy Markets Tariff.

Comment Date: 5 p.m. Eastern Time on April 17, 2006.

3. Montana Alberta Tie, Ltd.

[Docket No. ER05–764–002]

Take notice that on March 31, 2006, Montana Alberta tie, Ltd., pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations submits an amendment to its April 1, 2006 application.

Comment Date: 5 p.m. Eastern Time on April 21, 2006.

4. ISO New England, Inc.

[Docket No. ER06–656–001]

Take notice that on April 10, 2006, ISO New England, Inc. filed its response to the Commission's April 5, 2006 request for additional information.

Comment Date: 5 p.m. Eastern Time on April 17, 2006.

5. Conectiv Energy Supply, Inc.

[Docket No. ER06–839–000]

Take notice that on March 22, 2006, Conective Energy Supply, Inc. pursuant to section 205 of the Federal Power Act and part 35 of the Commission's Rules and Regulations hereby submit a request for authorization to make wholesale power sales to its affiliate, Delmarva Power & Light Company.

Comment Date: 5 p.m. Eastern Time on April 17, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5816 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2204–024, Colorado]

City and County of Denver; Notice of Availability of Environmental Assessment

April 12, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for exemption from licensing for the Williams Fork Reservoir Hydroelectric Project, a small hydroelectric project of less than 5 megawatts, located on the Williams Fork River near its confluence with the Colorado River at Parshall, in Grand County, Colorado, and has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that issuing an exemption from licensing for the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Dianne Rodman at (202) 502–6077 or *dianne.rodman@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–5823 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time to Commence and Complete Project Construction and Soliciting Comments

April 12, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Extension of Time.

b. *Project No:* 11437–013.

c. *Date Filed:* March 1, 2006.

d. *Applicant:* Hydro Matrix Partnership, Ltd.

e. *Name of Project:* Jordan Dam Hydroelectric Project.

f. *Location:* The project is located on the Haw River in Chatham County, North Carolina.

g. *Pursuant to:* Public Law 107–322, 116 STAT. 2786.

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202) 408–5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 502–8838.

j. *Deadline for Filing Comments and or Motions:* May 12, 2006.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11437–013) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The licensee requests that the Commission grant a two-year extension of time from the existing deadlines to commence and complete project construction of the Jordan Dam Hydroelectric Project. This is the last 2-year extension authorized by Public Law 107–332.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of

the particular application to which the filing refers A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5818 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

April 12, 2006.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing)

b. *Applicants, Project Numbers, and Dates Filed:*

E.ON U.S. Hydro 1 LLC filed the application for Project No. 12658–000 on March 3, 2006, at 4:05 PM.

The Electric Plant Board of the City of Augusta, Kentucky filed the application for Project No. 12657–000 on March 3, 2006, at 4:51 PM.

The City of Hamilton, Ohio filed the application for Project No. 12667 on March 29, 2006 at 4:06 PM

c. Name of the project is the Meldahl Project. The project would be located on the Ohio River in Bracken County, Kentucky. The existing dam is owned and operated by the U.S. Army Corps of Engineers.

d. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For E.ON U.S. Hydro 1 LLC: Mr. Douglas Schetzel, E.ON U.S. Hydro 1 LLC, 220 West Main Street, Louisville, KY 40202, (502) 627–4838. For The Electric Plant Board of the City of Augusta, Kentucky: Mr. James B. Price, AJS Hydro Corp., P.O. Box 5550, Gatlinburg, TN 37738, (865) 436–0402 and Donald H. Clark, the Law Offices of GKRSE, 1500 K Street NW, Suite 330, Washington, DC 20005, (202) 408–5400. For The City of Hamilton, Ohio: Mr. Michael Perry, Director of Electric, City of Hamilton, Ohio, 345 High Street, Hamilton, OH 45011, (513) 785–7229.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. Description of Projects: The project proposed by E.ON U.S. Hydro 1 LLC using the U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam would consist of: (1) A proposed intake structure, (2) a proposed powerhouse containing three generating units having a total installed capacity of 93 megawatts, (3) a proposed 1.8-mile-long, 138 kilovolt transmission line; and (4) appurtenant facilities. The project would have an annual generation of 443 gigawatt-hours, which would be sold to a local utility.

The project proposed by The Electric Plant Board of the City of Augusta, Kentucky using the U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam would consist of: (1) A proposed intake structure, (2) a proposed powerhouse containing three generating units having a total installed capacity of 77 megawatts, (3) a proposed 2-mile-long, 138 kilovolt transmission line; and (4) appurtenant facilities. The project would have an annual generation of 400 gigawatt-hours, which would be sold to a local utility.

The project proposed by The City of Hamilton, Ohio using the U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam would consist of: (1) A proposed intake structure, (2) a proposed powerhouse containing three generating units having a total installed capacity of 114 megawatts, (3) a proposed 2-mile-long, 138 kilovolt transmission line; and (4) appurtenant facilities. The project would have an annual generation of 475 gigawatt-hours, which would be sold to a local utility.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The

term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', COMPETING APPLICATION, OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5819 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

April 12, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project Number:* P–1267–075.

c. *Date Filed:* March 8, 2006.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzard's Roost Hydroelectric Project.

f. *Location:* The project is located on the Saluda River in Greenwood, Laurens, and Newberry Counties, South Carolina. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Larry Smith, 600 Monument Street, P.O. Box P–103, Suite 102, Greenwood, SC 29646; phone: (864) 942–8556.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at (202) 502–8951, or by e-mail: *jon.cofrancesco@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* May 3, 2006.

k. *Description of the Application:* Greenwood County requests Commission approval of a proposed change in the location of a public boat launch facility at Greenwood Lake from a site previously approved by the Commission in its Order Modifying And Approving Boat Launch Facility Under Article 416, issued May 11, 2001. Under the Commission order, the facility was to be installed in Newberry County just east of the border with Laurens County on Harrington Drive. Greenwood County now proposes to install the facility in Laurens County on River Fork Road adjacent to an existing public fishing pier, located southwest of Waterloo, South Carolina. Greenwood County also requests the Commission to relieve its obligation to construct a boat launch facility at the previous location once the facility is completed at the new proposed site.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–1267–075). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5820 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for a Waiver of Releases Under Article 405 of License for the 2005–2006 Water Year and Soliciting Comments, Motions to Intervene, and Protests

April 12, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for a waiver of non-irrigation releases under Article 405 of the license for the water year 2005–2006.

b. *Project No:* P–1417–178.

c. *Date Filed:* April 5, 2006.

d. *Applicant:* Central Nebraska Public Power & Irrigation District.

e. *Name of Project:* Kingsley Dam Project.

f. *Location:* The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper Counties in south-central Nebraska.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Mike Drain, Natural Resources Supervisor, Central Nebraska Public Power and Irrigation District, 415 Lincoln Street, P.O. Box 740, Holdrege, NE 68949; (308) 995–8601.

i *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 502–6190, or e-mail address: vedula.sarma@ferc.gov.

j. *Deadline for filing comments and or motions:* April 27, 2006.

k. *Description of Request:* Because of prolonged and severe drought, Nebraska Public Power and Irrigation District requests a waiver, for the water year 2005–2006, of a requirement under license Article 405 for non-irrigation season releases from Lake McConaughy for diversion at the Keystone Diversion Dam.

l. *Locations of the Application:* A of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5821 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

April 12, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No:* 2165–024.

c. *Date Filed:* April 5, 2006.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* The Warrior River Project, which includes the Smith Dam development.

f. *Location:* The proposed action will take place at the Smith Dam development at the Mallard Point Marina on the south side of Simpson Creek, which is located in Cullman County, Alabama approximately 18 stream miles above the Smith Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, Sr. Engineer; Alabama Power Company Hydro Services; 600 18th Street North, Birmingham, AL 35203; (205) 257–1403.

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406, or by e-mail: *Lesley.Kordella@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 1, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal

Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2165–024) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee has requested Commission approval to replace three damaged boat docks at the existing Mallard Point Marina with two refurbished floating boat dock structures, and increase the number of fuel pumping locations on a fuel dock from one to four. The total number of docks would be reduced from four to three, and the total number of slips would be reduced from 92 to 66. The footprint of the existing marina would be reduced from 30,368 square feet to 22,830 square feet. In addition, a small store would be located on the fuel dock to provide service to boaters. There would be no dredging during construction and the boat dock structure would be constructed on land and floated into place.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5822 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions to Intervene, and Protests

April 12, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2413–077.

c. *Date Filed:* March 17, 2006.

d. *Applicant:* Georgia Power Company (GP).

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The project is located on the Oconee River in Green County, Georgia. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lee Glenn, Lake Resources Manager, Georgia Power Company, 125 Wallace Dam Road NE, Eatonton, GA 31024. Phone: (706) 485–8704.

i. *FERC Contact:* Gina Krump, *gina.krump@ferc.gov,* 202–502–6704.

j. *Deadline for filing comments and or motions:* May 12, 2006.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the ''e-Filing'' link. Please reference ''Wallace Dam Project, FERC Project No. 2413–077'' on any comments or motions filed.

k. GP requests Commission approval to permit Rochester and Associates, Inc. to construct three docks (two 10-slip boat docks and one 4-slip fuel dock) totaling 24 slips. GP is also proposing to construct a storage facility for 500 boats on adjoining non-project lands, and an associated concrete boat drop-off platform on project waters. The licensee states any required dredging would be permitted by GP, consistent with current permitting limitations. The facilities would be available for the private use of residents of Vintage Communities development.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS

AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5824 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–000]

El Paso Natural Gas Company; Notice of Informal Settlement Conference

April 12, 2006.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (EST) on April 25, 2006, and continuing April 26, 2006, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Hearing Room 1, Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to (202) 208–2106, with the required accommodations.

For additional information, please contact Hollis Alpert, *hollis.alpert@ferc.gov,* (202) 502–8783.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5826 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–7–000; Docket No. ER06–826–000] [1]

Presentations on the Role of RTO/ISO Market Monitors; PJM Market Monitoring Plan; Notice of Presentations on the Role of RTO/ISO Market Monitors

April 12, 2006.

The Federal Energy Regulatory Commission (FERC) will meet with the market monitors of regional transmission organizations (RTOs) and independent system operators (ISOs) to receive and discuss presentations on their role in their regional markets. The meeting is scheduled for May 18, 2006, in Room 2C, 888 First Street, NE., Washington, DC 20426 at or around 1 p.m. (EDT) and will conclude in late afternoon. (The starting time may be delayed by the Open Commission Meeting taking place that morning.) All interested persons are invited to attend.

The Commission has invited RTO/ISO market monitors to make presentations about their role as market monitors, their resources and how they are used, and their current market monitoring priorities.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the Webcasts and offers access to the meeting via phone bridge for a fee. If you have any questions, visit *http://www.CaptiolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

FERC conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

Transcripts of the meeting will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the events calendar approximately one week after the meeting.

All are invited. There is no pre-registration and there is no fee to attend this meeting. Questions about the meeting should be directed to William Booth at *William.Booth@FERC.gov* or by phone at 202–502–8849.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5830 Filed 4–18–06; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission will not make any decisions in this docket at this meeting; however, as the proceeding may be discussed, the Commission is noticing the docket to ensure no violation of the Government in Sunshine Act requirements occurs.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8160–1]

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 Our Children's Earth Foundation and Sierra Club (collectively, ''plaintiffs'') in the U.S. District Court Northern District of California—Oakland Division: *Our Children's Earth Foundation, et al.* v. *EPA*, No. C 0505184 (N.D. CA). On December 14, 2005, plaintiffs filed a complaint alleging that EPA failed to perform a non-discretionary duty to review and, if necessary, revise the standards for emissions of hazardous air pollutants for petroleum refineries as required by section 112(d)(6) of the Clean Air Act (''CAA''), 42 U.S.C. 7412(d)(6). Under the terms of the proposed consent decree, within 12 months, EPA must make a proposed determination whether or not to revise the standards for petroleum refineries, and within 24 months, EPA must make a final determination whether or not to revise the standards for petroleum refineries.

DATES: Written comments on the proposed consent decree must be received by May 19, 2006.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2006–0346, 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: Apple Chapman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5666; fax number (202) 564–5603; e-mail address: *chapman.apple@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The CAA section 112(d)(6) requires EPA to review and revise as necessary each emission standard for hazardous air pollutants every 8 years. In 1995, EPA promulgated emission standards for petroleum refineries at 40 CFR part 63, subpart CC. Plaintiffs filed a complaint alleging that EPA failed to perform a non-discretionary duty to review and, if necessary, revise the standards for emissions of hazardous air pollutants for petroleum refineries as required by section 112(d)(6) of the Clean Air Act, 42 U.S.C. 7412(d)(6). Under the terms of the proposed consent decree, within 12 months of entry of this consent decree, EPA shall sign and submit for publication in the **Federal Register** a notice of proposed revisions to the standards for petroleum refineries in 40 CFR part 63, subpart CC pursuant to 42 U.S.C. 7412(d)(6) or a notice of proposed determination that no revisions are necessary. Within 24 months of entry of this consent decree EPA shall sign and submit for publication in the **Federal Register** a notice of final revisions to the standards for petroleum refineries in 40 CFR part 63, subpart CC pursuant to 42 U.S.C. 7412(d)(6) or a notice of final determination that no revisions are necessary.

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 intervenors 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 determines, 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 Settlement

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–2006–0346 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *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 ''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.

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: April 13, 2006.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E6–5872 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0302; FRL–8065–6]

Temporary Docket Closure and Relocation of EPA's Office of Pesticide Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the temporary closure and relocation of the Office of Pesticide Programs (OPP) Docket. OPP is moving to One Potomac Yard, 2777 South Crystal Drive, Arlington, VA 22202. The new OPP Docket facility will be located in Room S–4400. In order to prepare for the relocation to the new facility, the OPP Docket will be closed to the public on Friday, April 28 through Friday, May 5, 2006, and will reopen to the public on Monday, May 8, 2006. Once reopened for business at the new facility, the OPP Docket hours of operation will remain 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Docket telephone number will remain 703–305–5805. The mailing address will remain the same, except the mail code will become (7502P).

FOR FURTHER INFORMATION CONTACT: Sharon McBride, Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5232; e-mail address: *mcbride.sharony@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. How Can I Access Docket Materials During the Closure?

Publicly available docket materials will remain available to the public through the electronic docket at *http://www.regulations.gov.*

Docket material, such as copyrighted material, that are only publicly available in hard copy form at the OPP Docket facility, will not be available for inspection at the OPP Docket facility during this period of closure. The OPP Docket will reopen to the public at 8:30 a.m. on Monday, May 8, 2006, in Room S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202.

B. How Can I Submit Public Comments During the Closure?

Public comments may continue to be submitted by one of the following two methods:

1. Electronically through the Federal eRulemaking portal at *http://www.regulations.gov* (which is available 24 hours a day/7 days a week). Please be sure to have the relevant docket identification (ID) number handy and follow the online instructions for submitting comments.

2. By mail through the U.S. Postal Service addressed to: Public Information and Records Integrity Branch (PIRIB) (7502P), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Any mail received by the U.S. Postal Service for this address during the closure period will be held and then delivered to the new facility on May 8, 2006.

C. What About Personal or Courier Deliveries?

The OPP Docket will not be available to accept any deliveries during the closure period.

Beginning at 8:30 a.m. on Monday, May 8, 2006, the OPP Regulatory Public Docket will be available to accept deliveries in Room S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. Be sure to always identify the appropriate docket ID number in your submissions.

D. How Can I Find out More about the OPP Move?

Until the move is complete, regular updates will be published on the OPP Web site at *http://www.epa.gov/pesticides/*.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: April 6, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–5744 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0203;FRL–8060–7]

Ethylene Oxide (ETO) Revised Risk Assessments; Notice of Availability and Solicitation of 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 February 22, 2006, concerning the availability of revised risk assessments and the solicitation of risk reduction options for ethylene oxide. This document is extending the comment period for 30 days, from April 24, 2006, to May 19, 2006.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0203, must be received on or before May 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0203, [*insert number*], by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public

Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0203, [*insert number*]. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are 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: Susan Bartow, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; e-mail address: *susan.bartow@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the 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. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

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 **ADDRESSEES** section of the February 22, 2006 **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** of February 22, 2006, Ethylene Oxide (ETO) Revised Risk Assessments; Notice of Availability, and Solicitation of Risk Reduction Options (Phase 5 of 6–Phase Process) (FRL–7764–4). In that document, EPA made available the Agency's revised risk assessments, initially issued for comment through a Federal Register notice published on August 3, 2005 (70 FR 44632) (FRL–7729–2); a response to comments; and related documents for ETO. EPA also solicited public comment on risk reduction options for ETO. EPA is hereby extending the comment period, which was set to end on April 24, 2006, to May 19, 2006, to allow additional time for commenters to review material that was inadvertently unavailable at the start of the comment period.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 13, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs

[FR Doc. 06–3778 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0156; FRL–8064–5]

Alkylbenzene Sulfonates Risk Assessment and Preliminary Risk Reduction Options; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment, preliminary risk reduction options, and related documents for the pesticide alkylbenzene sulfonates which

encompasses sodium dodecylbenzene sulfonate; dodecylbenzene sulfonic acid; and benzenesulfonic acid, C10–C16 alkyl derivatives, and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for alkylbenzene sulfonates through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. This is Phase 3 of the 4–Phase Process. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES Comments must be received on or before June 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0156, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0156. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are 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: Heather Garvie, Antimicrobials Division, (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; fax number: (703) 308–8481; e-mail address: *garvie.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessment, preliminary risk reduction options, and related documents for alkylbenzene sulfonates (encompassing sodium dodecylbenzene sulfonate; dodecylbenzene sulfonic acid; and benzenesulfonic acid, C10–C16 alkyl derivatives), and encouraging the public to suggest risk management ideas or proposals. The alkylbenzene sulfonates are both active and inert ingredients in pesticide products. As active ingredients, they are currently found in end-use products as a disinfectant, food-contact sanitizer, bacteriocide/bacteriostat, microbiocide/microbiostat, fungicide/fungistat, and virucide. As inert ingredients, they are found in end-use products, many of which are used in residential settings, and outdoors in agricultural settings. EPA developed the risk assessment and preliminary risk reduction options for alkylbenzene sulfonates 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 alkylbenzene sulfonates are both active and inert ingredients in pesticide products. As active ingredients, they are currently in 23 registered end-use products as a disinfectant, food-contact sanitizer, bacteriocide/bacteriostat, microbiocide/microbiostat, fungicide/fungistat, and virucide. Alkylbenzene sulfonates are in cleaners and sanitizers that are designated for use in agricultural, food handling and commercial/institutional/industrial settings. Examples of registered uses for alkylbenzene sulfonates include, but are not limited to: Application to indoor hard surfaces e.g., urinals, shower stalls, toilet bowls, etc., food dispensing equipment (e.g., pre-mix and post-mix vending machines), food contact surfaces (glasses, dishes, silverware, countertops, etc.), agricultural tools, and fruits and vegetables (post-harvest). As active ingredients, there are no residential or outdoor uses currently registered. As inert ingredients, there are approximately 350 registered end-use products containing these chemicals. Many of these products are used in residential settings, and outdoors in agricultural settings. The Agency's risk assessment identified dietary, residential and occupational risks of concern for some exposure scenarios. Because limited information is available for some exposure scenarios conservative assumptions were sometimes used in the risk assessment. The Agency is interested in receiving any information that could assist in refining the risk assessment.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for alkylbenzene sulfonates. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as ecological data to fill data gaps for aquatic toxicity studies for freshwater fish and invertebrates, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA is also releasing for public comment its preliminary risk reduction options for alkylbenzene sulfonates, and is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

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 alkylbenzene sulfonates, 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 alkylbenzene sulfonates, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment, few complex issues, and/or other factors. 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 **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for alkylbenzene sulfonates. 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, Alkylbenzene sulfonates Pesticides and pests.

Dated: April 4, 2006.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E6–5879 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0369; FRL–7772–4]

Chloroneb; Notice of Receipt of Request to Voluntarily Terminate Certain Uses of Pesticide Registrations and Request for Label Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request submitted by the registrant to voluntarily terminate certain uses of its chloroneb products and request label amendments. The request would terminate chloroneb use on residential lawns and turf, as well as on lawns and turf at parks and schools. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before May 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0369, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0369. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are 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: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; fax number: (703) 308–8041; e-mail address: *livingston.wilhelmena @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. Background on the Receipt of Requests to Terminate Certain Uses of its Chloroneb Products and Request for Label Amendments

This notice announces receipt by EPA of a request from Kincaid Inc. (See Table 3 of this unit) to voluntarily terminate certain uses of four chloroneb product registrations, and effect label amendments. Chloroneb is a fungicide currently registered for use on a wide variety of food crops but primarily used for pre-plant cottonseed treatment as well as on commercial turf and ornamentals. Other markets for chloroneb seed treatment uses include: Sugar beets, soybeans, cotton, and beans. In a letter dated January 9, 2006, Kincaid Inc. requested that EPA terminate certain uses of pesticide product registrations identified in this notice in Table 1 of this unit. Kincaid Inc. requests voluntary termination of chloroneb's use on residential lawns and turf, as well as on lawns and turf at parks and schools. Specifically, Kincaid requests that the following use be terminated: Turf, except for golf course tees, greens, collars, aprons, and spot treatment on fairways, as well as athletic fields used only by professional athletes. In addition to the use terminations, Kincaid requests the following statement be added to the label for its manufacturing-use registration (registration number 73782–1) identified in this notice in Table 2: ''This product may not be formulated into end use products for use on turf, except for use on golf course tees, greens, collars, aprons, and spot treatment on fairways, as well as athletic fields used for professional athletes.''

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to terminate certain uses of chloroneb product registrations. The affected products and the registrant making the request are identified in Table 1 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The chloroneb registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice in the **Federal Register**, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued shortly after the close of the comment period terminating the affected registrations.

TABLE 1.—CHLORONEB PRODUCT REGISTRATIONS WITH PENDING REQUEST FOR TERMINATION OF CERTAIN USES

Registration No.	Product name	Company
73782–1	Chloroneb Fungicide Technical	Kincaid Inc.
73782–2	Demosan 65W	Kincaid Inc.
73782–3	Terraneb SP Turf Fungicide	Kincaid Inc.
73782–4	K.E. Chloroneb Systemic Flowable Fungicide	Kincaid Inc.

TABLE 2.—CHLORONEB PRODUCT REGISTRATIONS WITH PENDING REQUEST FOR LABEL AMENDMENTS

Registration No.	Product name	Company
73782–1	Chloroneb Fungicide Technical	Kincaid Inc.

Table 3 of this unit includes the name and address of record for the registrant of the products listed in Table 1 and Table 2 of this unit.

TABLE 3.—REGISTRANT REQUESTING VOLUNTARY TERMINATION OF CERTAIN USES AND LABEL AMENDMENTS

EPA Company No.	Company name and address
73782	Kincaid Inc. P.O. Box 490 Athens, TN 37371

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Chloroneb

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 19, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the termination action.

In any order issued in response to this request for termination of certain uses of a product registration, EPA proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1: Registrant may sell and distribute existing stocks for one year from the date of the use termination request. The product may be sold, distributed, and used by people other than the registrant until existing stocks have been exhausted, provided that such sale, distribution, and use complies with the EPA-approved label and labeling of the product.

If the request for voluntary use termination is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 6, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–5748 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0507; FRL–7776–4]

Sodium Chlorate; Notice of Receipt of Requests to Voluntarily Cancel, Amend or Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily amend their registrations to terminate uses of certain products containing the pesticide sodium chlorate. The requests would terminate sodium chlorate use in or on residential use sites. The requests would not terminate the last sodium chlorate products registered for use in the U.S. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before May 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0507, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.
- **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0507. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are 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: Felicia Fort, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7478; fax number: (703) 308–8005; e-mail address: *fort.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action

to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from registrants, Kerr-McGee Chemical, LLC (now Tronox, LLC) and EKA Chemicals, Inc., to amend to terminate uses of four sodium chlorate product registrations. Sodium chlorate is used agriculturally as a defoliant and dessicant, primarily on cotton, however it is also applied to a wide variety of other crops including, but not limited to, rice, corn, soybeans, dry beans, potatoes, sunflowers, flax, safflower, chili peppers (for processing only), grain sorghum, and wheat. As a non-selective herbicide it is also applied to industrial/non-crop areas such as rights-of-ways, building perimeters, ditch banks, bleachers, airport runways, vacant lots, fire hydrants, or as a pre-paving treatment. Its residential uses include applications as a spot/edging treatment to driveway cracks, and crevices, around foundations, and under or around wood decks. Sodium chlorate is also used as an antimicrobial agent to generate chlorine dioxide. In letters dated September 26, 2005 and December 6, 2005, Kerr-McGee Chemical, LLC (now Tronox, LLC); and EKA Chemicals, Inc requested EPA to amend to terminate uses of pesticide product registrations identified in Table 1 of this notice. Specifically, the labels for the products listed in Table 1 will contain a statement indicating that the product is not for formulation of end use products for residential sites and/or prohibiting the use of these products for residential use. The registrants named above are no longer supporting these uses and wish to have them removed from product labels.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to amend to terminate uses of sodium chlorate product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The sodium chlorate registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling and/or amending the affected registrations.

TABLE 1.— SODIUM CHLORATE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
49620–2	EKA Sodium Chlorate Technical	EKA Chemicals, Inc.
49620–6	EKA Sodium Chlorate Tech 47	EKA Chemicals, Inc.
2342–897	Sodium Chlorate	Kerr-McGee Chemical, LLC (now Tronox, LLC)
2342–977	Sodium Chlorate Solution	Kerr-McGee Chemical, LLC (now Tronox, LLC)

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.— REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
2342	Kerr-McGee Chemical, LLC (now Tronox, LLC) 123 Robert S. Kerr Avenue Oklahoma City, OK 73102
49620	EKA Chemicals, Inc. 1775 West Oak Commons Court Marietta, GA 30062-2254

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before

acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Sodium Chlorate

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before 30 days after date of publication in the **Federal Register**. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. If the request for use termination is granted as discussed above, the Agency intends to issue a cancellation order that will allow the registrant to continue to sell and distribute existing stocks of products bearing old labeling for 18 months after the date of the use termination order. Persons other than the registrant are allowed to continue to sell and/or use existing stocks of products bearing old labeling until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 10, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–5749 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0543; FRL–7769–5]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Flufenoxuron in or on Various Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or amendment of regulations for residues of the insecticide flufenoxuron, 1-[4-(2-chloro-,,-trifluoro-p-tolyloxy)-2-fluorophenyl]-3-(2,6-difluorobenzoyl)urea] in or on apple, pear, orange, orange oil, grape, raisin, cattle (meat, meat by-products, fat), milk, and milk fat.

DATES: Comments must be received on or before May 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0543 and pesticide petition number (PP) 8E4943, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

• **Important Note**: OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0543. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this Docket Facility are 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: Mark Suarez, Registration Division, (7505C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; (703) 305-0120; e-mail: *suarez.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 8E4943. BASF Corporation, 26 Davis Drive, P.O. Box13528, Research Triangle Park, NC 27709-3528, proposes to establish a tolerance for residues of the insecticide flufenoxuron, 1-[4-(2-chloro-,,-trifluoro-p-tolyloxy)-2-fluorophenyl]-3-(2,6-difluorobenzoyl)urea] in or on food commodities) apple and pear at 1.0 parts per million (ppm); orange at 0.3 ppm; orange oil at 60.0 ppm; grape at 0.2 ppm; raisin at 0.8 ppm; cattle meat at 0.30 ppm; cattle meat by-products at 1.5 ppm; fat at 6.0 ppm; milk at 0.6 ppm; and milk fat at 3.0 ppm. Practical analytical methods for detecting and measuring the level of flufenoxuron residues in the commodities of this petition are submitted to EPA with this petition. Each analytical method is a high power liquid chromatography (HPLC) procedure with ultraviolet (UV) detection. These validated methods are appropriate for the enforcement purposes of this petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 4, 2006.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5873 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0120; FRL–8065–8]

Notice of Filing of a Pesticide Petition for a Certain Chemical from the Exemption from the Requirement of Regulations on All Food Commodities When Used as an Inert Ingredient in Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of regulations for residues of poly(acrylic acid/butyl acrylate/methacrylic acid/methyl acrylate/methyl methacrylate), salt with2-amino-2-methyl-1-propanol in or on all food commodities when used as an inert ingredient in pesticide products.

DATES: Comments must be received on or before May 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPP–2006–0120, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

• **Important Note:** OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Regulatory Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0120. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this docket facility are 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:

Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–8380; e-mail address: *gandhi.bipin@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 at the end of the pesticide petition summary of interest.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of a pesticide

chemical in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner 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 docket ID number ''EPA–HQ–OPP–2006–0120.'' Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7032. E. I. du Pont de Nemours & Company, Inc., 1007 Market St., Wilmington, DE 19898, proposes to establish an exemption from the requirement of a tolerance for residues of poly(acrylic acid/butyl acrylate/methacrylic acid/methyl acrylate/methyl methacrylate) (CAS Reg. No. 153163–36–1) in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 11, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5875 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0325; FRL–8058–1]

Notice of Filing of a Pesticide Petition for the Establishment of an Exemption from the Requirement of Regulations for Residues of 6–Benzyladenine in or on Pear

AGENCY Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of regulations for residues of 6–benzyladenine in or on pear.

DATES: Comments must be received on or before May 19, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0325 and pesticide petition number (PP) 6F7035, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Public Docket (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPP Regulatory Public Docket, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

• **Important Note**: OPP will be moving to a new location the first week of May 2006. As a result, from Friday, April 28 to Friday, May 5, 2006, the OPP Regulatory Public Docket will NOT be accepting any deliveries at the Crystal Mall #2 address and this facility will be closed to the public. Beginning on May 8, 2006, the OPP Regulatory Public Docket will reopen at 8:30 a.m. and deliveries will be accepted in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. The mail code for the mailing address will change to (7502P), but will otherwise remain the same. The OPP Public Docket telephone number and hours of operation will remain the same after the move.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0325. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket at the location identified under ''Delivery'' and ''Important Note.'' The hours of operation for this Docket Facility are 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: Denise Greenway, Biopesticides and Pollution Prevention Division, (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6F7035. Valent Biosciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048–6316, proposes to establish an exemption from the requirement of a tolerance for residues of the biopesticide Q6–benzyladenine in or on pear. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 11, 2006

Janet L. Andersen

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–5750 Filed 4–18–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 11, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (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 June 19, 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 Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith at 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and the Americans with Disabilities Act of 1990, *Fifth Report and Order,* CC Docket Nos. 90–571 and 98–67, FCC 02–269.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, state, local or tribal government.

Number of Respondents: 5,053.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion, Annual, Every five years, and One-time reporting requirements; Recordkeeping requirement; and Third party disclosure requirement.

Total Annual Burden: 26,837 hours.

Total Annual Cost: $0.

Privacy Impact Assessment: No.

Needs and Uses: On October 25, 2002, the Commission released the *Fifth Report and Order,* In the Matter of Telecommunications Relay Services and the Americans with Disabilities Act of 1990, (*Report and Order*), CC Docket Nos. 90–571 and 98–67, FCC 02–269. The *Report and Order* has eliminated the coin sent-paid requirement and has encouraged specific outreach and education programs to inform Telecommunications Relay Services (TRS) users of their options when placing calls from payphones. Because the Commission concluded that it is infeasible to provide coin sent-paid toll relay service through payphones at this time, and the coin sent-paid toll functionality was not necessary to achieve functional equivalence, carriers no longer needed to provide coin sent-paid toll TRS calls from payphones. The *Report and Order* has required carriers to continue to provide coin sent-paid local calls free to TRS users. The *Report and Order* has also required carriers via the Industry Team to submit a one time report on the efforts industry has made to educate consumers on how to make toll coin sent-paid calls.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5563 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 6, 2006.

SUMMARY: The Federal Communications Commissions, 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 May 19, 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: 3060–0466.

Title: Sections 73.1201, 74.783 and 74.1283, Station Identification.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local and Tribal Government.

Number of Respondents: 2,900.

Estimated Time per Response: 10 minutes—3 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 5,866 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1201(a) requires television broadcast licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally. 47 CFR 73.1201(b) requires the licensees' station identification to consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location. The name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. Digital Television (DTV) stations choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a station with major channel number 26 may use 26.1 to identify a High Definition Television (HDTV) program service and 26.2 to identify a Standard Definition Television (SDTV) program service. No other insertion between the station's call letters and the community or communities specified in its license is permissible. 47 CFR 74.783(b) requires licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television licensee to keep in its file, and available

to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or service representative to be contacted in the event of malfunction of the translator. 47 CFR 74.783(e) permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. LPTV respondents are required to use the on-line electronic system. To enable these respondents to use this on-line system, the Commission eliminated the requirement that holders of LPTV construction permits submit with their call sign requests a certification that the station has been constructed, that physical construction is underway at the transmitter site, or that a firm equipment order has been placed. 47 CFR 74.1283(c)(1) requires FM translator stations whose station identification is made by the primary station to furnish current information on the translator's call letters and location. This information is kept in the primary station's files. This information is used to contact the translator licensee in the event of malfunction of the translator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5575 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 6, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (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 June 19, 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: 3060–0208.

Title: Section 73.1870, Chief Operators and Section 73.1230, Posting of Station License.

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: 18,498.

Estimated Time per Response: 26 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 484,019 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5576 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 7, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 19, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers (ETCs) Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 2–60 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as an extension (no change in requirements) in order to obtain the full three-year clearance from them. Section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. The Commission concluded that petitions for designation filed under section 214(e)(6) relating to ''near reservation'' areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking ETC designation in such areas must follow the procedures outlined in the Twelfth Report and Order, FCC 00–208, for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5888 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 12, 2006.

SUMMARY: The Federal Communications Commission, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, and 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). An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 19, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Leslie F. Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.* If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1088.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991,

Report and Order and Third Order on Reconsideration, CG Docket No. 05–338, FCC 06–42.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business and other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 5,000,000 (4 million facsimile advertisement senders and 1,000,000 complainants.

Number of Responses: 5,160,000 responses.

Estimated Time per Response: 15 seconds to 1 hour.

Frequency of Response: On occasion, monthly, and annual reporting requirements; Recordkeeping; Third party disclosure.

Total Annual Burden: 13,180,000 hours.

Total Annual Cost: $60,000,000.

Privacy Impact Assessment Implication(s): Yes.

Needs and Uses: On April 5, 2006, the Commission adopted a *Report and Order and Third Order on Reconsideration, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, CG Docket Nos. 02–278 and 05–338, FCC 06–42, which modified the Commission's facsimile advertising rules to implement the Junk Fax Prevention Act.

With the exception of item (3) below, the information collection requirements are *identical* to those proposed and approved by OMB on March 15, 2006.

(1) *Opt-out Notice and Do-Not-Fax Requests Recordkeeping.* The rules require senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender. The notice must be clear and conspicuous (apparent to a reasonable consumer); separate from the advertising copy or other disclosures; and placed at either the top or bottom of the fax. In addition,

the Notice must include a domestic contact telephone, a domestic facsimile machine number for the recipient to transmit such a request to the sender, and a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement. The cost-free mechanism must include one of the following: a toll-free telephone number; a toll-free facsimile number; a Web site address; or email address. A local telephone number may be considered a cost-free mechanism so long as the advertisements are sent to local customers for whom a call to that number would not result in long distance or other separate charges. Finally, the telephone and facsimile numbers and cost-free mechanism must permit an individual or business to make such a request at any time on any day of the week. Recipients of fax advertisements must use one of the opt-out methods identified on the sender's facsimile so as not to impair an entity's ability to account for all requests and process them in a timely manner. Senders must comply with an opt-out request within the shortest reasonable time of such request, not to exceed 30 days.

(2) *Established Business Relationship Recordkeeping.* In addition, the Junk Fax Prevention Act provides that the sender, *e.g.*, a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an ''established business relationship'' with the recipient. The Commission amended its rules to comply with the Junk Fax Prevention Act regarding the express recognition of an EBR exemption. The Commission did not limit the duration of the EBR for fax advertising. There is no ongoing reporting requirement associated with these rules. If, however, a complaint is filed involving the existence of an EBR, the facsimile sender bears the burden of proof as to the validity of an EBR, or the possibility that it was formed prior to July 9, 2005. The rules do not require that any specific records be kept by fax senders. Instead, they may use records kept in the usual course of business showing an EBR, such as purchase agreements, sales slips, applications, and inquiry records.

(3) *Facsimile Number Recordkeeping.* The Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided voluntarily by the recipient. The Commission's amended rules provide that if a sender relies on an EBR for permission to fax an advertisement, the sender must have obtained the number of the telephone facsimile machine through the voluntary communication of such number, within the context of such EBR or through a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number. It would be permissible for the sender to obtain the number directly from the recipient (*e.g.*, through the recipient's letterhead, business cards, application, membership renewal form). It would be permissible for the sender to obtain the number from the recipient's *own* directory, advertisement, or internet site, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the facsimile number in question. On the other hand, if the sender obtains the number from sources of information compiled by third parties—*e.g.*, membership directories, internet databases—the sender must take reasonable steps to verify that the recipient consented to have the number listed, such as calling or emailing the recipient. For an EBR in existence prior to July 9, 2005, there is a presumption that if a valid EBR existed prior to July 9, 2005, the sender had the facsimile number prior to that date as well. There is no ongoing reporting requirement associated with these rules. If, however, a complaint is filed involving how the facsimile number was obtained, the sender bears the burden of proof that the number was voluntarily provided by the recipient.

(4) *Express Invitation or Permission Recordkeeping.* In the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement. When a consumer has made an opt-out request of the sender, the sender must demonstrate that the consumer subsequently gave his express permission to receive faxes. Such express invitation or permission may be provided orally or in writing, including through electronic methods. While there is no ongoing recordkeeping or reporting requirement associated with this rule, if a complaint is filed, the facsimile sender must be prepared to provide clear and convincing evidence of the existence of such permission.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–5889 Filed 4–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 06–53; DA 06–494]

Complaint Filed by Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.; Buford Communications I, L.P. d/b/a Alliance Communications Network; WEHCO Video, Inc.; and TCA Cable Partners d/b/a Cox Communications Against Entergy Arkansas, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission released a document initiating a hearing to determine whether Entergy Arkansas, Inc. (Entergy) unlawfully imposed on Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.; Buford Communications I, L.P. d/b/a Alliance Communications Network; WEHCO Video, Inc.; and TCA Cable Partners d/b/a Cox Communications (collectively, Cable Operators) a variety of allegedly unjust, unreasonable, and discriminatory terms and conditions of attachment, and whether Entergy unlawfully denied Comcast of Arkansas, Inc. and Alliance Communications Network access to its poles. To avail themselves of the opportunity to participate in this hearing, the parties were required to file a written Notice of Appearance with the Office of the Commission Secretary, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the document.

DATES: The document was mailed to the parties on March 2, 2006. The parties were required to file their Notices of Appearance by March 22, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–204(B), Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Engel, 202–418–1516.

SUPPLEMENTARY INFORMATION: The complete text of this Hearing Designation Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *www.bcpiweb.com.*

Federal Communications Commission.

Christopher N. Olsen,

Deputy Chief, Enforcement Bureau.

[FR Doc. E6–5580 Filed 4–18–06; 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.: 011867–003.

Title: Norasia/GSL/CSCL Round the World Service Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; Gold Star Line Ltd.; and Norasia Container Lines Limited, Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes the China Shipping companies as parties to the agreement and restates and renames the agreement.

Agreement No.: 011939–001.

Title: COSCON/Agreement 011745 TransPacific All Water Vessel Sharing Agreement (Cue Service).

Parties: COSCO Container Lines Company Ltd.; Evergreen Marine Corporation Ltd.; Italia Marittima S.p.A.; and Hatsu Marine Limited.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment changes the total number of vessels deployed under the agreement from nine to eight.

Agreement No.: 011954.

Title: Maersk Line/Westwood Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Westwood Shipping Lines, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP, 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Maersk to charter space to Westwood between ports in Washington State and ports in Japan and Korea.

By Order of the Federal Maritime Commission.

Dated: April 14, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–5862 Filed 4–18–06; 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:

Fordpointer Shipping (N.Y.) Inc., 41–40 Union Street, #7H, Flushing, NY 11355, Officers: Yvonne Kao, Vice President, (Qualifying Individual), Tommy Yu, President.

Trans World Logistics LLC, 9969 SW 118 Ct., Miami, FL 33186, Officer: James Conroy, President, (Qualifying Individual).

LCL Shipping USA, Inc., 1951 W. 153rd Street, Gardena, CA 90249, Officers: Tim Mao, CEO, (Qualifying Individual), Le Thi Thu Ha, Director.

Grand Warehousing and Shipping, Inc., 2315 NW. 107th Avenue, #B17, Doral, FL 33172, Officers: Lorenzo Lorenzo, Vice President, (Qualifying Individual), Nily Cohen, President.

NVS International Inc., 1600 West Blancke Street, Linden, NJ 07036, Officers: Natalya Soltys, President, (Qualifying Individual), Vyacheslav Soltys, Vice President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

BC Global Logistics Inc., 1210 W. Euclid Avenue, Arlington Heights, IL 60005, Officer: Wantanee Jackie Benkler, President, (Qualifying Individual).

Vanguard International, Inc., 30039 Ahern Avenue, Union City, CA 94587, Officers: Elaine Chang, Director, (Qualifying Individual), Honkai Chang, President.

Montebello Management Company, LLC dba Aero Logistics; Aero Logistics of the United States; BFG Global, 345 Swift Avenue, So. San Francisco, CA 94080, Officers: Michael Lee Smith, Vice President, (Qualifying Individual), John Fowler, CEO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

EOM Shipping, 1200 Central Avenue, Suite 4, Union City NJ 07087, Officer: Shay Harpaz, President, (Qualifying Individual).

Scanwell Logistics (ATL) Inc., 4799 Aviation Pkwy, Suite H, College Park, GA 30349, Officers: Dennis Choy, President, (Qualifying Individual), Adam Hassan, Chairman.

Global Logistical Connections, 8 Third Place, Long Beach, CA 90802, Officer: Derek Scarbrough, President, (Qualifying Individual).

Dated: April 14, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–5863 Filed 4–18–06; 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 *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 May 15, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Pryor Bancorp, Inc., Pryor, Oklahoma; to acquire 14.29 percent of the voting shares of Carson River Community Bank (in organization), Carson City, Nevada.

Board of Governors of the Federal Reserve System, April 14, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5847 Filed 4–18–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations Requested/Open for the 2006 Secretary's Innovation in Prevention Awards

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) seeks nominations of public and private sector organizations to receive the 2006 Secretary's Innovation in Prevention Awards Initiative. This activity is part of a broader Departmental initiative called Steps to a Healthier U.S. that advances President George W. Bush's HealthierUS goal of helping Americans live longer, better and healthier lives. The statutory authority for this health promotion activity is Section 1703 (42 U.S.C. 300u–2) from Title XVII of the Public Health Service Act. The Secretary's Innovation in Prevention Awards Initiative will identify and celebrate outstanding organizations that have implemented innovative and creative chronic disease prevention and health promotion programs. To be nominated, a program must address at least one of the following risk factors:

(1) Obesity;
(2) Physical activity; and
(3) Nutrition.

The Department intends that these awards will provide an opportunity to increase public awareness of creative approaches to develop and expand innovative health programs and duplication of successful strategies.

Awards will be given in the following categories:

- Faith-Based and Community Initiatives
- Health Care Delivery
- Healthy Workplace
  —Large Employer >500 employees
  —Small Employer <500 employees
- Non-Profit
- Public Sector
- Schools (K–12)

The following criteria will be taken into consideration upon review:

- Creativity/Innovation
- Leadership
- Sustainability
- Replicability
- Effectiveness
- Receipt of other national award(s)/recognition

DATES: Nominations must be received by 5 p.m. EDT, June 15, 2006.

Nominations: Partnership for Prevention, a 501(c)(3) focused on health promotion, is coordinating the nomination process for the Innovation in Prevention Awards on behalf of the HHS. Nominations can only be made online at *http://www.prevent.org/awards2006*. For more information, contact Partnership for Prevention at (202) 785–4943 or *2006innovationawards@prevent.org* Partnership for Prevention may request additional information as necessary.

SUPPLEMENTARY INFORMATION: HHS is the U.S. government's principal agency for promoting and protecting the health of all Americans. HHS manages many programs, covering a broad spectrum of health promotion and disease prevention services and activities. Leaders in the business community, State and local government officials, tribes and tribal entities and charitable, faith-based, and community organizations have expressed an interest in working with the Department to promote healthy choices and behaviors. The Secretary welcomes this interest. With this notice, the Secretary outlines opportunities to identify and celebrate outstanding organizations that have implemented innovative and creative chronic disease prevention and health promotion programs.

Dated: April 11, 2006.

John O. Agwunobi,

Assistant Secretary for Health.

[FR Doc. 06–3759 Filed 4–18–06; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality; Meeting of the Citizens' Health Care Working Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Citizens' Health Care Working Group (the Working Group) mandated by section 1014 of the Medicare Modernization Act.

DATES: A business meeting of the Working Group will be held on Sunday, April 30, 2006 from 8:30 a.m. to 4:30 p.m. and Monday, May 1, 2006 from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will take place at the Courtyard by Marriott, 1900 Connecticut Avenue, NW., Washington, DC 20009 in the Sequoia Room. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1514 or *Caroline.Taplin@ahrq.hhs.gov.* If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda for this Working Group meeting will be available on the Citizens' Working Group Web site, *http://www.citizenshealthcare.gov.* Also available at that site is a roster of Working Group members. When a summary of this meeting is completed, it will also be available on the Web site.

SUPPLEMENTARY INFORMATION: Section 1014 of Pub. L. 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Citizen Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and (3) submit its recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: the

Secretary of DHHS is designated as a member by statute and the Comptroller General of the U.S. Government Accountability Office (GAO) was directed to name the remaining 14 members whose appointments were announced on February 28, 2005.

Working Group Meeting Agenda

The Working Group business meeting on April 30th and May 1st will be devoted to ongoing Working Group business. Topics to be addressed are expected to include: a summary of citizen input to date, the development of interim recommendations, and the process for obtaining public comments on these interim recommendations.

Submission of Written Information

The Working Group invites written submissions on those topics to be addressed at the Working Group business meeting listed above. In general, individuals or organizations wishing to provide written information for consideration by the Citizens' Health Care Working Group should submit information electronically to *citizenshealth@ahrq.gov.* Separate submissions by topic will facilitate review of ideas submitted on each topic by the Working Group and the public.

Dated: April 12, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–3718 Filed 4–18–06; 8:45am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Research Dissemination and Implementation.
Date: June 15–16, 2006 (Open from 8 a.m. to 8:15 a.m. on June 15 and closed for remainder of the meeting).
2. *Name of Subcommittee:* Health Systems Research.
Date: June 15–16, 2006 (Open from 8 a.m. to 8:15 a.m. on June 15 and closed for remainder of the meeting).
3. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.
Date: June 22–23, 2006 (Open from 8 a.m. to 8:15 a.m. on June 22 and closed for remainder of the meeting).
4. *Name of Subcommittee:* Health Care Technology and Decision Sciences.
Date: June 22–23, 2006 (Open from 8 a.m. to 8:15 a.m. on June 22 and closed for remainder of the meeting).
5. *Name of Subcommittee:* Health Care Research Training.
Date: June 29–30, 2006 (Open from 8 a.m. to 8:15 a.m. on June 29 and closed for remainder of the meeting).

All the meetings above will take place at: Agency for Healthcare Research and Quality, John Eisenberg Conference Center, 540 Gaither Road, Rockville Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: April 11, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–3719 Filed 4–18–06; 8:45am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Summary of Special Exposure Cohort Petitions and National Institute for Occupational Safety and Health Findings

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Pursuant to the requirements of 42 CFR 83.15(a), the Department of Health and Human Services (HHS) gives notice of petitions to add classes of employees to the Special Exposure Cohort (SEC) and the findings of the National Institute for Occupational Safety and Health (NIOSH) from evaluating these petitions that are to be considered by the Advisory Board on Radiation and Worker Health April 25–27, 2006 (see notice: **Federal Register**/ Vol. 71, No. 66/Thursday, April 6, 2006/ Notices, p. 17470).

Summary of petitions and NIOSH findings:

1. Y–12 Plant, Oak Ridge, Tennessee

Qualified Petitioners: Survivors of Y–12 Plant Department of Energy (DOE) contractor employees.

Initial Proposed Class Definition, Subject to Revision as Warranted by the Evaluation: All steamfitters, pipefitters, and plumbers who worked at Y–12 from October, 1944 through December, 1957.

Basis of the Petition: Documentation or statements provided by affidavit indicating that radiation exposures and doses to members of the proposed class were not monitored either through personal or area monitoring.

NIOSH Finding and NIOSH Proposed Class Definition: NIOSH does not have access to sufficient information to estimate radiation dose with sufficient accuracy for employees of the DOE or DOE contractors or subcontractors who were monitored or should have been monitored for thorium exposures while working in Building 9202, 9204–1, 9204–3, 9206, or 9212 at Y–12 during the period January 1948 through December 1957. NIOSH has determined that health was endangered for those workers who were employed for at least 250 aggregated work days within the parameters established for this class or in combination with work days within the parameters for one or more classes of employees in the SEC.

2. Rocky Flats Plant, Golden, Colorado

Qualified Petitioner: Labor organization representing or formerly having represented DOE or DOE contractor or subcontractor employees who would be included in the proposed class of employees.

Initial Proposed Class Definition, Subject to Revision as Warranted by the Evaluation: All represented members, past, present and current, of United Steelworkers of America (USWA) Local 8031 and its predecessors, that worked at the Rocky Flats Plant, Golden, Colorado, from April 1952 to February 15, 2005.

Bases of the Petition:

a. Documents or statements provided by affidavit indicating that radiation exposures and doses to members of the proposed class were not monitored, either through personal or area monitoring.

b. Documents or statements provided by affidavit indicating that radiation monitoring records for members of the proposed class have been lost, falsified, or destroyed; or that there is no information regarding monitoring, source, source term, or process from the site where the employees worked.

c. A report from a health physicist or other individual with expertise in radiation dose reconstruction documenting the limitations of existing DOE records on radiation exposures at the facility, as relevant to the petition.

d. A scientific or technical report, issued by an agency of the Executive Branch of Government, or published in a peer-reviewed journal, that identifies dosimetry and related information that are unavailable (due to either a lack of monitoring or the destruction or loss of records) for estimating the radiation doses of employees covered by the petition.

NIOSH Finding: NIOSH has established that it has access to sufficient information to estimate the maximum radiation dose incurred by any member of the class as identified above, or estimate radiation doses more precisely than a maximum dose estimate. Information available from the Rocky Flats Site Profile document and additional resources is sufficient to estimate the maximum internal and external potential exposure to members of the proposed class under plausible circumstances during the specified period.

3. Nevada Test Site, Mercury, Nevada

Qualified Petitioner: DOE contractor or subcontractor employee who would be included in the proposed class of employees.

Initial Proposed Class Definition, Subject to Revision as Warranted by the Evaluation: Employees of the DOE or DOE contractors or subcontractors who worked at the Nevada Test Site during the period January 27, 1951 through December 31, 1962.

Basis of the Petition: NIOSH has determined that there is insufficient information to complete a dose reconstruction for the employee identified in the petition, and NIOSH has notified the employee, Department of Labor (DOL), and DOE of this finding. HHS will consider this finding sufficient, without further consideration, to determine that it is not feasible to estimate the levels of radiation doses of members of the class with sufficient accuracy.

NIOSH Finding and NIOSH Proposed Class Definition: NIOSH does not have access to sufficient information to estimate the potential internal radiation dose with sufficient accuracy for employees of the DOE or DOE contractors or subcontractors who worked at the Nevada Test Site during the period January 27, 1951 through December 31, 1962. NIOSH has determined that health was endangered for those workers who were employed for at least 250 aggregated work days within the parameters established for this class or in combination with work days within the parameters for one or more classes of employees in the SEC.

4. Pacific Proving Ground, Marshall Islands

Qualified Petitioner: Survivor of former DOE or DOE contractor or subcontractor employee.

Initial Proposed Class Definition, Subject to Revision as Warranted by the Evaluation: All Scientists and Scientific Couriers that worked on Enewetak Atoll, Pacific Proving Grounds, Marshall Islands, from July 1, 1958 until August 31, 1958 (Operation Hardtack I).

Basis of the Petition: Documentation or statements provided by affidavit indicating that radiation exposures and doses to members of the proposed class were not monitored, either through personal or area monitoring.

NIOSH Finding and NIOSH Proposed Class Definition: NIOSH does not have access to sufficient information to document or estimate either the potential maximum internal radiation dose, or to estimate such radiation doses more precisely than a maximum dose estimate for employees of the DOE or DOE contractors or subcontractors who were monitored or should have been monitored for exposures to ionizing radiation as a result of nuclear weapons testing, under plausible circumstances during the period of Atomic Energy Commission operations at the Pacific Proving Ground, 1946 through 1962. NIOSH has determined that health was endangered for those workers who were employed for at least 250 aggregated work days within the parameters established for this class or in combination with work days within the parameters for one or more classes of employees in the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: April 13, 2006.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E6–5851 Filed 4–18–06; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision To Evaluate a Petition to Designate a Class of Employees at the Feed Materials Production Center (FMPC), Fernald, OH

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Feed Materials Production Center (FMPC), Fernald, Ohio, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Feed Materials Production Center (FMPC), Fernald, Ohio.

Location: All locations.

Job Titles and/or Job Duties: All employees of the Department of Energy (DOE), DOE contractors and subcontractors.

Period of Employment: January 1, 1951 through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: April 13, 2006.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E6–5852 Filed 4–18–06; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Amendment of February 4, 2004, Order To Embargo Birds and Bird Products Imported From Pakistan

SUMMARY: On February 4, 2004, the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services issued an order to ban immediately the import of all birds (Class: *Aves*) from specified countries, subject to limited exemptions for returning pet birds of U.S. origin and certain processed bird-derived products. HHS/CDC took this step because birds from these countries potentially can infect humans with avian influenza (influenza A/ [H5N1]). The February 4, 2004, order complemented a similar action taken at the same time by the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA).

On March 10, 2004, HHS/CDC lifted the embargo of birds and bird products from the Hong Kong Special Administrative Region (HKSAR) because of the documented public-health and animal health measures taken by Hong Kong officials to prevent spread of the outbreak within the HKSAR, and the absence of highly pathogenic avian influenza H5N1 cases in Hong Kong's domestic and wild bird populations. USDA/APHIS took a similar action. On September 28, 2004, HHS/CDC extended the embargo on birds and bird products to include Malaysia because of the documented cases of highly pathogenic avian influenza A H5N1 in poultry in Malaysia. On July 20, 2005, USDA/APHIS adopted as a final rule the interim rule that became effective on February 4, 2004, which amended its regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. (See 70 FR 41608 [July 20, 2005].) As the United Nations Food and Agriculture Organization and the World Organization for Animal Health (OIE) have confirmed additional cases of highly pathogenic avian influenza (H5N1), USDA/APHIS has added additional countries to its ban. Because of the documentation of highly pathogenic avian influenza H5N1 in poultry, HHS/CDC added the following countries to its embargo: Kazakhstan, Romania, Russia, Turkey, and Ukraine on December 29, 2005; Nigeria on February 8, 2006; India on February 22, 2006; Egypt on February 27, 2006; Niger on March 2, 2006; Albania, Azerbaijan, Cameroon, and Burma (Myanmar) on March 15, 2006; Israel on March 20, 2006; Afghanistan on March 21, 2006; Jordan on March 29, 2006; and Burkina Faso on April 10, 2006.

On April 4, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Pakistan. At this time, HHS/CDC is adding Pakistan to its current embargo. This action is effective on April 10, 2006, and will remain in effect until further notice.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2006, OIE reported confirmation of highly pathogenic avian influenza H5 type in commercial poultry in Charsada and Abbottabad, Northwest Frontier, Pakistan. H5N1 typing was confirmed by OIE on April 4, 2006.

Introduction of birds infected with highly pathogenic avian influenza H5N1 into the United States could lead to outbreaks of disease among birds and among the human population, a significant public health threat. Banning the importation of all avian species from affected countries is an effective means of limiting this threat. HHS/CDC is therefore taking this action to reduce the likelihood of introduction or spread of influenza A H5N1 into the United States.

Immediate Action

Therefore, pursuant to 42 CFR 71.32(b), HHS/CDC is amending the February 4, 2004, order to add Pakistan to the list of countries subject to the order's embargo of birds and products derived from birds. All other portions of the February 4, 2004, order, as further amended on March 10, 2004; September 28, 2004; December 29, 2005; February 8, 2006; February 22, 2006; February 27, 2006; March 2, 2006; March 15, 2006; March 20, 2006; March 21, 2006; March 29, 2006; and April 10, 2006, shall remain in effect until further notice.

Dated: April 13, 2006.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. E6–5839 Filed 4–18–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Amendment of February 4, 2004, Order To Embargo Birds and Bird Products Imported From Burkina Faso

SUMMARY: On February 4, 2004, the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services issued an order to ban immediately the import of all birds (Class: *Aves*) from specified countries, subject to limited exemptions for returning pet birds of U.S. origin and certain processed bird-derived products. HHS/CDC took this step because birds from these countries potentially can infect humans with avian influenza (influenza A/ [H5N1]). The February 4, 2004, order complemented a similar action taken at the same time by the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA).

On March 10, 2004, HHS/CDC lifted the embargo of birds and bird products from the Hong Kong Special Administrative Region (HKSAR) because of the documented public-health and animal health measures taken by Hong Kong officials to prevent spread of the outbreak within the HKSAR, and the absence of highly pathogenic avian influenza H5N1 cases in Hong Kong's domestic and wild bird populations. USDA/APHIS took a similar action. On September 28, 2004, HHS/CDC extended the embargo on birds and bird products to include Malaysia because of the documented cases of highly pathogenic avian influenza A H5N1 in poultry in Malaysia. On July 20, 2005, USDA/APHIS adopted as a final rule the interim rule that became effective on February 4, 2004, which amended its regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. (See 70 FR 41608 [July 20, 2005].) As the United Nations Food and Agriculture Organization and the World Organization for Animal Health (OIE) have confirmed additional cases of highly pathogenic avian influenza (H5N1), USDA/APHIS has added additional countries to its ban. Because of the documentation of highly pathogenic avian influenza H5N1 in poultry, HHS/CDC added the following countries to its embargo: Kazakhstan,

Romania, Russia, Turkey, and Ukraine on December 29, 2005; Nigeria on February 8, 2006; India on February 22, 2006; Egypt on February 27, 2006; Niger on March 2, 2006; Albania, Azerbaijan, Cameroon, and Burma (Myanmar) on March 15, 2006; Israel on March 20, 2006; Afghanistan on March 21, 2006; and Jordan on March 29, 2006.

On April 3, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in guinea fowl in Burkina Faso. USDA added Burkina Faso to their ban on April 5, 2006. At this time, HHS/CDC is adding Burkina Faso to its current embargo. This action is effective on April 10, 2006, and will remain in effect until further notice.

SUPPLEMENTARY INFORMATION:

Background

An outbreak of avian influenza subtype H5N1 in guinea fowl has been reported at Gampéla, Kadiogo province, Burkina Faso.

Introduction of birds infected with highly pathogenic avian influenza H5N1 into the United States could lead to outbreaks of disease among birds and among the human population, a significant public health threat. Banning the importation of all avian species from affected countries is an effective means of limiting this threat. HHS/CDC is therefore taking this action to reduce the likelihood of introduction or spread of influenza A H5N1 into the United States.

Immediate Action

Therefore, pursuant to 42 CFR 71.32(b), HHS/CDC is amending the February 4, 2004, order to add Burkina Faso to the list of countries subject to the order's embargo of birds and products derived from birds. All other portions of the February 4, 2004, order, as further amended on March 10, 2004; September 28, 2004; December 29, 2005; February 8, 2006; February 22, 2006; February 27, 2006; March 2, 2006; March 15, 2006; March 20, 2006; March 21, 2006; and March 29, 2006, shall remain in effect until further notice.

Dated: April 13, 2006.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. E6–5841 Filed 4–18–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 2, 2006, from 8:30 a.m. to 3:30 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make a recommendation on the reclassification of the noninvasive bone growth stimulator indicated for the treatment of established nonunion fractures acquired secondary to trauma and as an adjunct to the treatment of lumbar spinal fusion surgery for one or two levels.

Background information for the topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panel* (click on ''Upcoming CDRH Advisory Panel/Committee Meetings'').

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 19, 2006. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:45 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 19, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks at 240–276–0450, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 12, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–5783 Filed 4–18–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Docket No. 2005D–0195

Guidance for Industry and FDA Staff; The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #9; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #9.'' This guidance document is intended to assist facilities and their personnel in meeting the Mammography Quality Standards Act (MQSA) final regulations.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''The Mammography Quality Standards Act Final Regulations:

Modifications and Additions to Policy Guidance Help System #9'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Drive., Rockville, MD 20850, 301–594–3332

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 15, 2005 (70 FR 41043), FDA issued a notice of availability for, and an opportunity for public comment on, ''The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #9'' draft guidance. During the public comment period, 6 respondents submitted a total of 38 comments. In addition, the National Mammography Quality Assurance Advisory Committee reviewed the draft guidance during its September 26 to 27, 2005, meeting and provided additional comments. FDA reviewed and considered all the comments, and in response FDA has modified the draft guidance as follows by:

1. Further clarifying Small Field Digital Mammography (SFDM) requirements,
2. Adding the phrase ''final interpretation quality'' to the section on retention and transfer of Full Field Digital Mammography (FFDM) images,
3. Clarifying that FFDM images used for final interpretation contain certain identifying information,
4. Clarifying under what circumstances the 8 hours of new mammographic modality training can be included as part of other initial interpreting physician requirements,
5. Further clarifying the table describing acceptability of the American Registry of Radiologic Technologists (ARRT(M)) certificate,
6. Modifying the guidance regarding the testing of single use cushion pads,
7. Modifying the table listing medical physicist involvement in certain FFDM repairs,
8. Clarifying the conditions under which electronic Quality Control test data may be retained.

This document provides guidance on the following issues:

1. Definitions of final interpretation and lossless and lossy digital compression,
2. Use of Small Field Digital Mammography (SFDM) image receptors,
3. Clarification relating to reestablishing processor operating levels,
4. Impact of the Health Insurance Portability and Accountability Act (HIPAA) requirements on certain MQSA activities,
5. Retention of medical outcomes audit records,
6. Steps to take when patients do not wish to receive their lay summaries,
7. Combining medical reports,
8. The effect of film digitization and compression of Full Field Digital Mammography (FFDM) digital data on retention, transfer, and interpretation of mammographic images,
9. Clarification of continuing education requirements,
10. Use of foreign-trained physicians,
11. Use of the ARRT(M) certificate to meet certain radiologic technologist requirements,
12. Quality Control testing when using cushion pads on compression devices,
13. Medical physicist involvement in certain FFDM repairs,
14. Use of printers and monitors that were not specifically approved as part of an FFDM unit,
15. Digitization of paper records and personnel documents.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the issues described in the previous paragraphs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive ''The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #9'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1538 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0580.

V. Comments

Interested persons may submit to the Division of Dockets Management (See **ADDRESSES**), written or electronic comments regarding this document at any time. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–5785 Filed 4–18–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Projects (R01s).

Date: May 2, 2006.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Irina Gordienko, PhD, Scientific Review Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892, 301–435–0725, *gordieni@nhlbi.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 Heart, Lung, and Blood Institute Special Emphasis Panel, Research Project-Cooperative Agreements (U01s).

Date: May 9, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Administrator, Review Branch, NIH/NHLBI, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Continuing Education Training Grants (T15s).

Date: May 11, 2006.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rina Das, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–435–0297, *dasr2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Institutional National Research Service Award (T32).

Date: May 19, 2006.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles Joyce, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Education Projects (R25s).

Date: May 22, 2006.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rina Das, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–435–0297, *dasr2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institute of Health, HHS)

Dated: April 11, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3701 Filed 4–18–06; 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 contact 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 Institute on Drug Abuse Special Emphasis Panel, Synthesis and Distribution of Opioid and Related Peptides.

Date: May 2, 2006.

Time: 1:30 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.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, International Drug Abuse Researcher E-Learning Program.

Date: May 3, 2006.

Time: 9:30 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, 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) 435–1439, *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Wearable Wireless PDA Peripheral for Research.

Date: May 10, 2006.

Time: 10 a.m. to 11 a.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Developmental 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: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3696 Filed 4–18–06; 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 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 on Drug Abuse Special Emphasis Panel, Pilot Clinical Trials of Pharmacotherapies for Substance Related Disorders.

Date: April 27–28, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@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. 93.277, 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: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3697 Filed 4–18–06; 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 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 a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 5, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, PhD, Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(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: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3698 Filed 4–18–06; 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 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 a meeting of the National Advisory Council on Drug Abuse.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Council on Drug Abuse.

Date: May 16–17, 2006.

Closed: May 16, 2006, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 17, 2006, 8:30 a.m. to 12:30 p.m.

Agenda: This portion of the meeting will be open to the public for announcement and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(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: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3699 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: May 22, 2006.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: Director' Report; Training Report; OPASI Briefing, Deputy Director, NIH; Blue Ribbon Panel Report; Concept Clearances.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, PhD, Assistant to the Director, NIH–NIDCR, Building 31, Rm. 5B55, Bethesda, MD 20892, (301) 594–2089, *NORMAN.BRAVEMAN@NIH.GOV.*

Any interested person may file written comments with the comments by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 11, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3703 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communications Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Deafness and Other Communication Disorders Advisory Council.

Date: May 19, 2006.

Closed: 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: 10:45 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD., Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, (301) 496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: April 11, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3704 Filed 4–18–06; 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 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health, Special Emphasis Panel, ITV and Practice Research for Combat-related PTSD.

Date: May 5, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Tracey Waldeck, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6132, MSC 9608, Bethesda, MD 20852–9609, 301–435–0322, *waldeckt@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: April 11, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3705 Filed 4–18–06; 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, Research Projects (R01).

Date: May 2, 2006.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Democracy One, NIAMS Institute, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael L. Bloom, PhD, Scientific Review Administrator, EP Review Branch, NIH–NIAMS Institute, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892, 301–594–4953, *Michael_Bloom@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: April 11, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3706 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6) Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: May 18–19, 2006.

Time: May 18, 2006, 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, 9000 Rockville Pike, Bethesda, MD 20892.

Time: May 19, 2006, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, Bethesda, MD 20892, (301) 496–4129.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3709 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 section 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 Child Health and Human Development Special Emphasis Panel, Understanding Achievement Gaps and Developing Interventions to Close Them.

Date: April 25, 2006.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, Pennsylvania Ave. at 15th Street, NW., Washington, DC 20004.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@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. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3710 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed 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: Biomedical Library and Informatics Review Committee.

Date: June 15–16, 2006.

Time: June 15, 2006, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Time: June 16, 2006, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: April 11, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3700 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Chairpersons, Boards of Scientific Counselors for Institutes and Centers at the National Institutes of Health

Notice is hereby given of a meeting scheduled by the Deputy Director for Intramural Research at the National Institutes of Health (NIH) with the Chairpersons of the Boards of Scientific Counselors. The Boards of Scientific Counselors are advisory groups to the Scientific Directors of the Intramural Research Programs at the NIH. This meeting will take place on May 12, 2006, from 10 a.m. to 3 p.m., at the NIH, 9000 Rockville Pike, Bethesda, MD, Building 1, Room 151. The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work, with special emphasis on clinical research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Colleen Crone at the Office of Intramural Research, NIH, Building 1, Room 160, Telephone (301) 496–1921 or FAX (301) 402–4273 in advance of the meeting.

Dated: April 5, 2006.

Raynard Kington,

Deputy Director, NIH.

[FR Doc. 06–3702 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Viral Dangers to Immunocompromised Patients.

Date: April 19, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: May 30, 2006.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Khalid Masood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095H, MSC 7854, Bethesda, MD 20892, (301) 402–3962, *masoodk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3707 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 20, 2006, 3 p.m. to April 20, 2006, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on March 30, 2006, 71 FR 16173–16174.

The meeting title has been changed to ''Special Topic: Immunology''. The meeting is closed to the public.

Dated: April 12, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3708 Filed 4–18–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Revision From OMB of One Current Public Collection of Information: Transportation Security Officer (TSO) Medical Questionnaire

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for revision in compliance with the Paperwork Reduction Act.

DATES: Send your comments by June 19, 2006.

ADDRESSES: Katrina Wawer, Attorney-Advisor, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to:

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0032; Transportation Security Officer (formerly Screener) (TSO) Medical Questionnaire. Because Transportation Security Screeners were converted to Transportation Security Officers (TSOs) on February 5, 2005, TSA is revising the title of this collection accordingly. TSA also is making other revisions to the form to ensure the proper information is collected in the most appropriate manner. With approval from OMB, TSA currently collects information via a TSO medical questionnaire, which assists the agency in ensuring that candidates under employment consideration for TSO positions meet the qualification standards to successfully perform the functions of the position. TSA uses this information to evaluate a candidate's physical and medical qualifications, including visual and aural acuity, and physical coordination and motor skills.

TSA now seeks approval to revise its existing control number application to include additional medical forms which TSA candidates will bring with them to follow-up medical evaluations (should they be necessary) and which must be completed by the candidate's health care provider(s) and returned to TSA by facsimile. These forms are required in circumstances where additional medical information is needed to make a determination regarding the candidate's qualifications for the TSO job. For example, due to the physically demanding nature of the TSO job, it is important to ensure that individuals who have prior back injuries are evaluated thoroughly to ensure they can perform the TSO job safely and efficiently without excessive risk of accident or injury to themselves or others. This additional information is provided by the candidate's health care provider of choice and includes historical and other information needed to make a determination.

A TSA contractor will facilitate receipt and processing of these forms. The variety of forms pertains to particular body systems and medical conditions, including cardiac, orthopedic, endocrine, vitals, etc. The form or forms a candidate's health care provider will complete depends on the condition(s) revealed during a candidate's initial medical evaluation. Thus, while all candidates reaching the medical evaluation portion of the selection process will be asked to complete a medical questionnaire, only candidates for whom additional information is needed will be asked to seek further evaluation from their health care provider and submit additional information through the further evaluation forms. Historical data indicate that approximately 30 percent of candidates reaching the medical evaluation will be required to complete an additional form(s). TSA estimates that the potential annual respondent population for this collection will be 22,800 health care providers and candidates, which includes 11,400 candidates and 11,400 health care providers, nationwide. TSA estimates the total annual hour burden, in addition to the annual burden as a result of the TSO medical questionnaire, to be 6346 hours.

Issued in Arlington, Virginia, on April 12, 2006.

Lisa S. Dean,

Privacy Officer.

[FR Doc. E6–5840 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Nominations for the Invasive Species Advisory Committee; Extension of Deadline for Nomination Submissions

AGENCY: Office of the Secretary, National Invasive Species Council, Interior.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is extending the deadline for submission of nominations for qualified persons to serve as members of the ISAC.

DATES: *Extended Deadline*—Nominations must be postmarked by Wednesday, May 17, 2006.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/SIO/NISC), 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Analyst, at (202) 513–7243, fax: (202) 371–1751, or by e-mail at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce. The Council's duty is to provide national leadership regarding invasive species issues. Pursuant to the Executive Order, the Council developed a National Invasive Species Management Plan, which is available on the Web at *http://www.invasivespecies.gov.* The Council is responsible for effective implementation of the Plan including any revisions of the Plan. The Council also coordinates Federal agency activities concerning invasive species; encourages planning and action at local, tribal, State, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC meets up to four (4) times per year.

Terms for most of the current members of the ISAC will expire in October 2006. After consultation with the other members of NISC, the Secretary of the Interior will actively solicit new nominees and appoint members to ISAC. Prospective members of ISAC should be knowledgeable in and represent one or more of the following communities of interests: weed science, fisheries science, rangeland management, forest science, entomology, nematology, plant pathology, veterinary medicine, the broad range of farming or agricultural practices, biodiversity issues, applicable laws and regulations relevant to invasive species policy, risk assessment, biological control of invasive species, public health/epidemiology, industry activities, international affairs or trade, tribal or state government interests, environmental education, ecosystem monitoring, natural resource database design and integration, and internet-based management of conservation issues.

Prospective nominees should also have practical experience in one or more of the following areas: representing sectors of the national economy that are significantly threatened by biological invasions (*e.g.*, agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (*e.g.*, shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in order to create effective solutions to complex conservation issues including education, outreach, and public relations experts; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with NEPA and other Federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, so to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than two (2) consecutive terms. All terms will be limited to three (3) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Submitting Nominations

Nominations should be typed and should include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.

2. A resume or curriculum vitae.

3. At least two (2) letters of reference.

The deadline for submitting nominations has been extended. Nominations should be postmarked no later than Wednesday, May 17, 2006, to Lori Williams, National Invasive Species Council (OS/SIO/NISC), 1849 C Street, NW., Washington, DC, 20240. Due to periodic delays in processing surface mail, faxed nominations will also be accepted and may be sent to (202) 371–1751. However, all faxed nominations and letters of support must have signatures in order to be considered. Please fax ONE COPY ONLY to avoid congestion of the NISC office fax line.

The Secretary of the Interior, on behalf of the other members of NISC, is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations to ensure that recommendations of the ISAC take into account the needs of the diverse groups served.

Dated: April 17, 2006.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 06–3770 Filed 4–17–06; 10:51 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal; OMB Control Number 1018–0121; Depredation Orders for Double-Crested Cormorants, 50 CFR 21.47 and 21.48

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) plan to request that OMB renew approval for our information collections associated with regulations authorizing the take of double-crested cormorants. The current OMB control number for this information collection is 1018–0121, which expires October 31, 2006. We will ask OMB to renew approval of this information collection for a 3-year term.

DATES: You must submit comments on or before June 19, 2006.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirement or explanatory information, contact Hope Grey at the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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.

This information collection is associated with regulations implementing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*). The MBTA implements four treaties concerning migratory birds that the United States has signed with Canada, Mexico, Japan, and Russia. The treaties preserve and protect various species of birds. Under the MBTA, it is unlawful to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, their parts, nests, or eggs, except as authorized by regulations implementing the MBTA. In 2003, we promulgated regulations (50 CFR 21.47, Aquaculture Depredation Order, and 21.48, Public Resource Depredation Order) to authorize the take of double-crested cormorants (DCCOs) under certain circumstances.

Aquaculture producers may take DCCOs when the birds are found committing or about to commit depredations on commercial freshwater aquaculture stocks (50 CFR 21.47). Persons operating under this order must:

(a) Immediately report the take of a migratory bird species other than double-crested cormorants to the appropriate Service Regional Migratory Bird Permit Office.

(b) Immediately report the take of species protected under the Endangered Species Act to the Service.

(c) Keep a log recording the date, number, and location of all birds killed each year under this authorization; maintain this log for a period of 3 years (and maintain records for 3 previous years of takings at all times thereafter); and each year, provide the previous year's log to the appropriate Service Regional Migratory Bird Permit Office.

Our regulations at 50 CFR 21.48 authorize State fish and wildlife agencies, U.S. Department of Agriculture (APHIS-Wildlife Services), and Federally recognized tribes in 24 States to take DCCOs to prevent depredations on the public resources of fish, wildlife, plants, and their habitats. Responsible agencies operating under this order must:

(a) Provide a one-time written notice to the appropriate Service Regional Migratory Bird Permit Office indicating that they intend to act under this order.

(b) Provide a report to the Service detailing activities conducted under the authority of this order, including:

(1) Summary (by date and location) of the number of double-crested cormorants killed and/or number of nests in which eggs were oiled;

(2) Statement of efforts being made to minimize incidental take of nontarget species and a report of the number and species of migratory birds involved in such take, if any;

(3) Description of the impacts or anticipated impacts to public resources by double-crested cormorants and a statement of the management objectives for the area in question;

(4) Description of the evidence supporting the conclusion that double-crested cormorants are causing or will cause these impacts;

(5) Discussion of other limiting factors affecting the resource (*e.g.*, biological, environmental, and socioeconomic); and

(6) Discussion of how control efforts are expected to, or actually did, alleviate resource impacts.

(c) Evaluate, by means of collecting data or using best available information, effects of management activities on the public resources being protected and on nontarget species, and include this information in the report mentioned in (b) above.

Title: Depredation Orders for Double-Crested Cormorants, 50 CFR 21.47 and 21.48.

OMB Control Number: 1018–0121.

Service Form Number: None.

Frequency of Collection: Annual, except that reporting of accidental take is on occasion.

Description of Respondents: Aquaculture producers, State fish and wildlife agencies, tribes, and Federal agencies.

Activity	Number of respondents	Number of responses	Estimated completion time (hrs)	Total annual burden hrs
Report take of migratory bird species other than DCCOs	2	2	1	2
Report take of species protected under the Endangered Species Act	1	1	1	1
Written notice of intent to conduct control activities	12	12	2	24
Report of activities conducted under 50 CFR 21.48	8	8	8	64
Report effects of management activities	8	8	80	640
Recordkeeping under 50 CFR 21.47	900	900	2	1,800
Totals	931	931		2,531

We invite comments concerning this information collection on: (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Dated: April 6, 2006.

Hope G. Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–5882 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Cameron Prairie National Wildlife Refuge, Cameron Parish, Louisiana

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact for Cameron Prairie National Wildlife Refuge.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan and Finding of No Significant Impact for Cameron Prairie National Wildlife Refuge are 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 refuge will be managed for the next 15 years. The compatibility determinations for (1) recreational fishing; (2) recreational hunting; (3) wildlife observation and wildlife photography; (4) environmental education and interpretation; (5) commercial alligator harvest; (6) commercially guided wildlife viewing, wildlife photography, and environmental education and interpretation; (7) research and monitoring; (8) commercial video and photography; (9) adjacent property access; and (10) beneficial use of dredge material are also included in the plan.

ADDRESSES: A copy of the plan may be obtained by writing to Cameron Prairie National Wildlife Refuge, 1428 Highway 27, Bell City, LA 70630, or by calling 337/598–2216. The plan may also be accessed and downloaded from the Service's Internet Web site at *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: Cameron Prairie National Wildlife Refuge is one of the three refuges that comprise the Southwest Louisiana National Wildlife Refuge Complex. It is located about 25 miles southeast of Lake Charles, Louisiana, in north central Cameron Parish. The 9,621-acre refuge and the 64,000-acre multi-agency Cameron Creole Watershed Project, which is managed by the refuge, contain freshwater marsh, coastal prairie, and early successional wetlands and are managed to conserve and protect wintering waterfowl and their habitat.

The availability of the draft comprehensive conservation plan and environmental assessment for a 45-day review as announced in the **Federal Register** on July 27, 2005 (70 FR 43445). The draft plan and environmental assessment evaluated three alternatives for managing the refuge. Alternative B was chosen as the ''preferred alternative.'' Under the preferred alternative, the quality and quantity of habitat for wintering waterfowl will be maximized by focusing on a more adaptive management approach through improved biological monitoring. Public use opportunities will generally increase and moer emphasis will be placed on environmental education and interpretation. Commercial guides for wildlife viewing, wildlife photography, and environmental education and interpretation will be permitted. Research and monitoring will be enhanced. Programs to promote the beneficial use of dredge material will be allowed. Current partnerships that assist the refuge in accomplishing its conservation objectives will continue and the refuge will strive to develop new partnerships. A more aggressive approach to removal of undesirable plants and animals will be implemented. Cultural resources will continue to be protected. The refuge will assist in developing and maintaining the Southwest Louisiana National Wildlife Refuge Complex Headquarters, located at Cameron Prairie Refuge, in a manner that supports, directs, and manages the needs, resources, and staff of the entire Complex.

Implementation of the goals, objectives, and strategies within the comprehensive conservation plan will allow the refuge to protect a variety of freshwater marshland and upland prairie habitat; to serve as a critical resting area for waterfowl in a heavily hunted area; to conserve, restore, and enhance diverse habitats for migratory and native wildlife species; to maintain health and viable native fish and wildlife populations; to provide opportunities for safe, quality, compatible, wildlife-dependent public use and recreation; and to protect cultural resources.

FOR FURTHER INFORMATION CONTACT: Judy McClendon, Natural Resource Planer, Cameron Prairie National Wildlife Refuge, 1428 Highway 27, Bell City, LA 70630; Telephone: 337/598–2216; Fax: 337/598–2492; E-mail: *judy_mcclendon@fws.gov*.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 6, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–3731 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before May 19, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (we) solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–827493

Applicant: Brian Leatherman, Yorba Linda, California.

The permittee requests an amendment to take (capture and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in southern California for the purpose of enhancing their survival.

Permit No. TE–0726550

Applicant: Jennifer Michaud-Laird, Sebastopol, California.

The permittee requests an amendment to take (capture and collect and kill) the California freshwater shrimp (*Syncaris pacifica*) in conjunction with surveys in Sonoma, Marin, and Napa Counties, California, for the purpose of enhancing its survival.

Permit No. TE–118641

Applicant: Jody McGraw, Boulder Creek, California.

The applicant requests a permit to take (capture, handle, and release) the Zayante band-winged grasshopper (*Trimerotropis infantilis*) and the Mount Hermon June beetle (*Polyphylla barbata*) in conjunction with surveys in Santa Cruz County, California, for the purpose of enhancing their survival.

Permit No. TE–122123

Applicant: Douglas B. McNair, Pasadena, California.

The applicant requests a permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) and take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empiconax traillii extimus*) in conjunction with surveys in San Bernardino and Riverside Counties in California for the purpose of enhancing their survival.

Permit No. TE–119861

Applicant: Quad Knopf, Inc., Visalia, California.

The applicant requests a permit to take (capture and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*); take (harass by survey, capture and release) the California tiger salamander (*Ambystoma californiense*); and take (capture, mark, and release) the Tipton kangaroo rat (*Dipomodys nitratratoides nitratratoides*), the Fresno kangaroo rat (*Dipomodys nitratratoides exilis*), the giant kangaroo rat (*Dipodomys nigens*), and the Buena Vista Lake shrew (*Sorex ornatus relictus*) in conjunction with surveys and demographic studies throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–122025

Applicant: Tracy Bailey, Ridgecrest, California.

The applicant requests a permit to take (capture, mark, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the Stephens' kangaroo rat (*Dipodomys stephensi*), and the Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in conjunction with surveys throughout the species range in California for the purpose of enhancing their survival.

Permit No. TE–101148.

Applicant: David Compton, Santa Barbara, California.

The permittee requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in Riverside and San Bernardino Counties, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: March 31, 2006.

Paul Henson,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–5846 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on this permit application must be received on or before May 19, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the permit number for the application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above. Please refer to the permit number for the application when requesting copies of documents.

SUPPLEMENTARY INFORMATION: The following applicants have applied for survival enhancement permits to conduct certain activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from the public, and from local, State, and Federal agencies on the following permit requests.

Permit No. TE–017352

Applicant: The Commonwealth of the Northern Mariana Islands, Division of Fish and Wildlife, Saipan, Mariana Islands.

The permittee requests a permit amendment to take (capture, release, collect biological samples, and nest monitor) the Rota bridled white-eye (*Zosterops rotensis*) in conjunction with scientific research on the Island of Rota, in the Commonwealth of the Northern

Mariana Islands for the purpose of enhancing its survival.

Permit No. TE–122117

Applicant: Dawn M. Reding, Honolulu, Hawaii.

The applicant requests a permit to take (capture, measure, band, collect blood, and release) the Hawaii akepa (*Loxops coccineus coccineus*), the Hawaii creeper (*Oreomystis mana*), and the akiapolaau (*Hemignathus munroi*); and take (capture, band, and release) the Hawaiian hawk (*Buteo solitarius*) in conjunction with genetic and demographic research on the island of Hawaii in the state of Hawaii for the purpose of enhancing their survival.

Permit No. TE–122076

Applicant: Gustav R. Bodner, Honolulu, Hawaii.

The applicant requests a permit to take (capture, measure, examine, band, collect biological samples, and release) the Hawaii akepa (*Loxops coccineus*), the Hawaii creeper (*Oreomystis mana*), the akiapolaau (*Hemignathus munroi*), Hawaiian hawk (*Buteo solitarius*), and the ou (*Psittirostra psittacea*) in conjunction with disease and parasite research at Hakalau Forest National Wildlife Refuge, Hawaii, for the purpose of enhancing their survival.

Permit No. TE–122762

Applicant: Liba Pejchar, Palo Alto, California.

The applicant requests a permit to take (capture and release) the akiapolaau (*Hemignathus munroi*), akepa (*Loxops coccineus*), and the Hawaii creeper (*Oreomystis mana*) in conjunction with ecological research on the island of Hawaii in the State of Hawaii for the purpose of enhancing their survival.

We solicit public review and comment on these recovery permit applications.

Dated: March 30, 2006.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–5848 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Safe Harbor Agreement for the Valley Elderberry Longhorn Beetle for River Partners in Glenn County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that River Partners (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service for the threatened valley elderberry longhorn beetle (VELB) (*Desmocerus californicus dimorphus*). The Agreement and permit application are available for public comment.

DATES: Written comments should be received on or before May 19, 2006.

ADDRESSES: Comments should be addressed to Shannon Holbrook, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Holbrook, Sacramento Fish and Wildlife Office (see **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by contacting the individual named above. You may also make an appointment to view the documents at the above address during normal business hours.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 et seq.). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to Section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with the Applicant to develop the proposed Agreement for the conservation of the VELB on the Del Rio Wildland Preserve (Enrolled Property) in Butte City, Glenn County, California. The 259-acre Del Rio Wildland Preserve subject to this Agreement is located in the southeastern corner of Glenn County just south of the Llano Seco Rancho. The property occupies flood-prone land between the Sacramento River Flood Control Project setback levee and Angel Slough. The property currently is divided into existing riparian habitat, an ongoing restoration project, and a walnut orchard.

This Agreement provides for the restoration, enhancement, and management of riparian habitat suitable for the VELB on the Enrolled Property. The proposed duration of the Agreement is 20 years, and the proposed term of the enhancement of survival permit is 25 years, provided that the Service determines that the actions identified in the Agreement were implemented prior to the Agreement's expiration. When fully implemented, the Agreement and requested enhancement of survival permit will allow the Applicants to return to baseline after the end of the 20-year term of the Agreement and prior to the expiration of the 25-year permit, if so desired by the Applicants. The Agreement fully describes the management activities to be undertaken by the Applicant, and the net conservation benefits expected to the VELB.

Upon approval of this Agreement, and consistent with the Service's Safe Harbor Policy published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the Applicants authorizing take of the VELB incidental to the implementation of the management activities specified in the Agreement, incidental to other lawful uses of the Enrolled Property including normal, routine land management activities, and to return to pre-Agreement conditions (baseline).

Under the Agreement, the Applicants would undertake management activities to benefit the VELB by planting over 1,500 elderberry plants in a matrix of native riparian plants that will benefit a variety of riparian dependent wildlife species including the VELB; completing restoration of 231 acres of agricultural land into riparian habitat with a diverse native plant community and high structural diversity; controlling invasive weeds; and increasing the connectivity of riparian forest within the Enrolled Property and along the Sacramento River.

Elderberry bushes (*Sambucus* sp.) are the exclusive host plants for the larval

VELB, which develops inside the stems of the bush. In order to receive the above assurances regarding incidental take of the VELB, the Applicant must maintain baseline on the Enrolled Property. The Service and Applicants have determined that the measure of baseline for VELB will be the number of elderberry bushes having one or more stems that are 1 inch or greater in diameter at the base. Therefore, the Enrolled Property's baseline is one naturally occurring elderberry bush with nine stems each greater than 1 inch in diameter at the base.

Public Review and Comments

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review.

Individuals wishing copies of the permit application, copies of our Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicants for take of the VELB incidental to otherwise lawful activities in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: April 13, 2006.

Susan Moore,

Acting Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. E6–5850 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Proposed Construction of a Single-family Home in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Michael Perez and Cynthia Perez (Applicants) request an incidental take permit (ITP) for a two-year term pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate the removal of about 0.22 acre of Florida scrub-jay (*Aphelocoma coerulescens*)(scrub-jay) foraging, sheltering, and possibly nesting habitat, incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Charlotte County, Florida (Project). The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before May 19, 2006.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE098970–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, South Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Jeff Howe, Fish and Wildlife Biologist, South Florida Ecological Services Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 772/562–3909, extension 283.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit written comments by any one of several methods. Please reference permit number TE098970–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (mostly consisting of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The scrub-jays using the Applicants' residential lot and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in Charlotte County. Construction of the Project's infrastructure and facilities will result in the destruction of 0.22 acre of foraging, sheltering, and possibly nesting habitat and is expected to result in the take, in the form of harm, of one family of scrub-jays, incidental to the carrying out of these otherwise lawful activities. The Applicants propose to minimize and avoid incidental take by conducting clearing activities outside of the nesting season, and landscaping with scrub oaks and other native vegetation where possible. The Applicants propose to avoid landscaping with trees that will grow greater than 30 feet tall and potentially provide perch trees for predators that may prey on scrub-jays on this lot and surrounding unimproved lots. The Applicants propose to avoid having any free-roaming cats on the lot as they can be a potential predator on young scrub-jays.

The Applicants propose to mitigate the take of scrub-jays through contribution of $11,660 to an approved scrub-jay conservation fund. Funds from this contribution would be earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and management. The Applicants would make this contribution prior to any land clearing activities affecting scrub-jay habitat.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicants' HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. The Service does not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, the ITP will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: March 30, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–5849 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The ANS Task Force will meet from 8 a.m. to 5 p.m. on Wednesday, May 24 and Thursday, May 25, and from 8 a.m. to 12 p.m. on Friday, May 26, 2006.

ADDRESSES: The ANS Task Force meeting will be held at the Cape Codder Resort, 1225 Iyanough Road (Route 132 & Bearse's Way), Hyannis, MA 02601; (888) 297–2200. Minutes of the meeting will be maintained by the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203, and will be made available for public inspection during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Scott Newsham, ANS Task Force Executive Secretary, at (703) 358–1796, or by e-mail at *Scott_Newsham@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces meetings of the ANS Task Force. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: Committee and Regional Panel reports, ANS priorities of the Northeastern states, development of the Asian Carp Management Plan, allocation of state ANS management plan funds, and consideration for approval of Louisiana's state management plan for aquatic invasive species. The agenda and other related meeting information can be viewed on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php.*

Dated: March 29, 2006.

Mamie A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. E6–5881 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria's Fee-to-Trust Transfer and Casino-Hotel Project, San Bernardino County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the National Indian Gaming Commission, Los Coyotes Band of Cahuilla and Cupeño Indians and Big Lagoon Rancheria as cooperating agencies, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed 45 acre fee-to-trust transfer and casino and hotel project to be located in San Bernardino County, California. The purpose of the proposed action is to help improve the tribal economy of the Los Coyotes Band of Cahuilla and Cupeno Indians and Big Lagoon Rancheria (hereinafter collectively referred to as the Tribes) and assist tribal members to attain economic self-sufficiency. This notice also announces a public scoping meeting to identify potential issues, concerns and alternatives to be considered in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by May 19, 2006. The public scoping meeting will be held May 4, 2006, from 6 p.m. to 9 p.m. (local time), or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return caption, address and ''DEIS Scoping Comments, Los Coyotes Band of Cahuilla and Cupeno Indians and Big Lagoon Rancheria, 45 Acre Fee to Trust Casino/Hotel Project, San Bernardino County, California,'' on the first page of your written comments.

The public scoping meeting will be held in the Barstow Community College Gymnasium, 2700 Barstow Road, Barstow, California 92311.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The Tribes propose that approximately 45 acres of land be taken into trust and subsequently, two casinos, two hotels, parking and other facilities supporting the casinos be constructed on the proposed trust acquisition property. The subject property is located within the incorporated boundaries of the City of Barstow, San Bernardino County, California, just east of Interstate 15. State Highways 58 and 247 and Interstate 40 are located nearby.

The site is predominantly undeveloped, bounded on the north by Mercantile Way, on the west by Lenwood Road and commercial/light industrial development, on the south by vacant Bureau of Land Management land and on the east by vacant land. The proposed project is to develop two adjacent casinos of approximately 49,000 square feet each. Associated facilities which would be constructed include food and beverage services, retail space, banquet/meeting space and administration space. Food and beverage facilities would include two full service restaurants, two food courts of four venues each, two coffee shops and two lounge bars. Two five-story hotels, each having approximately 100 rooms, would also be constructed. Approximately 3,900 parking spaces would be provided, of which about one-fourth would be in two equally sized garages. Regional access to the project site is via Interstate 15 and State Highway 247. Lenwood Road and Mercantile Way would provide direct access to the proposed casino resort.

Areas of environmental concern to be addressed in the EIS include land resources, water resources, biological resources, cultural resources, traffic and transportation, noise, air quality, public health/environmental hazards, public services and utilities, hazardous waste and materials, socio-economics, environmental justice and visual resources/aesthetics. In addition to the proposed action, a reasonable range of alternatives, including the no-action alternative, will be analyzed in the EIS. Other possible alternatives currently under consideration are two reduced-intensity alternatives and two alternate sites. The range of issues and alternatives may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with sections 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary '' Indian Affairs by 209 DM 8.l.

Dated: April 5, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 06–3779 Filed 4–18–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Notice of Realty Action: Competitive Sale of Public Lands in Clark County, Nevada; Termination of Recreation and Public Purposes Classification and Segregation; Withdrawal of the Formerly Classified Lands by the Southern Nevada Public Land Management Act

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell by public auction 72 parcels of Federal public land, aggregating approximately 705.235 acres, more or less, in the Las Vegas Valley, Nevada. The sale will be under the authority of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), as amended by Title IV of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 1994) (SNPLMA). The SNPLMA sale

will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), and BLM land sale and mineral conveyance regulations at 43 CFR parts 2710 and 2720. The sale will be conducted in Las Vegas, Nevada, on August 2, 2006, using competitive bidding procedures under the regulations, at not less than the appraised fair market value (FMV) of each parcel.

DATES: Comments regarding the proposed SNPLMA sale of the 705.235 acres in the Las Vegas Valley must be received by BLM on or before June 5, 2006. Comments regarding the draft environmental assessment (EA) must be received by the BLM on or before June 5, 2006.

Sealed bids must be received not later than 4:30 p.m. PDT July 28, 2006 at the address of the Las Vegas Field Office listed below. The sale by auction will begin at 10 a.m., PDT, August 2, 2006. Registration for oral bidding for those who have not pre-registered will begin at 8 a.m., PDT, August 2, 2006 and will end at 10 a.m., PDT. Other deadline dates for the receipt of payments, and arranging for certain payments to be made by electronic transfer, are specified in the proposed terms and conditions of sale, as stated herein.

ADDRESSES: Comments regarding the proposed sale may be submitted to BLM at the following address: Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

More detailed information regarding the proposed sale, including maps and appraisals, may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the BLM Las Vegas Field Office (LVFO).

The address for oral bidding registration, and the location of the public auction, is: Cashman Center, 850 Las Vegas Boulevard North, Las Vegas, NV 89101.

The auction will take place inside the Cashman Theater located in the southwest corner of the Cashman Center with entrance to the Theater between Parking Lots ''B'' and ''C''. Registration will take place in the Theater Lobby. Cashman Center charges a $3 per vehicle parking fee. Parking Passes will be provided to those individuals who pre-register and those who pick-up a Sale Packet at the LVFO prior to the day of the sale. Passes will accompany the sale packet which is sent to everyone on the sale mailing list. Give the Pass to the attendant when you enter the parking area. If you don't have a Pass you will be required to pay the fee. There will be no exceptions.

Directions to the Cashman Center from Boulder City, Henderson, or the Southeast Area of Las Vegas: Take U.S. 95 North. Exit on Las Vegas Blvd. North. Turn right on Washington Ave. Turn right on Washington to Cashman Center (850 Las Vegas Blvd. North).

Directions to the Cashman Center from Reno or the Northwest Area of Las Vegas: Take U.S. 95 South. Exit on Las Vegas Blvd. North (Las Vegas Blvd./Cashman Center). Turn left to Cashman Center (850 Las Vegas Blvd. North).

FOR FURTHER INFORMATION CONTACT: You may contact Manuela Johnson at (702) 515–5224 or by e-mail at *m15johns@nv.blm.gov*. You may also call (702) 515–5000 and ask to have your call directed to a member of the Sales Team.

SUPPLEMENTARY INFORMATION: The following described lands in the Las Vegas Valley, Nevada, are proposed for sale and have been authorized and designated for disposal under SNPLMA. The lands will be put up for sale competitively on August 2, 2006, at an oral auction for not less than the appraised fair market value (FMV) of each parcel. These SNPLMA parcels described below will be auctioned under the terms and conditions of this Notice of Realty Action (NORA).

Mount Diablo Meridian, Nevada

T. 19 S., R., 59 E.
Sec. 01, Lot 37;
Sec. 02, E½NW¼SW¼SW¼, NW¼NE¼SW¼SW¼SW¼;
Sec. 03, E½NW¼SW¼SW¼, W½SE¼SW¼SW¼, W½NW¼SE¼SW¼, E½SW¼SE¼SW¼, E½SW¼NE¼SE¼, E½SE¼NE¼SE¼, N½SE¼SE¼, N½SW¼SE¼SE¼, SW¼SW¼SE¼SE¼, N½SE¼SW¼SE¼SE¼, SW¼SE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼, N½SW¼SE¼SE¼SE¼;
Sec. 10, NW¼NW¼NW¼NE¼NE¼;
Sec. 25, SW¼NE¼NE¼, E½NE¼NW¼NE¼, E½SE¼NW¼NE¼, E½NE¼SW¼NE¼, E½SW¼SE¼NW¼, NE¼NE¼SW¼, NE¼SW¼SW¼, NE¼SE¼SW¼, E½SE¼SE¼SW¼, NW¼NW¼SE¼, E½SW¼NW¼SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼.

T. 19 S., R., 60 E.
Sec. 30, Lots 22, 25, 26 and 30, E½NW¼SE¼NE¼, E¼SE¼NE¼, E½NW¼NE¼SW¼, W½SE¼NE¼SW¼, NE¼SE¼SW¼,W½NW¼SE¼SW¼, W½SW¼SE¼SW¼, E½SW¼NW¼SE¼, W½SW¼SW¼SE¼, E½NW¼SE¼SE¼;
Sec. 31, Lots 5–9, N½NE¼NE¼, SW¼NE¼NE¼, W½SE¼NE¼NE¼, SE¼NW¼NE¼, E½NE¼SW¼NE¼, SW¼SW¼NE¼, E½SE¼SW¼NE¼, W½NE¼SE¼NE¼, W½NW¼SE¼NE¼, W½NE¼NW¼NW¼, E½SW¼NE¼SW¼, E½SE¼NE¼SW¼, NW¼NE¼SE¼, W½NE¼NW¼SE¼, E½NW¼NW¼SE¼.

T. 20 S., R. 60 E.
Sec. 06, SE¼NE¼SW¼, W½NE¼SE¼SW¼, SE¼NW¼SE¼SW¼,W½NW¼NW¼SE¼, W½SW¼NW¼SE¼;
Sec. 28, NE¼SW¼SE¼, E½NW¼SW¼SE¼.

T. 22 S., R. 60 E.
Sec. 13, SW¼NW¼NE¼NE¼, SE¼NE¼SE¼NE¼, NE¼SE¼SE¼NE¼, SW¼SE¼SW¼NW¼;
Sec. 14, NW¼SW¼NW¼SW¼;
Sec. 16, NW¼NE¼SE¼NE¼, SW¼NE¼SE¼NE¼, NE¼SE¼SE¼NE¼, SE¼SE¼SE¼NE¼;
Sec. 19, Lots 22–26, 32, 38, 40–44, 46, 48, 49, 51–54, 56–58, S½NW¼NE¼SE¼NW¼, SW¼NE¼SE¼NW¼, N½SW¼SE¼NW¼,SW¼SW¼SE¼NW¼, W½SE¼SE¼NW¼, E½NE¼NE¼SW¼, NW¼NE¼NE¼SE¼,W½NW¼NE¼SE¼, SE¼NW¼NE¼SE¼, N½SW¼NE¼SE¼, NE¼NE¼NW¼SE¼, W½NE¼NW¼SE¼, NE¼NW¼NW¼SE¼, SW¼NW¼NW¼SE¼, SE¼NE¼SW¼SE¼, SE¼NW¼SW¼SE¼, NE¼SE¼SW¼SE¼, S½SW¼SE¼SE¼, N½SE¼SE¼SE¼, SE¼SE¼SE¼SE¼;
Sec. 21, NW¼NE¼SW¼NE¼, N½SW¼NW¼NW¼;
Sec. 23, NW¼NE¼NW¼NE¼, NE¼NW¼NW¼NE¼, NE¼NE¼NE¼NW¼, NE¼NW¼NE¼NW¼;
Sec. 30, SE¼SW¼NE¼NE¼, SW¼SE¼NE¼NE¼, SW¼NE¼NW¼NE¼, S½NW¼NW¼NE¼, SW¼NW¼NE¼, W½SE¼NW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, N½SE¼SW¼NE¼, SW¼SE¼SW¼NE¼, NE¼NE¼SE¼NE¼, W½NE¼SE¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼.

T. 22 S., R. 61 E.
Sec. 10, Lot 15;
Sec. 33, SW¼NW¼SW¼NE¼, NE¼NE¼NW¼SE¼, SW¼NE¼NW¼SE¼, NE¼NW¼NW¼SE¼, SW¼NW¼NW¼SE¼, SE¼NW¼NW¼SE¼, NE¼SW¼NW¼SE¼.

Consisting of 72 parcels containing 705.235 acres, more or less.

In addition to the lands described herein, other parcels that have been previously noticed for sale, but did not sell, may be offered at this sale.

Minerals of no known locatable value will be conveyed with the following eleven parcels: BLM case file serial numbers N–79508, N–80683 through N–80685, N–80687 through N–80691, N–80715, N–80730. These case files are located at the BLM Las Vegas Field Office. An offer to purchase these listed parcels will constitute an application for conveyance of the locatable mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests which will

be sold simultaneously with the surface interests.

The remainder of the parcels offered will have all mineral interests reserved to the United States; therefore, no $50 filing fee will be required as no mineral interests will be conveyed. The legal description of the parcels associated with these BLM Serial Numbers is available at the BLM Las Vegas Field Office, or online at *http://propertydisposal.gsa.gov.*

Terms and Conditions of Sale

The terms and conditions applicable to the SNPLMA sale parcels are as follows:

1. For the parcels under case files N–79508, N–80683 through N–80685, N–80687 through N–80691, N–80715 and N–80730 all discretionary leaseable and saleable mineral deposits on the lands in Clark County are reserved to the United States; but, permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights. As stated above, all other offered parcels will have all mineral interest reserved to the United States.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All parcels are subject to valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the marketability or the federally approved Fair Market Value (FMV) of a parcel. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during business hours, 7:30 a.m. PDT to 4:30 p.m. PDT, Monday through Friday, at the BLM LVFO.

4. All parcels are subject to reservations for roads, public utilities and flood control purposes in accordance with the local governing entities' Transportation Plans.

5. No warranty of any kind, express or implied, is given by the United States as to title, whether or to what extent the land may be developed, physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, all parcels are subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).

6. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substances or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

7. Unless otherwise stated herein, maps delineating the individual proposed sale parcels and current appraisals for each parcel are available for public review at the BLM LVFO.

8. In accordance with policy and procedures adopted by the Clark County Board of Commissioners which addresses sale parcels in areas designated as ''Major Development Project'', parcels N–79534, N–79544, N–79551, N–79552, N–79549, N–79550, N–79545, N–79546, N–79548 and N–79579 totaling 205.17 acres more or less will aggregated and offered as one single parcel. The starting bid amount for these parcels will be the total of the appraised values for all 10 parcels.

9. Sealed bids may be presented for all parcels. Sealed bids must be received at the BLM LVFO, no later than 4:30 p.m., PST, July 28, 2006. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel and the sale date. Bids must be for not less than the federally approved FMV and a separate bid must be submitted for each parcel.

10. Each sealed bid shall be accompanied by a deposit in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount bid. The highest qualified sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the FMV, as determined by the authorized officer. All sealed bids will be opened and recorded at 12 noon PST on July 31, 2006 at the BLM office on 4701 N. Torrey Pines Drive in Las Vegas. The high sealed bid amount will be posted on the auction order list and will be the starting bid amount at the oral auction.

11. All parcels will be offered for competitive sale by oral auction beginning at 10 a.m., PDT, August 2, 2006, at Cashman Theater located inside Cashman Center at 850 Las Vegas Boulevard North, Las Vegas, NV. Interested parties who will not be bidding are not required to register and may proceed directly to the Cashman Theater. If you are at the auction to conduct business with the high bidders or are there to observe the process, should seating become limited, you may be asked to relocate to the balcony or another area in order to provide seating in the theater for all bidders before the auction begins. We will try to provide an audio/visual transmission outside the theater for your convenience.

12. All oral bidders are required to register. Registration for oral bidding will begin at 8 a.m. PDT on the day of the sale and will end at 10 a.m. PDT. You are encouraged to pre-register by mail or fax by completing the form located in the Sale Packet. The form is also available at the BLM LVFO.

13. Prior to receiving a bidder number on the day of the sale, all registered bidders must submit a certified check, bank draft, or cashier's check in the amount of $10,000. The check must be made payable in U.S. dollars to the order of the Bureau of Land

Management. On the day of the sale, pre-registered bidders may go to the Express Registration Desk, present their Photo Identification, the required $10,000 check, and receive a bidder number. All other bidders must go to the standard Registration Line where additional information will be requested along with your Photo Identification and the required $10,000 check. Upon completion of registration you will be given a bidder number. If you are a successful bidder, the $10,000 will be applied to your required deposit.

14. If you purchase one or more parcels and default on any single parcel, the default may be against all of your parcels. BLM may retain your $10,000 and the sale of *all* parcels to you may be cancelled. Following the auction, checks will be returned to the unsuccessful bidders upon presentation of their Photo Identification at the designated area.

15. The highest qualifying bid for any parcel will be declared the high bid. The apparent high bidder must submit a deposit of not less than 20 percent of the successful bid by 3 p.m. PDT on the day of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable in U.S. dollars to the Bureau of Land Management. Funds must be delivered no later than 3 p.m. PDT the day of the sale to the BLM Collection Officers at the Cashman Theater. Funds will NOT be accepted at the LVFO.

16. Oral bids will be considered only if received at the place of sale and made at least for the FMV as determined by the BLM authorized officer.

17. The remainder of the full bid price for each parcel must be paid within 180 calendar days of the competitive sale date in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. *Personal checks will not be accepted.* Arrangements for Electronic Fund Transfer (EFT) to BLM for the balance which is due on or before February 1, 2006, should be made a minimum of two weeks prior to the date you wish to make payment. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

18. All sales are made in accordance with and subject to the governing provisions of law and applicable regulations. In general, the BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined not to be in the public interest.

19. Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality or political subdivision authorized to hold property or an entity legally capable of conveying lands or interests therein under the laws of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit and is subject to verification by the BLM prior to consummation of the sale.

Additional Information

If not sold, any parcel described above in this Notice may be identified for sale at a later date without further legal notice. Unsold parcels may be offered for sale in a future online Internet auction. Internet auction procedures will be available at *http://www.auctionrp.com*. If unsold on the Internet, parcels may be put up for sale at future oral and online Internet auctions without additional legal notice. Upon publication of this Notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel identified for sale, including parcels that have been published in a previous NORA. However, land use applications may be considered after completion of the sale for parcels that are not sold through oral or online Internet auction procedures provided the authorization will not adversely affect the marketability or value of the parcel.

In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, state, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware of those laws regulations, and policies, and to seek any required local approvals pursuant to them. Buyers should also make themselves aware of any Federal or state law or regulations that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Environmental Assessment. The SNPLMA parcels proposed for sale were analyzed in an Environmental Impact Statement (EIS), entitled ''Las Vegas Land Disposal Boundary EIS'', approved December 23, 2004. This EIS is available for public review at the BLM LVFO. An Environmental Assessment (EA) for this sale, which tiers to the EIS, has also been prepared for public review and comment at the BLM LVFO. BLM will be accepting public comment on the EA during the time for comment on the proposed sale up to June 5, 2006.

Other information concerning the sale, including the appraisals, reservations, sale procedures and conditions, CERCLA and other environmental documents will be available for review at the BLM LVFO, or by calling (702) 515–5000 and asking to speak to a member of the Sales Team. Most of this information also will be available on the Internet at *http://propertydisposal.gsa.gov*.

Public Comments: The general public and interested parties may submit comments regarding the proposed sale to the Field Manager, BLM LVFO, up to 45 days after publication of this Notice in the **Federal Register**. Any adverse comments regarding the proposed sale will be reviewed by the Nevada BLM State Director, or other authorized official of the Department of the Interior who may sustain, vacate, or modify this realty action in whole or in part, if applicable. Any comments received during this process, as well as the name and address of the commenter, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commenter to have their name and/or address withheld from public release will be honored to the extent permissible by law.

(Authority: 43 C.F.R. 2711.1–2(a) and (c))

Termination of Portions of R&PP Classification—SNPLMA Withdrawal

A portion of the following lease granted under the Recreation and Public Purposes (R&PP) Act, 43 U.S.C. 869 et. seq.) has been relinquished: N–63336 (68FR47929). The Notice officially terminates the R&PP classification and segregation of a portion of that parcel. A portion of R&PP application, N–78724 has been withdrawn by the applicant. This notice serves to inform you that land previously leased and previously requested for R&PP purposes is no longer required and is now part of this sale. It does not serve as an opening order because those parcels are within the disposal boundary set by Congress in SNPLMA. Pursuant to section 4(c) of SNPLMA, these parcels are withdrawn, subject to valid existing rights, from entry and appropriation under the public land laws, location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws, until such time as the Secretary of the Interior terminates the withdrawal or the lands are conveyed.

Dated: March 15, 2006.

Juan Palma,

Field Manager.

[FR Doc. 06–3773 Filed 4–17–06; 11:42 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–355 and 731–TA–659 and 660 (Second Review)]

Grain-Oriented Silicon Electrical Steel from Italy and Japan

AGENCY: International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in February 2006 to determine whether revocation of the countervailing duty order on grain-oriented silicon electrical steel from Italy and the antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury. On March 28, 2006, the Department of Commerce published notice that it was revoking the orders effective March 14, 2006, ''{b}ecause the domestic interested parties did not participate in these sunset reviews * * *'' (71 FR 15376). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

DATES: *Effective Date:* March 14, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: April 13, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–3711 Filed 4–18–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–551]

In the Matter of Certain Laser Bar Code Scanners and Scan Engines, Components Thereof and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) issued by the presiding administrative law judge (''ALJ'') granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on October 26, 2005, based on a complaint filed by Symbol Technologies Inc. (''Symbol'') of Holtsville, New York. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser bar code scanners or scan engines, components thereof, or products containing the same by reason of infringement of various claims of United States Patent Nos. 5,457,308 (''the '308 patent''), 5,545,889 (''the '889 patent''), 6,220,514 (''the '514 patent''), 5,262,627, and 5,917,173. 70 FR 61841 (Oct. 26, 2006). The complaint named two respondents: Metro Technologies Co., Ltd. of Suzhou, China, and Metrologic Instruments, Inc. of Blackwood, New Jersey (collectively, ''Metrologic'').

On March 9, 2006, Symbol filed a motion for leave to amend the complaint and notice of investigation to add claims 10 and 11 of the '308 patent, claims 8 and 11 of the '889 patent, and claims 3, 7, 9, and 10 of the '514 patent. Metrologic filed an opposition to Symbol's motion, asserting that Symbol failed to show good cause for its amendment and that Metrologic would be unduly prejudiced by an amendment to the complaint just one month before the close of discovery. The Commission investigative attorney supported Symbol's motion.

On March 22, 2006, the ALJ issued an ID (Order No. 9) granting Symbol's motion to amend the complaint and notice of investigation. The ALJ found that, pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)), there was good cause to add claims 10 and 11 of the '308 patent, claims 8 and 11 of the '889 patent, and claims 3, 7, 9, and 10 of the '514 patent to the complaint and notice of investigation. The ALJ found that Symbol had obtained new

information, justifying the addition of the newly-asserted claims of the '308 patent. The ALJ also found that adding the newly-asserted claims of the '889 patent and the '514 patent to the complaint did not prejudice the parties, because they had been notified that these claims were at issue early on in the investigation. Moreover, the ALJ noted that he had extended the target date by one month in order to alleviate any concerns regarding the amount of time remaining for discovery. No petitions for review of the ID were filed. Having examined the record of this investigation, the Commission has determined not to review the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: April 14, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–5887 Filed 4–18–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–533]

In the Matter of Certain Rubber Antidegradants, Components Thereof, and Products Containing Same; Notice of Commission Determination To Review a Final Initial Determination; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on February 17, 2006, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this section 337 investigation on March 29, 2005, based on a complaint filed by Flexsys America LP. 70 FR 15885 (March 29, 2005). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rubber antidegradants, components thereof, and products containing same that infringe claims 30 and 61 of U.S. Patent No. 5,117,063 (''the '063 patent''), claims 7 and 11 of U.S. Patent No. 5,608,111 (''the '111 patent''), and claims 1, 32, and 40 of U.S. Patent No. 6,140,538 (''the '538 patent''). The complaint and notice of investigation named five respondents. The investigation was subsequently terminated as to two respondents and as to the '538 patent.

On February 17, 2006, the ALJ issued his final ID finding a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by respondents Sinorgchem Co., Shandong, and Sovereign Chemical Company, but finding no violation of section 337 by respondent Korea Kumho Petrochemical Co., Ltd. The ALJ recommended that the Commission issue limited exclusion orders, but did not recommend that any bond be imposed for importations during the Presidential review period. All parties petitioned for review of various parts of the final ID.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety. The Commission's review includes the issue of whether the ALJ properly determined that the issue of infringement by the P1 and P2 processes of Korea Kumho Petrochemical Co., Ltd. was not before him, but that review is only for the purpose of making a correction to the final ID, *i.e.*, to substitute ''Motion No. 533–61'' for ''Motion No. 533–57'' on page 96 of the final ID. The Commission has otherwise concluded that the ALJ was correct in his determination on this issue.

On review, the Commission requests briefing based on the evidentiary record. While the Commission has determined to review the final ID in its entirety, it is particularly interested in briefing on the issues of claim construction and indefiniteness, especially with respect to the term ''controlled amount of protic material,'' which appears in all the asserted claims. In addressing the question of claim construction, each party should specifically identify those portions of the claim language, specification, and prosecution history (and other evidence, if appropriate) which support the construction it advocates. The Commission is also interested in receiving answers to the following questions:

1. With respect to the ID's construction of the term ''controlled amount of protic material,'' what is the basis for including ''the desired selectivity,'' given that col. 4, ll. 48–50 ('063 patent) states: ''A 'controlled amount' of protic material is an amount up to that which inhibits the reaction of aniline with nitrobenzene * * *,'' a statement which does not contain the term ''selectivity''?

2. Given that the '111 patent is based on a continuation-in-part application, what is the legal basis for using matter in the claims and specification of that patent not common to the disclosure of the '063 patent to construe the claims of the '063 patent? What is the legal basis for using the prosecution history of the '111 patent to construe the claims of the '063 patent?

3. Referring to the ALJ's definition of ''controlled amount of protic material'' in the ID at 78–79, what is the meaning of the terms ''inhibited'' and ''desired selectivity''? How are these terms applied to determine infringement by the accused processes? With respect to the claim construction of ''controlled amount of protic material'' adopted in the ID, what is the evidence that the claims, specification, and prosecution history would provide a person of ordinary skill in the art with knowledge of what constitutes ''inhibition'' and the ''desired selectivity''?

4. With respect to the licensing issues raised by Korea Kumho Petrochemical Co., Ltd., which are stated to be subject to Korean law, state the applicable Korean law and discuss how it applies.

5. With respect to the estoppel issue raised by Korea Kumho Petrochemical Co., Ltd., state what law (Korean, U.S., or other) applies and how it applies.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the February 17, 2006, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on April 24, 2006. Reply submissions must be filed no later than the close of business on May 1, 2006. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Issued: April 13, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–5884 Filed 4–18–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–865–867 (Review)]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 10, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On April 10, 2006, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (71 FR 140, January 3, 2006) was adequate and that the respondent interested party group response with respect to Malaysia was adequate and decided to conduct a full review with respect to the order covering stainless steel butt-weld pipe fittings from Malaysia. The Commission found that the respondent interested party group responses with respect to Italy and the Philippines were inadequate. However, the Commission determined to conduct full reviews concerning stainless steel butt-weld pipe fittings from Italy and the Philippines to promote administrative

efficiency in light of its decision to conduct a full review with respect to stainless steel butt-weld pipe fittings from Malaysia. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 13, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–5886 Filed 4–18–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter Athe Committee@).

DATES: The meeting will take place on April 25, 2006, from 8:30 a.m. to 5 p.m. and on April 26, 2006, from 8:30 am to 12 noon.

ADDRESSES: The meeting will take place at the Westin City Center, 650 North Pearl Street, Dallas, TX 75201. Signs will be posted in the lobby of the hotel to direct attendees to the meeting location.

FOR FURTHER INFORMATION CONTACT: Sandy Lonick, The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530; by telephone at: (202) 307–6026; e-mail: *Saundra.Lonick@usdoj.gov*; or fax: (202) 307–3911. You may also view the Committee's Web site at: *http://www.usdoj.gov/ovw/nac/welcome.html*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and related laws. The Committee also assists in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking. Because violence against women is increasingly recognized as a public health problem of staggering human cost, the Committee brings national attention to the problem to increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work and the Federal Government's response to violence against women; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and related laws.

Schedule: This meeting will be held on April 25, 2006, from 8:30 a.m. until 5 p.m. and on April 26, 2006 from 8:30 a.m. until 12 noon, and will include breaks and a working lunch. Time will be reserved for public comment on April 25 beginning at 10:45 a.m. and ending at 11:15 a.m., and on April 26 beginning at 11:15 a.m. and ending at 11:45 a.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space-available basis is required. Persons who wish to attend must register at least six (6) days in advance of the meeting by contacting Sandy Lonick by e-mail at: *Saundra.Lonick@usdoj.gov*; or fax: (202) 307–3911. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting. The meeting site is accessible to individuals with disabilities. Individuals who require special accommodations in order to attend the meeting should notify Sandy Lonick by e-mail at: *Saundra.Lonick@usdoj.gov;* or fax at: (202) 307–3911, no later than April 11, 2006. After this date, we will attempt to satisfy accommodation requests, but cannot guarantee the availability of any requests.

Written Comments: Interested parties are invited to submit written comments by April 20, 2006 to Sandy Lonick at The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530. Comments may also be submitted by e-mail at *Saundra.Lonick@usdoj.gov*; or fax at (202) 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting, which will discuss the implementation of the Violence Against Women Act of 1994 and the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and related legislation, are requested to reserve time on the agenda by contacting Sandy Lonick by e-mail at *Saundra.Lonick@usdoj.gov*; or fax at (202) 307–3911. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the issue. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at 800 K Street, NW., Ste. 920, Washington, DC 20530.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. E6–5788 Filed 4–18–06; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 4:30 p.m. on Monday, May 8, 2006. 8:30 a.m. to 4:30 p.m. on Tuesday, May 9, 2006.

Place: Hillsborough County Facility, Tampa, Florida 33601, Phone: 813–247–8310.

Status: Open.

Matters to be Considered: Reports; Faith Based; Mental Health; Report and Discussion on Management/Leadership Development; PREA Update; Visit to Large Jail Facilities and Programs; Report on Maine Project; Agency Reports.

FOR FURTHER INFORMATION CONTACT: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 06–3744 Filed 4–18–06; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 14, 2006.

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 contacting Darrin King on 202–693–4129 (this is not a toll-free number) or email: *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: Request for Earnings Information.

OMB Number: 1215–0112.

Form Number: LS–426.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 1,600.

Annual Reponses: 1,600.

Average Response Time: 15 minutes.

Total Annual Burden Hours: 400.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $672.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901 et seq.), and its extensions the Nonappropriated Fund Instrumentalities Act, the Outer Continental Shelf Lands Act and the Defense Base Act. These Acts provide compensation benefits to injured workers. The Secretary of Labor is authorized, under the Act, to make rules and regulations to administer the Act and its extensions. Pursuant to the LHWCA, injured employees shall receive compensation in an amount equal to 66⅔ per centum of their average weekly wage. Form LS–426, Request for Earnings Information is used by district offices to collect wage information from injured workers to assure payment of compensation benefits to injured workers at the proper rate. This information is needed for determination of compensation benefits in accordance with section 10 of the LHWCA.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6–5858 Filed 4–18–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Currently, DOL is soliciting comments concerning the proposed extension of the Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 19, 2006.

The Department of Labor 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 submissions of responses.

ADDRESSES: Send comments to Darrin A. King, Agency Clearance Officer, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue, NW., Washington, DC 20210. Mr. King can be reached on 202–693–4129 (this is not a toll free number) or by e-mail at *king.darrin@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) conducts a variety of voluntary Customer Satisfaction Surveys of regulated/non-regulated entities, which are specifically designed to gather information from a customer's perspective as prescribed by E.O. 12862, Setting Customer Service Standards,

September 11, 1993. These Customer Satisfaction Surveys provide information on customer attitudes about the delivery and quality of agency products/services and are used as part of an ongoing process to improve DOL programs. This generic clearance allows agencies to gather information from both Federal and non-Federal users.

In addition to conducting Customer Satisfaction Surveys, the Department also includes the use of evaluation forms for those DOL agencies conducting conferences. These evaluations are helpful in determining the success of the current conference, in developing future conferences, and in meeting the needs of the Department's product/service users.

II. Current Actions

Over the past three years the DOL has conducted more than two dozen customer satisfaction surveys and conference evaluations, which have helped assess the Department's products and services and has led to improvements in areas deemed necessary. Office of Management and Budget approval for this collection of information expires July 31, 2006. DOL proposes to seek continued approval for this collection of information for an additional three years.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Assistant Secretary for Administration and Management.

Title: Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

OMB Number: 1225–0059.

Affected Public: Individuals and households; business or other for-profit; not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Estimated Total Respondents/ Responses: 200,000.

Frequency: On occasion and usually only one-time per respondent.

Average Time per Response: Varies by survey/evaluation generally ranging from 3 to 15 minutes with an average of approximately 6 minutes.

Total Burden Hours: 20,000.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/ Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 13th day of April, 2006.

Darrin A. King,

Agency Clearance Officer, Office of the Assistant Secretary for Administration and Management.

[FR Doc. E6–5860 Filed 4–18–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11261]

RIN 1210–A05

Amendment to Prohibited Transaction Exemption 2002–51 (PTE 2002–51) to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Adoption of Amendment to PTE 2002–51.

SUMMARY: This document amends PTE 2002–51 (67 FR 70623 November 25, 2002), a class exemption that provides relief from certain prohibited transaction restrictions imposed by section 4975 of the Internal Revenue Code of 1986 (the Code) for certain eligible transactions identified in the Department of Labor's (the Department) Voluntary Fiduciary Correction (VFC) Program, which was adopted on March 28, 2002. This amendment is being adopted in conjunction with the Department's adoption of the updated VFC Program (final VFC Program), which is being published simultaneously in this issue of the **Federal Register**. The VFC Program allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) or 502(i) of ERISA in connection with an investigation or civil action by the Department. The amendment affects plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

EFFECTIVE DATE: The class exemption is effective May 19, 2006.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8545 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On April 6, 2005, a notice was published in the **Federal Register** (70 FR 17476) of the pendency before the Department of a proposed amendment to PTE 2002–51. PTE 2002–51 provides relief from the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The amendment expands the relief under the exemption to additional transactions included in the final VFC Program. The amendment to PTE 2002–51 adopted by this notice was proposed by the Department on its own motion pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment. The Department received two comment letters. Upon consideration of all the comments received, the Department has determined to grant the proposed amendment, subject to certain modifications. These modifications and the comments are discussed below.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that the final VFC Program is significant under

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities.

The amended PTE 2002–51 provides excise tax relief for six of the transactions identified in the final VFC Program. Parties who wish to take advantage of the exemption must have met all of the applicable requirements of the final VFC Program and the conditions of the exemption. One of those conditions is receipt of a no action letter from the Employee Benefits Security Administration (EBSA) with respect to the transaction at issue. In conjunction with the final VFC Program, PTE 2002–51, as amended, has also been determined to be significant under section 3(f)(4) of the Executive Order. Accordingly the Department has assessed the costs and benefits of this amendment to PTE 2002–51.

PTE 2002–51 provides relief from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. In general, the exemption enhances the benefits of participation in the VFC Program by granting relief from excise taxes under section 4975 for certain breaches of fiduciary duty that are prohibited transactions. The purpose of the VFC Program is to encourage the correction of breaches of fiduciary duty, resulting in the recovery of lost earnings or profits for the benefit of plan participants and beneficiaries. The class exemption will have positive economic effects by eliminating excise taxes and promoting increased participation in the VFC Program.

The amendment to PTE 2002–51 is being adopted in connection with the final VFC Program, which is published in this issue of the **Federal Register**. The class exemption has been amended to provide relief for two additional transactions. One of the transactions was introduced in the April 2005 VFC Program and the proposed Amendment to PTE 2002–51. That transaction has now become effective in the amended exemption. The transaction concerns the purchase of an asset (including real property) by a plan where the asset has later been determined to be illiquid as described in the final VFC Program, and/or the subsequent sale of the illiquid asset by the plan in a transaction that was prohibited pursuant to section 4975(c)(1) of the Code. The second transaction included in this amendment covers the use of plan assets to pay expenses to a service provider for services that are properly characterized as settlor expenses, provided such payments were not expressly prohibited in the plan documents.

The Department has assumed, based on experience, that not all applicants who apply to the final VFC Program will take advantage of the excise tax relief provided under the exemption, either by choice or because the exemption does not provide relief for the transaction they are correcting under the final VFC Program. The Department has more specifically calculated that the number of applicants who will rely on the class exemption will equal approximately one-fifth of the total number of applicants, or 250 applicants (.2 × 1,250).

Paperwork Reduction Act

The amendment to PTE 2002–51 engenders no significant new paperwork burden for the notification and other written documentation requirements in comparison with the previous version of this exemption. Applicants to the final VFC Program who rely on the amended class exemption may be eligible, as well, for a new optional provision. Under this option, qualifying applicants may choose not to send notices to interested persons. The conditions of the optional provision are described in detail in the amendment to PTE 2002–51. However, while these particular parties would be relieved of the responsibility to send notices to interested persons, they do need to provide the Department with certain additional documentation on their calculations and the payment they remitted to the plan when submitting their application to the VFC Program. Documentation of the calculation of the amount of excise tax otherwise due consists of a copy of a completed IRS Form 5330 or equivalent written evidence containing the information required by IRS Form 5330; proof of payment to the plan is required. The Department has determined that the difference between the paperwork burden of plans using the optional provision versus the burden of those that do not is negligible.

Service providers will likely do the work on behalf of parties relying on PTE 2002–51. For parties who do not rely on the optional provision, service providers will prepare and send out notices to interested persons. A copy of the notice must be provided to the Department. As to those parties that opt not to provide notice, service providers will submit to the Department evidence of the required calculations described in IRS Form 5330 and evidence of the payment to the plan of the excise tax otherwise payable along with the application to the final VFC program. These respective tasks should require no more than an hour for each service provider to complete. Assuming that as many as one-fifth of the annual 1,250 applicants to the VFC Program (250) also use the class exemption, the burden cost posed by PTE 2002–51 equals $8,625 ($34.50 × 1 hr. × 250). One-half of the parties using the exemption (125) are estimated to be eligible to take advantage of PTE 2002–51's new optional provision, thereby being relieved of the notice requirement, while the other half of the parties using the exemption (125) are estimated as being required to send notices to interested persons. Notices will be sent, on average, to 136 interested persons for each plan. PTE 2002–51 permits notification of interested persons by electronic means. The Department assumes that only 62 percent of the parties using the exemption will send notices to interested persons by first class mail. Therefore, the total number of notices sent by mail will be 10,540 (136 × 125 × 62 percent). The remaining 38 percent will be delivered electronically. The total mailing costs arising from the class exemption will equal roughly $4,427 ($0.42 × 10,540 mailings). The Department assumes, however, that all applicants who send interested party notices will send the Department its copy of the notice by mail, using certified or overnight delivery services and that this copy will be included in the application package described above under costs for the VFC Program. The annual mailing costs for notice to interested persons and the Department is therefore estimated at $4,427. In sum, the burden costs attributable to the amended PTE 2002–51 will be approximately $13,052 ($8,625 + $4,427).

Persons are not required to respond to the revised information collection unless it displays a currently valid OMB control number 1210–0118.

Description of the Exemption

Title I of ERISA, which establishes certain standards of conduct for fiduciaries of employee benefit plans covered by ERISA, includes provisions prohibiting fiduciaries from causing a plan to engage in certain classes of transactions with persons defined as parties in interest. Similarly, Title II of ERISA prohibits plans described in section 4975(e)(1) of the Code from engaging in certain classes of transactions with persons defined under the Code as disqualified persons. Generally, such transactions are subject to taxation under section 4975 of the Code.

The VFC Program was adopted by the Department on a permanent basis in

March 2002.[2] Under the VFC Program, persons who are potentially liable for a breach of fiduciary duty can avoid the possibility of civil investigations and/or civil actions initiated by the Department for that breach and the imposition of civil penalties under section 502(l) or 502(i) of ERISA if they satisfy the conditions for correcting the breach as described in the VFC Program. The VFC Program was based on the Department's experience with the Pension Payback Program, 61 FR 9203 (March 7, 1996), and continued public interest in such correction programs. In response to comments received on the VFC Program requesting that the Department provide relief from the excise taxes imposed by section 4975 of the Code for prohibited transactions, the Department proposed a class exemption for four of the eligible transactions described in the VFC Program. A final exemption, PTE 2002–51, was published in the **Federal Register** on November 25, 2002. The four eligible transactions described in the exemption are as follows:

(A) The failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR section 2510.3–102 and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

(B) The making of a loan by a plan at a fair market interest rate to a disqualified person [3] with respect to the plan.

(C) The purchase or sale of an asset (including real property) between a plan and a disqualified person at fair market value.

(D) The sale of real property to a plan by the employer and leaseback of such property to the employer, at fair market value and fair market rental value, respectively.

Based on growing public utilization and experience in administering the VFC Program, EBSA decided to amend and modify the VFC Program to expand the categories of eligible transactions and to make it more useful to employers and others who wish to avail themselves of the relief provided. Specifically, the VFC Program now includes relief under Title I of ERISA for the purchase of an asset by a plan where the asset was later determined to be illiquid as described under the final VFC Program.

In this regard, the final VFC Program provides relief for both the plan's original acquisition of the asset that was later determined to be illiquid under the final VFC Program, as well as the correction involving the sale of such asset in a transaction that violates the prohibited transaction rules under Title I of ERISA, and section 4975 of the Code provides that all of the requirements of the final VFC Program are met. Similarly, the class exemption has been amended to provide relief from the excise taxes imposed by section 4975 of the Code for both the plan's original acquisition and/or the subsequent sale of the illiquid asset by the plan in a transaction prohibited pursuant to section 4975(c)(1), provided all the requirements of the class exemption are met. Moreover, as distinguished from the other eligible transactions covered in the VFC Program [4] and PTE 2002–51, correction in the VFC Program for this category of eligible transactions will involve a prohibited transaction.

The other category of transactions being restructured under the final VFC Program (see Section 7.6) includes the use of plan assets to pay expenses, including commissions or fees, that should have been paid by the plan sponsor, to a service provider for: (i) services provided in connection with the administration and maintenance of the plan, in circumstances where a plan provision requires that such plan expenses be paid by the plan sponsor, or (ii) services provided in connection with the establishment, design, or termination, of the plan, which relate to the activities of the plan sponsor in its capacity as settlor. The class exemption is being amended to provide excise tax relief where plan assets are used to pay for services appropriately characterized as settlor expenses, which relate to the activities of the plan sponsor in its capacity as settlor.

Discussion of Written Comments Received

The Department received two letters commenting on the proposed amendments to PTE 2002–51. One commenter suggested expanding the scope of the VFC Program to include relief for plans that are subject to the prohibited transaction excise tax described in section 4975 of the Code, but are not subject to Title I of ERISA, including individual retirement accounts (IRAs) described in section 408 of the Code. This commenter suggested that certain VFC Program applicants (e.g., financial institutions) may have caused ERISA–covered plans, as well as plans that are subject only to the prohibited transaction provisions of the Code, to engage in prohibited transactions. According to the commenter, plan officials with respect to these IRAs and certain other plans are unable to participate in the VFC Program and, therefore, are not eligible for relief under PTE 2002–51. Accordingly, these plan officials must seek excise tax relief through an individual exemption application submitted to the Department.[5] The commenter believes that it would be administratively convenient if the Department extended VFC Program eligibility to encompass the full range of plans that are subject to section 4975 of the Code. The Department has determined that it cannot expand the VFC Program as requested by the commenter, since it lacks jurisdiction to issue a no action letter under the VFC Program with respect to violations of the prohibited transaction provisions under the Code. Consequently, in light of the decision not to expand the VFC Program to include plans only subject to section 4975 of the Code, the Department does not believe that it would be appropriate to modify the final exemption as requested by the commenter. Notwithstanding the foregoing, the Department wishes to take the opportunity to state that the grant of this amendment does not foreclose its future consideration of individual exemption requests for transactions involving IRAs that are outside the scope of relief provided by both the VFC Program and the class exemption under circumstances when, for example, a financial institution received a no action letter applicable only to plans subject to the Program for a transaction(s) that involved both plans and such IRAs. The Department cannot provide assurances in advance that an individual exemption will be issued with respect to a particular transaction involving an IRA, however, interested persons are encouraged to contact the Department to discuss the particular facts of their case.

[2] 67 FR 15062 (Mar. 28, 2002). Prior to adoption in March 2002, the VFC Program was made available on an interim basis during which the Department invited and considered public comments on the Program. (See 65 FR 14164, Mar. 15, 2000).

[3] The Department notes that the term ''party in interest'' was used in the description of the eligible transactions covered under PTE 2002–51 although that exemption provided, and this amendment will provide, relief only from the sanctions imposed under section 4975 of the Code, which prohibits certain transactions between a plan and a ''disqualified person.'' For purposes of clarity, references in the exemption to a ''party in interest'' are changed to ''disqualified person.''

[4] Under the VFC Program prior to the current revision, correction could not be achieved by engaging in a new prohibited transaction. *See* VFC Program, 67 FR 15073 (Mar. 28, 2002) Section 2(d).

[5] PTE 2002–51 requires that a VFC Program applicant comply with all of the applicable requirements of the VFC Program and receive a no action letter with respect to transactions corrected under the VFC Program.

The Internal Revenue Service (the Service) submitted a comment requesting a modification to the current requirement in PTE 2002–51 which provides that an applicant must notify interested persons in writing of the transactions for which relief is being sought pursuant to the VFC Program and this exemption.[6] The Service requested that the notice requirement not apply in those situations where: (a) The excise tax due under section 4975 of the Code for a failure to timely transmit participant contributions and loan repayments is less than or equal to $100.00; (b) the excise tax that otherwise would be owed and payable to the United States Treasury is contributed to the plan; and (c) the contribution is allocated to the accounts of the plan's participants and beneficiaries in a manner consistent with the plan's provisions concerning the allocation of plan earnings. Lastly, the Service noted that, under the circumstances outlined above, employers that meet the applicable conditions of the class exemption would not be required to file a Return of Excise Taxes Related to Employee Benefit Plans (IRS Form 5330) with the IRS. After considering the issue, the Department has determined to modify the final exemption as requested by the Service. The Department notes that, for the purpose of determining whether the excise tax due under section 4975 of the Code for failing to timely transmit participant contributions and loan repayments is less than or equal to $100, and determining the amount to be contributed to the plan, an applicant may calculate the excise tax that would otherwise be imposed by section 4975 of the Code based upon the Lost Earnings amount computed using the Online Calculator.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply, the requirement that all assets of an employee benefit plan be held in trust by one or more trustees, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The amendment will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) In accordance with section 4975(c)(2) of the Code, the Department finds that the amendment is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans.

(4) The amendment is supplemental to and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The amendment is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Amendment

Accordingly, the following amendment to Sections I and II of PTE 2002–51 is granted under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, Aug. 10, 1990).

Section I. Eligible Transactions

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following eligible transactions described in Section 7 of the Voluntary Fiduciary Correction (VFC) Program, published simultaneously in this issue of the **Federal Register**, provided that the applicable conditions set forth in Sections II., III. and IV. are met:

A. Failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulation at 29 CFR section 2510.3–102, and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer. (*See* VFC Program, Section 7.1(a)).

B. Loan at a fair market interest rate to a disqualified person with respect to a plan. (*See* VFC Program, Section 7.2(a)).

C. Purchase or sale of an asset (including real property) between a plan and a disqualified person at fair market value. (*See* VFC Program, Sections 7.4(a) and 7.4(b)).

D. Sale of real property to a plan by the employer and the leaseback of the property to the employer, at fair market value and fair market rental value, respectively. (*See* VFC Program, Section 7.4(c)).

E. Purchase of an asset (including real property) by a plan where the asset has later been determined to be illiquid as described under the VFC Program in a transaction which was a prohibited transaction pursuant to section 4975(c)(1) of the Code, or in which the asset was acquired from an unrelated third party, and/or the subsequent sale of such asset in a transaction prohibited pursuant to section 4975(c)(1). (*See* VFC Program, Section 7.4(f)).

F. Use of plan assets to pay expenses, including commissions or fees, to a service provider (*e.g.*, attorney, accountant, recordkeeper, actuary, financial advisor, or insurance agent) for services provided in connection with the establishment, design or termination of the plan (settlor expenses)[7], which relate to the activities of the plan sponsor in its capacity as settlor, provided that the payment of the settlor expense was not expressly prohibited by a plan provision relating to the payment of expenses by the plan. (*See* VFC Program, section 7.6(b)).

Section II. Conditions

A. With respect to a transaction involving participant contributions or loan repayments to pension plans described in Section I.A., the contributions or repayments were transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amounts otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

B. With respect to the transactions described in Sections I.B., I.C., I.D., or I.E., the plan assets involved in the transaction, or series of related transactions, did not, in the aggregate, exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction.

C. The fair market value of any plan asset involved in a transaction described

[6] The class exemption mandates that notice be provided to interested persons of the transaction and the method of correction.

[7] See Advisory Opinion 2001–01A (Jan. 18, 2001).

in Sections I.C., I.D., or I.E. was determined in accordance with section 5 of the VFC Program.

D. The terms of a transaction described in Sections I.B., I.C., I.D., I.E., or I.F., were at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

E. With respect to any transaction described in Section I., the transaction was not part of an agreement, arrangement or understanding designed to benefit a disqualified person.

F. (1) With respect to any transaction described in Section I., the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is three years prior to submission of the current application.

(2) Notwithstanding the foregoing, Section II.F.(1) shall not apply to an applicant provided that:

(a) The applicant was a broker-dealer registered under the Securities Exchange Act of 1934, a bank supervised by the United States or a State thereof, a broker-dealer or bank subject to foreign government regulation, an insurance company qualified to do business in a State, or an affiliate thereof;

(b) The applicant was a disqualified person (including a fiduciary) solely by reason of providing services to the plan or solely by reason of a relationship to such service provider described in section 4975(e)(2)(F) and (G) of the Code;

(c) Neither the applicant nor any affiliate (i) was a fiduciary (within the meaning of section 3(21)(A) of ERISA and 4975(e)(3)of the Code) with respect to the assets of the plan involved in the transaction and (ii) used its discretion to cause the plan to engage in the transaction;

(d) Individuals acting on behalf of the applicant had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and

(e) Prior to the transaction, the applicant established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and the applicant engaged in periodic monitoring for compliance.

G. With respect to a transaction involving a sale of an illiquid asset under the VFC Program described in Section I.E., the plan paid no brokerage fees, or commissions in connection with the sale of the asset.

H. With respect to any transaction described in Section I.F., the amount of plan assets involved in the transaction or series of related transactions did not, in the aggregate, exceed the lesser of $10,000 or 5% of the fair market value of all the assets of the plan at the time of the transaction.

Section III. Compliance With the VFC Program

A. The applicant has met all of the applicable requirements of the VFC Program.

B. EBSA has issued a no action letter to the applicant pursuant to the VFC Program with respect to a transaction described in Section I.

Section IV. Notice

A. Written notice of the transaction(s) for which the applicant is seeking relief pursuant to the VFC Program, and this exemption, and the method of correcting the transaction, was provided to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program. A copy of the notice was provided to the appropriate Regional Office of the United States Department of Labor, Employee Benefits Security Administration, within the same 60-day period, and the applicant indicated the date upon which notice was distributed to interested persons. Plan assets were not used to pay for the notice. The notice included an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average Plan participant or beneficiary. The notice provided for a period of 30 calendar days, beginning on the date the notice was distributed, for interested persons to provide comments to the appropriate Regional Office. The notice included the address and telephone number of such Regional Office.

B. Notice was given in a manner that was reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof. The notice informed interested persons of the applicant's participation in the VFC Program as amended and intention of availing itself of relief under the exemption.

C. Notwithstanding the foregoing, Section IV.A. and B. shall not apply to a transaction described in Section I.A., provided that (i) the applicant under the VFC Program has met all of the other Program requirements; (ii) the amount of the excise tax that otherwise would be imposed by section 4975 of the Code with respect to any transaction(s) described in Section I.A. would be less than or equal to $100.00; (iii) the amount of the excise tax that otherwise would be imposed by section 4975 of the Code was paid to the plan and allocated to the participants and beneficiaries in the same manner as provided under the plan with respect to plan earnings; and (iv) the applicant under the VFC Program provides a copy of a completed IRS Form 5330 or written documentation containing the information required by IRS Form 5330 and proof of payment with the submission of the application to the appropriate EBSA Regional Office. For the sole purpose of determining whether the excise tax due under section 4975 of the Code on the ''amount involved'' with respect to the prohibited transaction involving the failure to timely transmit participant contributions and loan repayments is less than or equal to $100, an applicant may calculate the excise tax due based upon the Lost Earnings amount computed using the Online Calculator.

Signed at Washington, DC, this 12th day of April, 2006.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 06–3675 Filed 4–18–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting

comments concerning the proposed revision of the ''Consumer Price Index Housing Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before June 19, 2006.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone 202–691–7628. (See **ADDRESSES** Section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Price Index (CPI) is the timeliest instrument compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is used most widely as a measure of inflation, and is used in the formulation of economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars.

II. Current Action

Office of Management and Budget clearance is being sought for the CPI Housing Survey. This request addresses both the ongoing collection activities associated with compilation of the shelter component of the Consumer Price Index and the beginning of a project to revise and update the CPI sample of rental units for which rents are collected over time.

The CPI continues to utilize electronic technology in the collection of data. Field representatives use hand-held pen computers and electronically collect and transmit data back to Washington, DC.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Revision.
Agency: The Bureau of Labor Statistics.
Title: CPI Housing Survey.
OMB Number: 1220–0163.
Affected Public: Individuals or households; business or other for-profit.
Total Respondents: 88,234.
Frequency: Semi-annually.
Total Responses: 114,351.
Average Time Per Response: 6 minutes.
Estimated Total Burden Hours: 11,652 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 11th day of April 2006.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E6–5859 Filed 4–18–06; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 1, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Landmarks of American History and Culture: Workshops for Community College Faculty, submitted to the Division of Education Programs at the March 15, 2006 deadline.

2. *Date:* May 3, 2006.
Time: 9 to 5 p.m.
Room: 315.
Program: This meeting will review applications for Landmarks of American History and Culture: Workshops for School Teachers, submitted to the Division of Education Programs at the March 15, 2006 deadline.

3. *Date:* May 8, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Landmarks of American History and Culture: Workshops for School Teachers, submitted to the Division of Education Programs at the March 15, 2006 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E6–5793 Filed 4–18–06; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

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 Science Foundation (NSF) will publish periodic summaries of proposed projects.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received within 60 days of this notice to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Catherine Hines, Acting Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–4414; or send e-mail to *chines@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. to 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the date collection instrument and instructions from Ms. Hines.

SUPPLEMENTARY INFORMATION:

Title of Collection: IWGSC Scientific Collections Survey.

OMB Approval Number: 3145–New.

Expiration Date of Approval: Not Applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Proposed Project: The Office of Science and Technology Policy (OSTP) has requested an assessment of information regarding all object-based scientific collections maintained or financially supported by the Federal government or used in research supported by the Federal government, and ancillary materials directly related to them. The Interagency Working Group on Scientific Collections (IWGSC), established in September 2005 by the Committee on Science of the National Science and Technology Council, is working with the IDA Science and Technology Policy Institute (STPI) to collect the information through an online survey. As part of the IWGSC, the National Science Foundation (NSF) has agreed to survey institutions with object-based scientific collections that receive support from the NSF or that are used by researchers that receive support from the NSF.

Estimate of Burden: The Foundation estimates that, on average, 40 minutes per respondent will be required to complete the survey, for a total of 400 hours for all respondents. Respondents from the approximately 600 institutions that receive NSF support for object-based collections, or whose object-based collections are used by researchers that receive NSF support for object-based collections, or whose object-based collections are used by researchers that receive NSF support, will complete this survey once.

Respondents: Not-for-profits.

Estimated Number of Responses: 600.

Estimated Total Annual Burden on Respondents: 400 hours.

Dated: April 13, 2006.

Catherine Hines,

Acting Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–3691 Filed 4–18–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The National Science Board and the Deputy Director, National Science Foundation have determined that the establishment of the Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics.

Nature/Purpose: The Commission will provide advice and recommendations to the National Science Board (NSB) on a broad range of policy issues dealing with science, technology, engineering, and mathematics education. The Board expects the scope of the Commission's advice and recommendations to address pre-K–16 education.

Responsible NSF Official: Dr. Michael P. Crosby, National Science Board Office, National Science Foundation, Room 1225, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–7000.

Dated: April 14, 2006.

Paul Bealafeld,

Chief, Committee Management Office.

[FR Doc. 06–3723 Filed 4–18–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act; Agenda

TIME AND PLACE: 9:30 a.m., Tuesday, April 25, 2006.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza S.W., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

7752A: *Safety Report*—Report on the Treatment of Safety-Critical Systems in Transport Airplanes.

NEWS MEDIA CONTACT: Ted Lopatkiewicz, Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, April 21, 2006.

The public may view the meeting via a live or archived Web cast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: April 14, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–3776 Filed 4–17–06; 12:20 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Notice of Availability of the Final Supplement 25 to the Generic Environmental Impact Statement Regarding License Renewal for Brunswick Steam Electric Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement (GEIS), NUREG–1437 for License Renewal of Nuclear Plants'', regarding the renewal of operating licenses DPR–71 and DPR–62 for an additional 20 years of operation at Brunswick Steam Electric Plant, Units 1 and 2 (BSEP). BSEP is operated by Carolina Power & Light Company (CP&L), now doing business as Progress Energy Carolinas, Inc. (PEC). BSEP is located in Brunswick County in southeastern North Carolina, near the mouth of the Cape Fear River. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. As discussed in Section 9.3 of the final Supplement 25, based on (1) The analysis and findings in the GEIS, (2) the CP&L Environmental Report; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for BSEP are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable. The final Supplement 25 to the GEIS is publicly available at the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*; a link is provided to access documents through the Internet-Based component of ADAMS. The accession number for the final Supplement 25 to the GEIS is ML060900480. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*. In addition, the William Madison Randall Library, located at 601 S. College Rd., Wilmington, NC 28403, has agreed to make the final Supplement 25 to the GEIS available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia R. Williamson, Environmental Branch B, Division of License Renewal, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Ms. Williamson may be contacted at 1–800–368–5642, extension 1878 or via e-mail at *ARW1@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of April, 2006.

For The Nuclear Regulatory Commission.

Frank P. Gillespie,

Division Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–5891 Filed 4–18–06; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Public Hearing

April 20, 2006.

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 71, Number 60, Page 15772) March 29, 2006. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's April 27, 2006 Board of Directors meeting scheduled for 2 p.m. on April 20, 2006 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: April 17, 2006.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 06–3777 Filed 4–17–06; 1:30 pm]

BILLING CODE 3210–01–M

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 17a-8, SEC File No. 270–53, OMB Control No. 3235–0092.

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 publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 17a–8—Financial Recordkeeping and Reporting of Currency and Foreign Transactions.

Rule 17a-8 (17 CFR 240.17a-8) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (the ''Act'') requires brokers and dealers to make and keep certain reports and records concerning their currency and monetary instrument transactions. The requirements allow the Commission to ensure that brokers and dealers are in compliance with the Currency and Foreign Transactions Reporting Act of 1970 (''Bank Secrecy Act'') and with the Department of the Treasury regulations under that Act.

The reports and records required under this rule initially are required under Department of the Treasury regulations, and additional burden hours and costs are not imposed by this rule.

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 agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 60 days of this notice.

Dated: April 12, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–5797 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 8676]

[Securities Exchange Act of 1934 Release No. 53641]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2006

April 13, 2006.

The Sarbanes-Oxley Act of 2002 (the ''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act. Under Section 109(f), the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Securities and Exchange Commission (the ''Commission'').

The PCAOB adopted a budget for calendar year 2006 on November 22, 2005 and submitted it to the Commission for approval on January 24, 2006. In accordance with its responsibilities to oversee the PCAOB, the Commission reviewed the budget proposed by the PCAOB for 2006 and its aggregate accounting support fee for 2006, which will fund the PCAOB's expenditures.

In an effort to address any issues relating to the PCAOB's proposed budget for 2006 before it was approved by the PCAOB and submitted to the Commission for review and approval, the Commission's review of the PCAOB's proposed budget for 2006 began in August 2005 with a meeting between Commission and PCAOB staffs to discuss the types of supporting information the Commission would need to begin its review of the PCAOB's 2006 budget, including questions to be addressed by the PCAOB regarding its proposed budget and accounting support fee. Also, prior to the PCAOB's final consideration of its 2006 budget estimates and approval of its proposed budget for 2006, the PCAOB board members met, either in person or by phone, with each Commissioner to discuss the PCAOB's development of a strategic plan and other matters impacting the PCAOB's budget. In December, shortly after the PCAOB approved its proposed budget for 2006, the PCAOB briefed the Commission staff on its inspection program for 2005 and its plans for 2006 and provided responses to the staff's questions regarding its inspection program.

Over the course of the Commission's review, staff from the Commission's Offices of the Chief Accountant, Executive Director and Information Technology dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates, and attended several meetings with board members, management and staff of the PCAOB to develop an understanding of the PCAOB's budget and operations. During the course of the Commission's review, the Commission staff relied upon representations and supporting documentation from the PCAOB.

After considering the above, the Commission did not identify any proposed disbursements in the budget that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2006 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2006.

Based on the foregoing, the Commission has determined that the PCAOB's 2006 budget and annual accounting support fee are consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2006 are approved.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–5796 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 8677]

[Securities Exchange Act of 1934 Release No. 53642]

Order Regarding Review of Financial Accounting Standards Board Accounting Support Fee for 2006 Under Section 109 of The Sarbanes-Oxley Act of 2002

April 13, 2006.

The Sarbanes-Oxley Act of 2002 (the ''Act'') establishes criteria that must be met in order for the accounting standards established by an accounting standard-setting body to be recognized as ''generally accepted'' for purposes of the federal securities laws. Section 109 of the Act provides that all of the budget of an accounting standard-setting body satisfying these criteria shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Securities and Exchange Commission (the ''Commission''). Under Section 109(f), the annual accounting support fee shall not exceed the amount of the standard setter's ''recoverable budget expenses.'' Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (''FASB'') and its parent organization, the Financial Accounting Foundation (''FAF''), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' under Section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2006. In connection with its review, the Commission also reviewed the proposed

[1] Financial Reporting Release No. 70.

budget for the FAF and the FASB for calendar year 2006.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Government Accounting Standards Board (''GASB''), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2006 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–5798 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53635; File No. SR–Amex–2005–075]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendments No. 2 and 3 Thereto Relating to the Establishment of a New Class of Registered Options Trader Called a Supplemental Registered Options Trader (''SROT'')

April 12, 2006.

I. Introduction

On July 14, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a new class of Registered Options Trader called a Supplemental Registered Options Trader (''SROT''). On November 4, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] On December 7, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] On January 13, 2006, the Amex filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 26, 2006.[6] The Commission received no comments from the public in response to the proposed rule change. This order approves the proposed rule, as amended by Amendments No. 2 and 3.

II. Description

Amex proposes to adopt Amex Rule 993—ANTE to establish a new category of registered options trader called an SROT. Amex also proposes to adopt amendments to existing Amex Rules 900—ANTE, 918—ANTE, 935—ANTE, 936—ANTE, 936C—ANTE, 950—ANTE, 951—ANTE, 958—ANTE and 958A—ANTE to incorporate this new category of trader into relevant existing rules.

The Amex proposes to define an SROT as a ROT that is a member organization so designated by the Exchange and would be granted remote quoting rights to enter bids and offers electronically only from off the Exchange's physical trading floor,[7] in at least 300 option classes. A member organization requesting approval to act as an SROT would file an application with the Exchange, and the Exchange would initially choose a maximum of six (6) SROTs, based upon criteria including adequacy of resources, operational history, market making and/or specialist experience in a broad array of securities, and the ability to interact with order flow in all types of markets. The Exchange proposes to designate a committee (''Committee'') to make SROT approval decisions, including granting, withdrawing, denying, and deferring approval.[8] The proposed rule also includes provisions that govern SROT applicant withdrawal, as well as suspension and/or termination of SROT appointments.

The Exchange would determine the number and type of option classes assigned to an SROT, with a minimum of 300 option classes per SROT. SROTs would be required to purchase or lease one seat for every thirty (30) option classes quoted and would be required to provide continuous two-sided quotations in at least 60% of the series of their assigned classes. The proposed rule would require that SROTs maintain information barriers and that no SROT be assigned to an options class where the SROT has a direct or indirect affiliate who is a specialist, ROT or SROT in such option class. Commentary to proposed Amex Rule 993—ANTE also provides that quoting rights and the designation as an SROT are non-transferable and that SROTs may trade in a market-making capacity only in the classes of options to which he/she is assigned.

Amex proposes to modify Amex Rule 935—ANTE, which governs the allocation of unexecuted contracts to include SROTs. As proposed, when more than one market participant is quoting at the Amex Best Bid or Offer (''ABBO''), and an SROT is not interacting with its own firm's orders, the allocations in Amex Rule 935—ANTE (a)(1)–(4) would apply. However, when more than one market participant is quoting at the ABBO, and an SROT is interacting with its own firm's orders, the ANTE System will allocate the remaining contracts after non-broker dealer customer orders as follows: (i) 20% to an SROT interacting with its own firm's orders; (ii) 20% to the specialist; and (iii) the balance to registered options traders.

Amex also proposes to modify Amex Rule 958—ANTE, which governs ANTE options transactions of registered options traders and imposes certain obligations, including engaging in transactions that are reasonably calculated to contribute to the maintenance of a fair and orderly market, making competitive bids and offers necessary, in a market making capacity, to contribute to the maintenance of a fair and orderly market, to include SROTs. Furthermore, Amex proposes to modify Amex Rule 958A—ANTE, which is the Exchange's Firm Quote Rule, to apply to SROTs.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Amendment No. 2 replaced and superseded Amendment No. 1.

[5] Amendment No. 3 made clarifying changes to the Purpose section, as well as changes to the proposed rule text relating to allocation of executed contracts and affiliation limitations.

[6] *See* Securities Exchange Act Release No. 53161 (January 20, 2005), 71 FR 4388.

[7] *See* proposed Amex Rule 900—ANTE (50).

[8] Pursuant to paragraph (a)(vi) to proposed Amex Rule 993—ANTE, the Committee may not defer a determination of the approval of the application of an SROT applicant unless the basis for such deferral has been objectively determined by the Committee, subject to Securities and Exchange Commission approval or effectiveness pursuant to a proposed rule change filed under Section 19(b) of the Act. The Committee would be required to provide written notification to any SROT applicant whose application is the subject of such deferral, describing the objective basis for such deferral.

and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,[10] which require, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Currently, the Exchange permits ROTs to submit quotes only from the physical trading floor. Under the proposal, a new class of market participant, SROTs, would be permitted to quote electronically from off the Exchange's physical trading floor. Introducing a new class of market participant able to enter quotes from off the physical trading floor should attract new market makers to the Exchange, which should increase the liquidity available in those classes to which SROTs are assigned.

The Commission notes that the Committee will determine, based on specified criteria, which member organizations should be chosen to act as SROTs. The existence of order flow commitments between an SROT applicant and order flow providers is one factor the Committee will evaluate in making its decisions. The Exchange represents, and the Commission emphasizes, that a future change to, or termination of, any such commitments would not be used by the Exchange at any point in the future to terminate or take remedial action against an SROT and that the Committee would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. Similarly, the Exchange has included the ''willingness to promote the Exchange'' as a factor that the Committee may consider when making its application decisions. The Exchange represents, and the Commission emphasizes, that the Committee would not apply this factor to in any way restrict, either directly or indirectly, an SROT's activities as a market maker or specialist on other exchanges, or to restrict how SROTs handle orders held by them in a fiduciary capacity to which they owe a duty of best execution.

The Exchange also represents that should the Committee decide not to approve an SROT applicant, or should an SROT's appointment be suspended or terminated in one or more classes, an SROT applicant or an SROT, respectively, would be entitled to a hearing under Article IV, Section 1(g) of the Amex Constitution and Amex Rule 40. Additionally, should the Committee decide to defer an SROT application, the Committee must provide written notification to any SROT applicant whose application is the subject of such deferral, describing the objective basis for such deferral. Proposed Amex Rule 993(a)(vi)—ANTE prohibits the Committee from deferring a determination of the approval of the application of an SROT applicant unless the basis for such deferral has been objectively determined by the Committee, subject to Securities and Exchange Commission approval or effectiveness pursuant to a proposed rule change filed under Section 19(b) of the Act.

Proposed Amex Rule 993(c)—ANTE sets forth the obligations that an SROT would be required to fulfill. Specifically, an SROT would be required to generate continuous, two-sided quotations in not less than 60% of the series of their assigned classes. The Commission believes that these obligations for SROTs are consistent with the Act. In particular, the Commission believes that SROT's affirmative obligations are sufficient to justify the benefits they receive as market makers.

The Exchange also represents that information barriers would be in place to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in option classes assigned to an SROT, or that may act as a market maker in any security underlying options assigned to an SROT. SROTs would also be required to comply with Amex Rule 193 regarding the misuse of material non-public information between the affiliate and the specialist organization.

The Commission believes that the trade allocation algorithm that would apply to SROTs is consistent with the Act and should encourage SROTs to quote competitively.

Finally, the Commission notes that an SROT would be permitted to trade in a market making capacity only in the classes of options in which the SROT is assigned and, furthermore, that quoting rights and designation of an SROT would be non-transferable.

As such, the Commission believes that Amex's proposal to adopt Amex Rule 993—ANTE to establish a new category of registered options trader called an SROT and the corresponding amendments to existing Amex Rules 900—ANTE, 918—ANTE, 935—ANTE, 936—ANTE, 936C—ANTE, 950—ANTE, 951—ANTE, 958—ANTE and 958A—ANTE, are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Amex–2005–075), as amended by Amendments No. 2 and 3, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5800 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53637; File No. SR-CBOE–2004–65]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Restrictions on Arbitrators serving on CBOE's Arbitration Committee

April 12, 2006.

I. Introduction

On October 14, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend rules concerning restrictions on the activities of arbitrators who serve as members of the CBOE Arbitration Committee (''Committee''). On December 13, 2005 and February 15, 2006, CBOE filed Amendments Nos. 1 and 2, respectively, to the proposed rule change including amendments to CBOE Rules 18.10, 18.13 and 18.14 concerning the removal of arbitrators and restrictions on the activities of arbitrators who serve as members of the Committee.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety. Amendment No. 2 replaced the rule text in the original filing and Amendment No. 1 in their entirety. Also, Amendment No. 2 supplemented the ''Purpose'' section of Amendment No. 1 with additional explanations as to the basis for certain proposed rule amendments.

proposed rule change, as amended, was published for comment in the **Federal Register** on March 13, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Proposed Changes to CBOE Rule 18.10

The Exchange proposes to amend CBOE Rule 18.10 to codify its unwritten policy that restricts members of the Committee from representing parties as counsel[5] in any arbitration dispute, claim or controversy that has been submitted to CBOE for resolution (''CBOE Arbitration''). This restriction would extend for six months after the date on which a Committee member ceases being a member of the Committee. Moreover, if a Committee member is appointed as an arbitrator in a pending CBOE Arbitration (''Pending CBOE Arbitration'') and subsequently ceases being a member of the Committee, but continues to serve as an arbitrator in the Pending CBOE Arbitration, that person cannot represent a party as counsel in a separate CBOE Arbitration until he or she has ceased serving as an arbitrator in the Pending CBOE Arbitration.

Under CBOE rules, any CBOE Arbitration between parties who are members or persons associated with a member shall be resolved by an arbitration panel that consists of three members of the Committee.[6] The Committee is maintained primarily as a means for managing a pool of qualified industry arbitrators that is composed of a cross-section of Exchange members and/or former members or associated persons of members or other individuals who are knowledgeable about the securities industry.[7] All Committee members are appointed in accordance with Exchange governance rules and guidelines.[8]

The Exchange has long adhered to an unwritten policy that prohibits a Committee member who is an attorney from representing a party in a CBOE Arbitration while that person is serving on the Committee. This policy is consistent with the Exchange's belief that, while serving on the Arbitration Committee, arbitrators should be committed to the impartial resolution of any disputes that come before them and should avoid circumstances that could disqualify them from being appointed in future arbitrations or give rise to the appearance of partiality. The Exchange does not believe that a Committee member should act as an advocate in a CBOE Arbitration while serving as a member of the CBOE Arbitration Committee. Accordingly, the Exchange feels it would be prudent to codify its unwritten policy within the rules governing CBOE Arbitrations. Additionally, the Exchange notes that the proposed rule text relating to restricting an arbitrator from representing a party as counsel in any CBOE Arbitration (proposed Rule 18.10(c)) also would extend to restrict an arbitrator from representing a party as counsel in any capacity, not just acting as an attorney.

In addition, the Exchange believes that a sufficient period of time should pass after an arbitrator is no longer a member of the Committee before that individual may represent a party as counsel in a CBOE Arbitration. Without this required separation period, a former Committee member conceivably could appear as counsel to a party before other members of the Committee in a CBOE arbitration immediately after resigning from the Committee. Although CBOE does not believe that membership on the Arbitration Committee necessarily creates meaningful relationships with other Committee members, such that present Committee members could not be impartial in considering a case on which a recently retired Committee member serves as counsel, a prescribed waiting period is a sensible precaution against the appearance of partiality. The Exchange believes that a six-month waiting period would be appropriate and would help to eliminate the appearance of partiality that could otherwise exist.

Finally, the rule proposal provides that, if a Committee member is appointed as an arbitrator to a pending CBOE Arbitration and subsequently ceases to be a member of the Committee, but continues to serve as an arbitrator in the pending CBOE Arbitration, that person cannot represent a party in a separate CBOE Arbitration as counsel until the arbitrator ceases to be appointed as an arbitrator in the pending CBOE Arbitration. This provision of the proposed rule would address the unlikely, but possible, situation in which an arbitration proceeding remains pending more than six months after the date on which an appointed arbitrator to that case ceased being a member of the Committee.[9] The Exchange believes that this provision is consistent with the purpose of this rule change, which is the avoidance of the appearance of partiality on the part of a CBOE Arbitrator.

The proposed rules supplement existing policies and procedures that are in place to screen arbitrators for conflicts, potential conflicts, and the appearance of conflicts prior, and subsequent, to appointment. Specifically, CBOE policies and procedures require any arbitrator, prior to or subsequent to appointment to a CBOE Arbitration, to disclose any information that presents a conflict, existing or potential, or creates the appearance of a conflict with any party, fact, or circumstance related to the case in question.[10] Arbitrators also are required to disclose any new information or circumstances that may arise after their appointment that would create a similar conflict or potential for conflict. Thus, if a former member of the Arbitration Committee were to serve as counsel to a party before a CBOE arbitration panel, the appointed arbitrators would be required to disclose any past relationships with the former Committee member regardless of how much time has passed since that former member resigned from the Committee.[11]

Proposed Changes to CBOE Rules 18.13 and 18.14

The Exchange also proposes to adopt new rules governing the process for removing or disqualifying arbitrators: (1) When the appointed arbitrator has conflicts of interest with the parties or subject matter or if there is evidence of arbitrator bias, or (2) for failing to comply with arbitrator disclosure requirements. Specifically, Exchange Rules 18.13 and 18.14 would be

[4] *See* Securities Exchange Act Release No. 53431 (March 7, 2006), 71 FR 12755 (March 13, 2006).

[5] CBOE Rule 18.17 provides: ''All parties shall have the right to representation by counsel at any stage of the proceedings.'' Since persons who are eligible to act as ''counsel'' in CBOE arbitration proceedings are not limited to licensed attorneys, the proposed rule change would apply to any person acting as ''counsel'' in a CBOE arbitration proceeding whether the person is a licensed attorney or not.

[6] *See* CBOE Rule 18.2(a). Rule 18.2(a) specifically provides that the arbitration panel appointed to resolve member-to-member arbitrations shall consist of ''not less than three members of the Arbitration Committee.'' However, as a matter of practice, arbitration panels typically consist only of three members of the Arbitration Committee.

[7] Unlike other Exchange committees, the Arbitration Committee does not meet as a whole except for training or to administer the annual Committee orientation. For a CBOE Arbitration involving customers or non-Exchange members and a member(s), CBOE rules require that the dispute be resolved by an arbitration panel that consists of no less than three arbitrators, the majority of which consists of arbitrators who are not from the securities industry (''Public Arbitrators''). (*See* CBOE Rule 18.10). In non-member CBOE Arbitrations, members of the Arbitration Committee may be appointed as industry arbitrators.

[8] *See* CBOE Rule 18.10.

[9] Proposed CBOE Rule 18.10(c)(ii).

[10] *See* CBOE Rule 18.13.

[11] *Id.*

amended to provide greater safeguards against the possibility that a CBOE Arbitration could proceed with an appointed arbitrator who should, by rule, not be hearing and resolving the arbitration. These amendments would be substantially similar to those recently proposed by the NASD.[12]

Rule 18.13(a)–(c) currently outlines the disclosures that a CBOE arbitrator must make that help to assess whether the arbitrator would be precluded from rendering an objective and impartial decision in a CBOE Arbitration.[13] Proposed Rules 18.13(d)(1) and 18.13(d)(2) provide that the Director of Arbitration may remove an arbitrator based on the disclosures made under Rule 18.13(a)–(c) and information not known to the parties when the arbitrator was selected. The Exchange also proposes to amend Rule 18.13(d), in proposed Rule 18.13(d)(3), to clarify that the Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the CBOE Arbitration. Such interest or bias must be direct, definite, and capable of reasonable demonstration, rather than being remote or speculative. In addition, proposed Rule 18.13(d)(4) would help to ensure that parties to a CBOE Arbitration are informed of the disclosure of any new information that is required to be disclosed by an arbitrator under Rule 18.13 unless either the Director of Arbitration removes the arbitrator or the arbitrator withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described under Rule 18.13(a) that might preclude the arbitrator from rendering an objective and impartial determination in the CBOE Arbitration. These proposed changes are substantially similar to the standards proposed by NASD.[14]

Also, this proposal would amend CBOE Rule 18.14, which currently provides the process by which the Exchange fills vacancies of an arbitrator, who for any reason, is unable to perform as an arbitrator.[15] The Exchange proposes to provide within Rule 18.14 a more detailed process by which the Director of Arbitration may remove or disqualify an arbitrator based on: (1) Conflicts of interest or bias involving an arbitrator; (2) challenges for cause; and (3) information required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.[16] These proposed changes are also substantially similar to proposed NASD arbitration rules governing the same subject matter.[17]

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.[18] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change furthers the objectives of Section 6(b)(5), in that it is designed to protect investors and the public interest by strengthening the integrity of the CBOE Arbitration program. The proposed rule change does so by limiting the possibility of conflicts of interest: (1) By restricting members of the Committee from representing parties to an arbitration while serving on the Committee and for six months after ceasing to be a member of the Committee, and (2) by adopting new rules governing the process for removing or disqualifying arbitrators when the appointed arbitrator has conflicts of interest with the parties or subject matter or if there is evidence of arbitrator bias, as well as for failing to comply with arbitrator disclosure requirements.

IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2004–65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5853 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

[12] *See* Securities Exchange Act Release No. 51856 (June 15, 2005); 70 FR 36442 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Customer Disputes (''Proposed Customer Code'')); Securities Exchange Act Release No. 51857 (June 15, 2005); 70 FR 36430 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Industry Disputes (''Proposed Industry Code'')).

[13] *See* CBOE Rule 18.13(a)–(c).

[14] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 11.

[15] Such reasons include the disqualification, resignation, death, disability, or withdrawal of the arbitrator.

[16] Proposed Rule 18.14(c) also would provide standards to be used in deciding challenges for cause, which standards are identical to those provided under proposed Rule 18.13(d).

[17] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 12.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53634; File No. SR–ISE–2006–16]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Regulatory Fees

April 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2006, the International Securities Exchange, Inc. (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to change its Regulatory Fees. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, and at the Exchange's Web site: *http://www.iseoptions.com/legal/proposed_rule_changes.asp.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

ISE currently charges a uniform regulatory fee of $3,500 on an annual basis to all its members regardless of whether they are a Primary Market Maker (''PMM''), a Competitive Market Maker (''CMM'') or an Electronic Access Member (''EAM''). The Exchange has determined that the cost of surveilling its members far exceeds the amount that is generated by the current fees. In order to partially bridge this gap, the Exchange proposes to increase these fees as follows: for PMMs, ISE proposes a fee of $7,500 for the first PMM membership; $1,500 for each additional PMM membership; and $1,000 for each CMM membership. For CMMs (who are not also PMMs), ISE proposes a fee of $5,000 for the first CMM membership and $1,000 for each additional CMM membership. Finally, for EAMs, ISE proposes a fee of $5,000 for each EAM membership. The Exchange estimates that its largest members will be impacted by a nominal increase in the range of $15,000–$18,000 per year. And while some members will be affected more than others, the Exchange believes the increase is justified as it enables ISE to partially recoup the expense incurred in fulfilling its regulatory responsibilities with respect to its members.

Under the proposed fee change, the amount of the regulatory fee is tiered, depending on whether the member is a PMM, a CMM or an EAM. The reason for the tiered structure is that the resources dedicated to surveilling the activities of a member vary on the type of membership. For example, the Exchange has rules that apply to a PMM that do not apply to a CMM or an EAM. These rules necessitate surveillance activities. Generally, PMMs are subject to more rules than CMMs are and CMMs are subject to more rules than EAMs are. As such, the Exchange believes that a tiered fee system is the most equitable method of assessing these fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act[5] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, these fees would permit the Exchange to partially recoup the expense incurred in fulfilling its regulatory responsibilities with respect to its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

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 Comment

- 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–ISE–2006–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and

Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File No. SR–ISE–2006–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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 No. SR–ISE–2006–16 and should be submitted on or before May 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5794 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53644; File No. SR–NASD–2006–048]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Modify Order Delivery Charges for Orders Delivered to Nasdaq Market Center Participants

April 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the imposition of fees for orders delivered to Nasdaq Market Center participants that elect to have orders delivered to their Quotes/Orders through the Nasdaq Market Center. Nasdaq plans to implement the proposed rule change, as amended, immediately upon approval by the Commission, if the Commission grants approval. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7010. System Services

(a)—(h) No Change

(i) Nasdaq Market Center, Brut, and Inet Order Execution and Routing

(1) The following charges shall apply to the use of the order execution and routing services of the Nasdaq Market Center, Brut, and Inet (the ''Nasdaq Facilities'') by members for all Nasdaq-listed securities subject to the Nasdaq UTP Plan and for Exchange-Traded Funds that are not listed on Nasdaq. The term ''Exchange-Traded Funds'' shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420(i), (j), and (l), respectively.

ORDER EXECUTION

Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq Facilities:	
Charge to member entering order:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed.	$0.0028 per share executed (or, in the case of executions against Quotes/Orders at less than $1.00 per share, 0.1% of the total transaction cost).
Other members	$0.0030 per share executed (or, in the case of executions against Quotes/Orders at less than $1.00 per share, 0.1% of the total transaction cost).
Credit to member providing liquidity:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 30 million shares of liquidity provided.	$0.0025 per share executed (or $0, in the case of executions against Quotes/Orders at less than $1.00 per share).
Other members	$0.0020 per share executed (or $0, in the case of executions against Quotes/Orders at less than $1.00 per share).
Order that [accesses]*is delivered to* the Quote/Order of a market participant [that charges an access fee to market participants accessing its Quotes/ Orders] through the Nasdaq Facilities:	
Charge to member [entering]*receiving order:*	
All members [Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 500,000 shares of liquidity provided].	$0.001 per share executed [(but no more than $10,000 per month)]
[Other members	$0.001 per share executed]

* * * * *

The text of the proposed rule change, as amended, is also available on Nasdaq's Internet Web site (*http://www.nasdaq.com*), at Nasdaq'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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to change the way fees are imposed for orders delivered to the Quotes/Orders of Nasdaq Market Center participants through the Nasdaq Market Center. Currently, Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq made non-substantive technical changes to clarify its Statement on Burden on Competition and to conform certain language of the proposed rule text to the current NASD Rule 7010.

imposes a $0.001 per share executed delivery fee on Nasdaq Market Center users who enter orders that are delivered to other Nasdaq Market Center participants that charge an access fee. Nasdaq proposes to modify this fee structure so as to impose a $0.001 delivery fee on participants that receive orders (order delivery participants) from the Nasdaq Market Center and eliminate the $0.001 delivery fee currently charged against the user who entered the order.

Nasdaq's order delivery service is a service provided to participants that wish to participate in the Nasdaq Market Center liquidity pool and control their execution decision external to Nasdaq systems. Order delivery is not a functionality or service that is required to be offered to participants, and it involves additional direct and indirect costs to operate. Specifically, order delivery consumes excess processing and networking capacity and requires unique specifications, requirements, and system development. These costs are directly related to the firms using order delivery, and the benefits of order delivery accrue directly to the firms participating in the system as order delivery participants.

Nasdaq believes that the proposed fee change more fairly and accurately aligns fees for order delivery within the Nasdaq Market Center by charging the firm that chooses to use order delivery functionality rather than the firm that has its order delivered. This fee modification better reflects the value of the benefits that accrue to order delivery recipients in the system. Furthermore, by no longer assessing a charge to the order entering firm, firms accessing liquidity within the Nasdaq Market Center can be more certain of their cost of using the system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[4] in general, and with Section 15A(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. In particular, Nasdaq believes that the proposed rule change more fairly and accurately aligns its fees for delivering orders to Nasdaq Market Center participants with the benefits accruing to entities that receive such order flow. In addition, to the extent that Nasdaq's proposal correctly assigns costs of order delivery to the small number of order delivery recipients that benefit from that functionality, the proposal also is a tangible benefit to the large number of market participants, including public investors, that will no longer be required to subsidize it.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Assessment of the competitive impact of any proposal must begin with a proper understanding of the notion of competition among market centers. Such understanding must be informed by the Act itself and by the commonly accepted principles of U.S. competition law generally (*e.g.*, the Sherman Antitrust Act and the Clayton Act), as applied by the courts and by the Antitrust Division of the U.S. Department of Justice.

The objective of assuring competition among markets is cited in Section 11A of the Act[6] alongside, *inter alia*, the objectives of achieving ''economically efficient execution of securities transactions'' and of creating ''the opportunity for more efficient and effective market operations.''[7] Not surprisingly, in antitrust law, the notion of competition is also always seen through the prism of economic efficiency. The law views competition as a force that encourages greater efficiency of operations, lower prices, and better service to market participants. Market behavior that promotes efficiency, lower fees, and better service is what both the Act and the antitrust laws seek to encourage.

As the Commission is aware, Nasdaq operates in the intensely competitive global exchange marketplace for listings, financial products, and market services. Nasdaq's ability to compete in this environment is based on a number of factors including technological quality, fairness and market transparency, price of services, quality of our markets (including spreads and depth of market), customer service, total transaction costs, and speed of our execution services. Relying on its array of services and benefits, Nasdaq competes with exchanges, Electronic Communication Networks (''ECNs''), and other Alternative Trading Systems (''ATSs'') for the privilege of providing market and listing services to broker-dealers and issuers. Moreover, within Nasdaq's own systems, ECNs and other ATSs compete with market makers and agency broker-dealers for retail and institutional order flow. It is in both arenas that Nasdaq's current method of imposing fees for order delivery services negatively impacts the overall competitive environment. First, Nasdaq's current imposition of fees for order delivery on parties entering orders into the Nasdaq Market Center creates disincentives for order flow providers to send orders to Nasdaq for processing and thereby harms Nasdaq's ability to compete with other markets operated by self-regulatory organizations—none of which provide order delivery, and consequently do not charge for it. For the same reasons, the present non-alignment of order delivery costs with those market participants that actually benefit from this functionality results in an improper subsidization of order delivery ECNs within Nasdaq's own system to the detriment of competing market makers and agency brokers that compete with those order delivery ECNs for retail and institutional order flow.

These negative competitive impacts are mitigated by Nasdaq's fee proposal. By imposing a portion of order delivery costs on firms that take advantage of Nasdaq's order delivery functionality, the proposal promotes efficiency, transparency, and lower prices, and is therefore pro-competitive. This is in contrast to the existing regime where order delivery ECNs are able to free-ride on Nasdaq's neutral execution algorithms that deliver orders to the ECNs without cost and provide them with little incentive to enhance their product or services. Nasdaq's proposal would ensure that ECNs more fully support the costs of Nasdaq's distribution of their services. In return, the overwhelming majority of Nasdaq's users would benefit from lower execution prices (and equally important, from the predictability of trade execution charges), while ECNs would have increased financial incentives to operate more efficiently. Finally, to the extent that the pricing change enhances Nasdaq's ability to attract order flow, the overall competitive environment among market centers would be enhanced. All results, by definition, are pro-competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78*o*–3(b)(5).

[6] 15 U.S.C. 78k–1 *et seq.*

[7] 15 U.S.C. 78k–1(a)(1).

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, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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–NASD–2006–048 and should be submitted on or before May 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5855 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53643; File No. SR–Phlx–2006–23]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Fees Related to Off-Floor Traders

April 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On April 12, 2006, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Phlx filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to: (1) Eliminate the Exchange's off-floor trader annual fee of $350.00; (2) eliminate the Exchange's off-floor trader initial registration fee of $100.00; and (3) adopt a monthly off-floor examination fee of $30.00 per off-floor trader for off-floor traders associated with member organizations for whom the Exchange is the Designated Examining Authority (''DEA'').[6] The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Appendix A

* * * * *

Off-Floor Examinations Fee—$30.00 monthly per Off-Floor Trader

[Off-Floor Trader Initial Registration Fee—$100.00]

[Off-Floor Trader Annual Fee—$350.00]

* * * * *

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 Phlx 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 Phlx 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 purpose of adopting the monthly off-floor examination fee is to continue to help off-set the Exchange's costs associated with conducting examinations and routine financial condition monitoring of member organizations that do not necessarily

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No.1, the Exchange made non-substantive, technical changes to the proposed rule text and clarified the purpose of the proposal.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA, or any other associated person of such member or participant organization, and who executes, makes trading decisions with respect to, or otherwise engages in proprietary or agency trading of securities, including, but not limited to, equities, preferred securities, convertible debt securities or options off the floor of the Exchange (''off-floor traders''), must successfully complete the Uniform Registered Representative Examination Series 7. *See* Phlx Rule 604(e)(i).

generate off-setting revenue for the Exchange or send orders to the Exchange. The Exchange also incurs administrative costs, such as costs incurred in conducting reviews of individuals with prior disciplinary history. Replacing the initial off-floor trader registration fee and the annual off-floor trader fee with a monthly off-floor examination fee allows the Exchange to bill member organizations in monthly increments, which should more closely align the number of off-floor traders that are registered with the Exchange with the fee being charged. Replacing such fees with the proposed monthly off-floor examination fee should therefore allow the Exchange to more accurately charge those applicable off-floor traders and help off-set those costs associated with such examinations, monitoring, and reviews. This proposal is scheduled to become effective on April 1, 2006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members of the Exchange.

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 Phlx has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. Accordingly, the proposed rule change is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2006–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File No. SR–Phlx–2006–23. 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 will also be available for inspection and copying at the principal office of the Phlx. 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 No. SR–Phlx–2006–23 and should be submitted on or before May 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–5854 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] The effective date of the original proposed rule change is March 31, 2006, and the effective date of Amendment No. 1 is April 12, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on April 12, 2006, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10448 and # 10449]

Arkansas Disaster # AR–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1636–DR), dated April 12, 2006.

Incident: Severe storms and tornadoes.

Incident Period: April 1, 2006 through April 3, 2006.

Effective Date: April 12, 2006.

Physical Loan Application Deadline Date: June 12, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: January 12, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on April 12, 2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Conway, Cross, Fulton, Greene, Lawrence, Randolph, White

Contiguous Counties (Economic Injury Loans Only): Arkansas

Baxter, Clay, Cleburne, Craighead, Crittenden, Faulkner, Independence, Izard, Jackson

Lonoke, Perry, Poinsett Pope, Prairie, Sharp, St. Francis, Van Buren, Woodruff Yell

Missouri

Dunklin, Howell, Oregon, Ozark, Ripley

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	7.408
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10448 C and for economic injury is 10449 O.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–5836 Filed 4–18–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10446 and # 10447]

Indiana Disaster # IN–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated April 13, 2006.

Incident: Severe Storms and Tornadoes.

Incident Period: March 31, 2006 through April 9, 2006.

Effective Date: April 13, 2006.

Physical Loan Application Deadline Date: June 12, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: January 16, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Daviess, Lawrence, Orange, Shelby

Contiguous Counties: Indiana

Bartholomew, Crawford, Decatur, Dubois, Greene, Hancock, Jackson, Johnson, Knox, Marion, Martin, Monroe, Pike, Rush, Washington

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	7.408
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10446 C and for economic injury is 10447 O.

The States which received an EIDL Declaration # is Indiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 13, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. E6–5837 Filed 4–18–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5327]

Arms Control and Nonproliferation Advisory Board (ACNAB); Meeting Notice

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2), the Department of State announces a meeting of the Arms Control and Nonproliferation Advisory Board (ACNAB) to take place on May 11, 2006, at the Department of State, Washington, DC. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d) and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 12958. The purpose of the ACNAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, international security, and public diplomacy. The agenda for this meeting includes classified briefings and other discussions related to the Board's ongoing studies on current U.S. policy and issues regarding the National Strategy for Combating Weapons of Mass Destruction, Counter-Terrorism and Space Policy. For more information, contact Matthew Zartman, Deputy Executive Director of the Arms Control and Nonproliferation Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 736–4244.

Dated: April 10, 2006.

Dr. George W. Look,

Executive Director of The Secretary's Arms Control and Nonproliferation Advisory Board, Department of State.

[FR Doc. E6–5871 Filed 4–18–06; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 5376]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice announces the program of International Telecommunication Advisory Committee meetings to prepare for meetings of the Organization for Economic Co-operation and Development (OECD) WPIE and CISP committee meetings of May 29–31, 2006.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare for the OECD WPIE and CISP meeting on the following dates: May 4, 11, 18, and 25. All meetings will be from 2–4 p.m. and will be held in Room 2533 at the Harry S Truman Building (Main State) 2201 C Street, Washington.

These meetings are open to the public. People planning to attend the meeting should send their clearance information (name, affiliation, SSN and date of birth) to *mccorklend@state.gov* not less than 24 hours prior to the meeting. Enter through the C Street

doors, and be prepared to present a picture ID. Particulars on conference bridges is available from *minardje@state.gov*, telephone 202 647–3234.

Dated: April 12, 2006.

Anne D. Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Department of State.

[FR Doc. E6–5870 Filed 4–18–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5377]

Third Public Meeting of the Advisory Committee on Persons With Disabilities

Summary: The Advisory Committee on Persons with Disabilities will conduct its third public meeting on May 1, 2006 from 9 a.m.–4 p.m. Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. See, *http://www.itcdc.com/index.php.*

Attendees must have valid, government-issued identification in order to enter the building.

The Advisory Committee is made up of the Secretary of State, the Administrator for International Development and an Executive Director (all ex-officio members); and eight members from outside the United States government: Senda Benaissa, Walter Bollinger, Joni Eareckson Tada, Vail Horton, John Kemp, Albert H. Linden, Jr., Kathleen Martinez, and John Register.

Established on June 23, 2004, the Advisory Committee serves the Secretary and the Administrator in an advisory capacity with respect to the consideration of the interests of persons with disabilities in formulation and implementation of U.S. foreign policy and foreign assistance. The Committee is established under the general authority of the Secretary and the Department of State as set forth in Title 22 of the United States Code, in particular Sections 2656 and 2651a, and in accordance with the Federal Advisory Committee Act, as amended.

Dated: April 13, 2006.

Stephanie Ortoleva,

Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. E6–5868 Filed 4–18–06; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2006–24502]

Notice Seeking Comments on Data Collection for the Small Community Air Service Development Program, 49 U.S.C. 41743

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) request for comments regarding data collection by the Department under the Small Community Air Service Development Program.

DATES: Comments on this notice must be received by June 19, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number OST–2006–24502 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 on Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this data collection. For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this document. 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 Notes.

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: Aloha Ley, Small Community Air Service Development Program, X–50, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2347.

SUPPLEMENTARY INFORMATION:

Title: Small Community Air Service Development Program.

OMB Control Number: XXXX–XXXX.

Type of Request: Comments on data collection.

Abstract: The Department of Transportation needs to collect certain information from eligible grant applicants in order to evaluate community proposals for financial grants to address their air service/air fare needs under the criteria set forth in 49 U.S.C. 41743 for the Small Community Air Service Development Program (Small Community Program) (Grant Application Form). In addition, the Department needs to collect information from those communities selected for grant awards regarding improvements to their air services and air fares, the community's expenditures made in conjunction with the authorized air service/fare improvements, and the effectiveness of the expenditures for such service(s). The purpose of these collections is to permit the Department to monitor the effects of the Small Community Program on the use of the air service at the local airport (Enplanement Report); to effectively and efficiently process a community's reimbursement requests during implementation of the air service/air fare improvements (Reimbursement Form); and to monitor and evaluate the effectiveness of the project being implemented with federal funding provided under the Small Community Program (Final Report).

Respondents: Eligible local communities or consortia of communities and/or local airports serving those communities.

Estimated Number of Respondents: 380. This consists of approximately 100 grant applicants each year; 120 grant recipients filing enplanement reports and reimbursement requests; and 40 grant recipients filing final reports each year.

Estimated Total Burden on Respondents: 13,200 hours. This consists of 8,000 hours for the application process; 480 hours for enplanement reports; 400 hours for final reports, and 4,320 hours for reimbursement requests. For applications, this assumes a maximum of 80 hours to prepare an application for

100 respondents; one hour each to complete the enplanement report four times per year assuming 120 grant recipients; ten hours to complete the final report, assuming 40 grant recipients file final reports each year; and three hours to complete a reimbursement request, assuming 120 grant recipients file one reimbursement request each month. With the exception of the reimbursement requests, which must include an original signature and supporting documentation, respondents are permitted to submit the collection data electronically to the Department. The Department expects to transition into an electronic submission system for reimbursement requests within the next 12 months.

Comments are invited on: (a) Whether the proposed collection of information is reasonable for the proper performance of the grant award functions of the Department under the Small Community Program, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on April 13, 2006.

Todd Homan,

Acting Director, Office of Aviation Analysis.

[FR Doc. E6–5838 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–24493]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 19, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number 2006–24493 to the Docket Clerk, via 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 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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: Mr. Chris Jaeschke, (703) 404–6306, Planning and Programming (HFPP–15), Eastern Federal Lands Highway Division, Federal Highway Administration, Department of Transportation, 21400 Ridgetop Circle. Sterling, VA 20166. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: George Washington Birthplace National Historic Site, Visitor Transportation Survey.

Background: The transportation related data that is collected is used for management decisions that affect visitor access and mobility, including estimates of the facility's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems in and around the subject facility. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-Lands Highway Program (FLHP). The data that is required by the FLHP is continually reassessed and streamlined by the FHWA.

Respondents: General public visitors to the National Historic Site.

Estimated Average Burden Per Response: The estimated average reporting burden per response is 10 minutes.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 17 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

James R. Kabel

Chief, Management Programs and Analysis Division.

[FR Doc. E6–5815 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on New Transit Operations in Madison, WI

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the City of Madison, WI (Madison) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for a proposal by Madison to implement new transit operations in an approximately 13-mile travel corridor extending from the City of Middleton on the west, through the campus of the University of Wisconsin-Madison to the Isthmus of Madison, WI to the American Parkway interchange on US 151, southwest of Sun Prairie, WI and encompassing the surrounding urbanized areas.

Growing mobility challenges coupled with very limited opportunity for highway capacity expansion has prompted the communities in the area to consider investment in transportation improvements, both to supplement and enhance existing Metro bus service and

to extend service to new markets throughout the corridor and in the region.

Alternatives proposed to be considered in the draft EIS include No Build, the Transportation System Management (TSM) Alternative and various Build Alternatives.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Madison by May 29, 2006. *Scoping Meetings:* An agency scoping meeting will be held at 1 p.m. on Wednesday, April 26, 2006, at Monona Terrace, One John Nolen Drive, in Madison, WI. A public scoping meeting open house will be held at the same location on Wednesday, April 26, 2006, from 5 p.m. to 8 p.m.

The scoping meeting sites are accessible to mobility-impaired individuals. If you need an interpreter, materials in alternate formats, or other accommodations to access this service, activity or program, please contact the City of Madison, Department of Planning and Development at (608) 266–4635, TDD (608) 266–4747. Please do so at least 48 hours prior to the meeting so that the proper arrangements can be made.

ADDRESSES: Send written comments on the project scope to David M. Trowbridge, Transport 2020 Project Manager, City of Madison Department of Planning and Development, 215 MLK Jr. Blvd., Madison, WI 53703–3348 or *dtrowbridge@cityofmadison.com* (608) 267–1148.

FOR FURTHER INFORMATION CONTACT: Victor Austin, Federal Transit Administration, Region 5 at (312) 886–1625.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and the City of Madison invite all interested individuals, organizations, businesses, and federal, state, and local agencies to comment on the purpose and need, project alternatives, and scope of the EIS. During the scoping process, comments should focus on the purpose and need for a project, identifying specific transportation problems to be evaluated, or on proposing transportation alternatives that may be less costly, more effective, or have fewer environmental impacts while improving mobility in the corridor.

Following the public scoping process, public outreach activities with interested parties or groups throughout the duration of work on the EIS will continue. The project Web site, *http://www.transport2020.net,* will be updated periodically to reflect the status of the project. Additional opportunities for public participation will be announced through mailings, notices, and press releases. Those wishing to be placed on the project mailing list may do so by contacting David M. Trowbridge, Transport 2020 Project Administrator at (608) 267–1148 or signing up at *http://transport2020.net/Mailing.htm.*

II. Description of Study Area and Project need

The Study Area includes the Isthmus, the University of Wisconsin and the most densely developed commercial and residential areas of central Dane County, extending from the city of Middleton on the west, through the campus of the University of Wisconsin-Madison to the Isthmus of Madison, WI to the American Parkway interchange on US 151, southwest of Sun Prairie, WI. This area contains the most serious congestion and mobility challenges in the region. The area also contains existing rail and roadway facilities that can support the proposed transportation strategies and systems.

Worsening mobility problems in Dane County's primary regional center, the central area of Madison which includes the city's commercial core, the University of Wisconsin Madison and major special events destinations, threatens to damage the region's high quality of life and the regional center's ability to absorb desirable residential and commercial growth.

Because of geographical constraints of the isthmus, environmental concerns primarily with area lakes, and quality-of-life issues presented by the public, the possibility of addressing the area's transportation problems through roadway capacity expansion is limited.

Given growing mobility challenges, coupled with very limited opportunity for highway capacity expansion to address them, a potentially promising alternative is investment in transit to supplement and enhance existing Metro bus service and to extend service to new markets throughout this regional corridor.

III. Alternatives

A Locally Preferred Alternative (LPA) emerged from the evaluation and public involvement process conducted previously (Transport 2020). The alternatives analyzed in that study are fully described in the *Transport 2020 Transportation Alternatives Analysis for the Dane County/Greater Madison Metropolitan Area* final report dated August 23, 2002. The DEIS will assess the environmental impacts of a range of alternatives including (1) The No Build Alternative; (2) the Transportation System Management (TSM) Alternative; and (3) the Build Alternatives using existing rail corridors, with possible street-running alternative alignments.

The No-Build Alternative will include existing transit services and facilities and those planned and programmed as new transportation services, facilities, and system management improvements that are already included in the 2035 Regional Transportation System Plan for Southeastern Wisconsin.

The TSM Alternative will include operational and low cost capital investments to the existing transit services in the corridor, providing a level of capital investment that is greater than the No-Build Alternative but significantly less than other Build Alternatives.

Build Alternatives would include both street-running and rail alternatives using either bus or rail technology. The Build Alternatives will include but not be limited to the refinement of the initial Start-Up System, or Minimum Operable Segment (MOS) identified in the Locally Preferred Alternative from the prior Alternatives Analysis. The MOS includes: (1) Expanding the Madison Metro local bus system; (2) Adding new express bus routes running inbound during a.m. peak periods and outbound during p.m. peak periods; (3) Adding new park and ride lots, primarily at express bus route terminal locations; and (4) Adding commuter rail service running approximately 13 miles between Middleton and East Towne using FRA-compliant, self-propelled vehicles (DMUs). In addition to these initially identified alternatives, other alternatives generated by the scoping process may be considered.

IV. Potential Impacts for Analysis

The EIS will evaluate the impacts of all reasonable alternatives on land use, zoning, displacements, parklands, economic development, community disruptions, environmental justice, aesthetics, air quality, noise and vibration, wildlife, vegetation, threatened and endangered species, farmland, water quality, wetlands, waterways, floodplains, hazardous materials, and cultural, historic, and archaeological resources.

The EIS will take into account both positive and negative impacts, direct and indirect impacts, short-term and long-term impacts and site-specific and corridor wide impacts. Evaluation criteria will be consistent with all Federal, State of Wisconsin and local criteria, regulations and policies. The EIS will identify measures to avoid or

mitigate significant adverse environmental impacts.

To ensure that all significant issues related to this proposed action are identified and addressed, scoping comments and suggestions are invited from all interested parties. Comments and questions should be directed to Madison as noted in the **ADDRESSES** section above.

V. FTA Procedures

In accordance with FTA policy, all federal laws, regulations and executive orders affecting project development, including but not limited to, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508 and 23 CFR part 771), the 1990 Clean Air Act Amendments, Section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and Section 4(f) of the Department of Transportation Act, will be addressed to the maximum extent possible during the NEPA process.

A DEIS will be prepared and made available for public and agency review and comment. A public hearing will be held on the DEIS. Based on the DEIS and the public and agency comments received, the preferred alternative will be further refined as necessary and the Final Environmental Impact Statement will be prepared.

Issued on: April 12, 2006.

Don Gismondi,

Deputy Regional Administrator.

[FR Doc. 06–3715 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24037]

Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, New Freedom Programs and Coordinated Public Transit-Human Services Plans: Notice of Public Meeting, Interim Guidance for FY06 Implementation, and Proposed Strategies for FY07

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Extension of comment period.

SUMMARY: The Federal Transit Administration is extending the comment period through May 22, 2006, for interested parties to submit comments to assist FTA in developing guidance in the form of circulars to help grantees in implementing the Elderly Individuals and Individuals With Disabilities Program, the Job Access and Reverse Commute Program, and the New Freedom Program beginning in FY07.

DATES: Comments must be received by May 22, 2006. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [FTA–2006–24037] 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 System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001; or Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You should include the agency name and docket number [FTA–2006–24037] for this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan-Smith or Bryna Helfer, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9114, Washington, DC 29590. Phone: 202–366–4020, Fax 202–366–7951, or e-mail, *Henrika.Buchanan-Smith@fta.dot.gov*; *Bryna.Helfer@fta.dot.gov*; or Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. Phone 202–366–4011, Fax: 202–366–3809 or e-mail, *Bonnie.Graves@fta.dot.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2006, the Federal Transit Administration issued a notice containing guidance for FY06 implementing, notice Aden request for comment for FY07 implementation, and announcement of public meeting for its Elderly Individuals and Individuals with Disabilities, Job Access and Reverse Commute, New Freedom Programs and Coordinated Public Transit-Human Services Transportation Plans (71 FR 13456). By this notice, FTA is seeking additional public comment to assist them in developing circulars for these programs. The comment closing date is scheduled for April 21, 2006, however, the Consortium for Citizens with Disabilities, has requested an extension of the comment period. The FTA agrees that an extension of the comment period would be useful to permit the Consortium for Citizens with Disabilities sufficient time to coordinate a comprehensive task force member response. Additionally, such an extension will give other parties additional time to provide thoughtful comments to FTA. Accordingly, FTA finds that good cause exists to extend the comment period on the notice from April 21, 2006, to May 22, 2006.

Issued in Washington, DC this 13th day of April, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–3734 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–16356; Notice 3]

Decision That Nonconforming 2002 and 2003 Ferrari 575 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by National Highway Traffic Safety Administration that nonconforming 2002 and 2003 Ferrari 575 passenger cars are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 2002 and 2003 Ferrari 575 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2002 and 2003 Ferrari 575 passenger cars), and they are capable of being readily altered to conform to the standards.

DATES: This decision was effective December 16, 2003. The agency notified the petitioner at that time that the subject vehicles are eligible for

importation. This document provides public notice of the eligibility decision.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007), petitioned NHTSA to decide whether 2002 and 2003 Ferrari 575 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 28, 2003 (68 FR 61549) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of petition. This was from Ferrari North America, Inc. (FNA), the U.S. representative of the vehicle's original manufacturer. In its comment, FNA acknowledged that the subject vehicles can be brought into compliance with all applicable FMVSS, but cautioned that Registered Importers who conform the vehicles must exercise utmost care and exactitude in making the necessary modifications.

Since FNA did not challenge the vehicle's capability of being brought into compliance with all applicable FMVSS, NHTSA decided to grant import eligibility to 2002 and 2003 Ferrari 575 passenger cars.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–415 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that 2002 and 2003 Ferrari 575 passenger cars that were not originally manufactured to comply with all applicable FMVSS, are substantially similar to 2002 and 2003 Ferrari 575 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E6–5790 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–24491]

Notice of Receipt of Petition for Decision That Nonconforming 1999 BMW Z3 European Market Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 BMW Z3 European market passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 BMW Z3 European market passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 19, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. 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.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the

petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. (''AMC''), of North Miami, Florida (Registered Importer 01–278) has petitioned NHTSA to decide whether nonconforming 1999 BMW Z3 European market passenger cars are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 1999 BMW Z3 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S.-certified 1999 BMW Z3 European market passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S.-certified 1999 BMW Z3 European market passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S.-certified 1999 BMW Z3 European market passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol, and (b) replacement or conversion of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Inspection of all vehicles and replacement of any non-U.S.-model, headlamps, taillamps, front and rear side-mounted reflex reflectors, and high-mounted stoplamp with U.S.-model components on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of U.S.-version software, or installation of a supplemental key warning system.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Installation of U.S.-version software to ensure that the systems meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of U.S.-version software to ensure that the seat belt warning system meets the requirements of this standard, and (b) inspection of all vehicles and replacement of any non-U.S.-model components needed to achieve conformity with this standard with U.S.-model components.

Petitioner states that the vehicle's restraint system components include U.S.-model airbags and knee bolsters, and combination lap and shoulder belts at the outboard front designated seating positions.

Standard No. *209 Seat Belt Assemblies:* Inspection of all vehicles and replacement of any non-U.S.-model seat belts with U.S.-model components on vehicles that are not already so equipped.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of any non-U.S.-model seat belt anchorage components with U.S.-model components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and installation of U.S.-model components, on vehicles that are not already so equipped, to ensure compliance with the standard.

The petitioner also states that all vehicles will be inspected for conformity with the Bumper Standard found in 49 CFR Part 581 and that any non-U.S.-model components necessary for conformity with this standard will be replaced with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E6–5789 Filed 4–18–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Treasury Inspector General for Tax Administration Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Treasury Inspector General for Tax Administration within the Department of the Treasury is soliciting comments concerning the Taxpayer Delinquency Investigation (TDI) Confirmation Letter.

DATES: Written comments should be received on or before June 13, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Joseph Ananka, Treasury Inspector General for Tax Administration, Office of Audit, 1125 15th Street, NW., Suite 700A, Washington, DC 20005, or e-mail *Joseph.Ananka@tigta.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the letter should be directed to Joseph Ananka (202–622–5964), Treasury Inspector General for Tax Administration, Office of Audit, 1125 15th Street, NW., Suite 700A, Washington, DC 20005, or e-mail at *Joseph.Ananka@tigta.treas.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Taxpayer Delinquency Investigation (TDI) Confirmation Letter.

OMB Number: 1591–NEW.

Abstract: The Treasury Inspector General for Tax Administration (TIGTA), Office of Audit is performing a confirmation program for delinquent return accounts to see if the taxpayer agrees that tax return(s) have not yet been filed. TIGTA will use the information collected to determine the accuracy of Internal Revenue Service records.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 24.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 10, 2006.

Preston B. Benoit,

Director, Office of Management and Policy, Treasury Inspector General for Tax Administration, Office of Audit.

[FR Doc. E6–5864 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Treasury Inspector General for Tax Administration Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Treasury Inspector General for Tax Administration within the Department of the Treasury is soliciting comments concerning the Taxpayer Delinquent Account (TDA) Confirmation Letter.

DATES: Written comments should be received on or before June 13, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Joseph Ananka, Treasury Inspector General for Tax Administration, Office of Audit, 1125 15th Street, NW., Suite 700A, Washington, DC 20005, or e-mail *Joseph.Ananka@tigta.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the letter should be directed to Joseph Ananka (202–622–5964), Treasury Inspector General for Tax Administration, Office of Audit, 1125 15th Street, NW., Suite 700A, Washington, DC 20005, or e-mail at *Joseph.Ananka@tigta.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Delinquent Account (TDA) Confirmation Letter.

OMB Number: 1591–NEW.

Abstract: The Treasury Inspector General for Tax Administration (TIGTA), Office of Audit is performing a confirmation program of balance due accounts owed the Internal Revenue Service (IRS) to see if the taxpayer agrees with with balance due owed. TIGTA will use the information collected to determine the accuracy of IRS records.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 24.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 10, 2006.

Preston B. Benoit,

Director, Office of Management and Policy, Treasury Inspector General for Tax Administration, Office of Audit.

[FR Doc. E6–5865 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs; Survey of Foreign Ownership of U.S. Securities

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2006. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting forms SHLA (2006) and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms-sh.html.*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who

resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The panel for this survey is based upon the level of foreign holdings of U.S. securities reported on the June 2004 benchmark survey of foreign holdings of U.S. securities, and will consist mostly of the largest reporters on that survey. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What to Report: This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How to Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300, e-mail: *SHLA.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to Mr. William L. Griever, Federal Reserve Board of Governors, at (202) 452–2924, e-mail: *william.l.griever@frb.gov*; or to Dwight Wolkow at (202) 622–1276, e-mail: *wolkowd@do.treas.gov.*

When to Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 31, 2006.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 486 hours per report for the largest custodians of securities, and 110 hours per report for the largest issuers of securities that have data to report and are not custodians. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Office of International Affairs, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. E6–5795 Filed 4–18–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 9178

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning TD 9178, Testimony or Production of Records in a Court or Other Proceeding.

DATES: Written comments should be received on or before June 19, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Testimony or Production of Records in a Court or Other Proceeding.

OMB Number: 1545–1850.

Form Number: TD 9178.

Abstract: These final regulations replace the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information. The purpose of the final regulations is to provide specific instructions and to clarify the circumstances under which more specific procedures take precedence. The final regulations extend the application of the regulation to former IRS officers and employees as well as to persons who are or were under contract to the IRS. The final regulations affect current and former IRS officers, employees and contractors, and persons who make requests or demands for disclosure.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Individuals and households, Not-for-Profit institutions, and Farms.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2006.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E6–5802 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–36

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–36, Industry Issue Program.

DATES: Written comments should be received on or before June 19, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to R. Joseph Durbala, 202–622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Industry Issue Program.

OMB Number: 1545–1837.

Revenue Procedure Number: Revenue Procedure 2003–36.

Abstract: Revenue Procedure 2003–36 describes the procedures for business taxpayers, industry associations, and others representing business taxpayers to submit issues for resolution under the IRS's Industry Issues Resolution Program.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Average Time Per Respondent: 40 hours.

Estimated Total Annual Reporting Burden: 2,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2006.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E6–5803 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4972

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4972, Tax on Lump-Sum Distributions (From Qualified Plans of Participants Born Before January 2, 1936).

DATES: Written comments should be received on or before June 19, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, 202–622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax on Lump-Sum Distributions (From Qualified Plans of Participants Born Before January 2, 1936).

OMB Number: 1545–0193.

Form Number: Form 4972.

Abstract: Internal Revenue Code section 402(e) and regulation section 402(e) and regulations section 1.402(e) allow recipients of lump-sum distributions from a qualified retirement plan to figure the tax separately on the distributions. The tax can be computed on the 10 year averaging method and/or by a special capital gain method. Form 4972 is used to compute the separate tax and to make a special 20 percent capital gain election on lump-sum distributions attributable to pre-1974 participation.

Current Actions: There are no changes being made to the the form at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 21,709.

Estimated Time Per Respondent: 4 hrs., 24 min.

Estimated Total Annual Burden Hours: 95,520.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2006.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E6–5804 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2438

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2438, Undistributed Capital Gains Tax Return.

DATES: Written comments should be received on or before June 19, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, 202–622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Undistributed Capital Gains Tax Return.

OMB Number: 1545–0144.

Form Number: 2438.

Abstract: Form 2438 is used by regulated investment companies to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D). The IRS uses this information to determine the correct tax.

Current Actions: There are no changes to the form at this time. However, the total burden has increased by 20 hours to a new total burden of 879 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 8 hrs., 48 mins.

Estimated Total Annual Burden Hours: 879.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 12, 2006.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E6–5807 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13285–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13285-A, Reducing Tax Burden on America's Taxpayers.

DATES: Written comments should be received on or before June 19, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reducing Tax Burden on America's Taxpayers.

OMB Number: 1545–2009.

Form Number: 13285–A.

Abstract: The IRS Office of Taxpayer Burden Reduction (TBR) needs the taxpaying public's help to identify meaningful taxpayer burden reduction opportunities that impact a large number of taxpayers. This form should

be used to refer ideas for reducing taxpayer burden to the TBR for consideration and implementation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, non-profit institutions, farms, Federal Government, State, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Number of Respondents: 25 minutes.

Estimated Total Annual Burden Hours: 62.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–5808 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8905

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8905, Certification of Intent To Adopt a Pre-approved Plan.

DATES: Written comments should be received on or before June 19, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certification of Intent To Adopt a Pre-approved Plan.

OMB Number: 1545–2011.

Form Number: Form 8905.

Abstract: Use Form 8905 to treat an employer's plan as a pre-approved plan and therefore eligible for the six-year remedial amendment cycle of Part IV of Revenue Procedure 2005–66, 2005–37 I.R.B. 509. This form is filed with other document(s).

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 29,000.

Estimated Time Per Respondent: 3 hours 49 minutes.

Estimated Total Annual Burden Hours: 110,490.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 2006.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E6–5809 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted in Detroit MI. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held May 18, May 19 and May 20, 2006.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held in Detroit, MI. Thursday, May 18, 2006, from 1 p.m. to 5 p.m. ET, Friday, May 19, 2006 from 8 a.m. to 5 p.m. ET and Saturday, May 20, 2006, from 8 a.m. to 12 p.m. ET. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference space, notification of intent to participate in the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include various IRS issues.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5801 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amended notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 24, 2006, at 11 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Committee of the Taxpayer Advocacy Panel scheduled for Tuesday, May 30, 2006, at 11 a.m., Central Time, via a telephone conference call was published in the **Federal Register** on April 4, 2006. This meeting has been rescheduled to Wednesday, May 24, 2006, at 11 a.m., Central Time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: April 12, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5805 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Tuesday, May 8, 2006 from 12 p.m. to 1 p.m. ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the website: *www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: April 13, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5806 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 17, 2006, at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, May 17, 2006 at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made

with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: April 13, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5812 Filed 4–18–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
April 19, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 10 et al.

Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13, 17, and 23

RIN 1018–AD87

Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reproposal.

SUMMARY: We, the Fish and Wildlife Service, propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty that regulates international trade in certain protected species. The United States was one of the original signatories to CITES, which has been in effect since July 1, 1975. CITES uses a system of permits and certificates to help ensure that international trade is legal and does not threaten the survival of wildlife or plant species in the wild. Since the existing regulations were finalized, the CITES Conference of the Parties (CoP) has held a number of meetings where resolutions have been adopted. The Parties adopt resolutions as a means of standardizing interpretation and implementation of the provisions of the Treaty. On May 8, 2000, we proposed a revision of the regulations to incorporate applicable resolutions, as appropriate, adopted through the tenth meeting of the Conference of the Parties to CITES (CoP10). This new proposal includes consideration of the comments received in response to the 2000 proposal and incorporates appropriate resolutions adopted at CoP11 through CoP13. Revised regulations will help us more effectively promote species conservation, continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade in CITES species.

DATES: In preparing the final decision on this proposed rule, we will consider all comments received by June 19, 2006.

Comments on the information collection aspects of this proposed rule will be considered if received by June 19, 2006. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by May 19, 2006.

ADDRESSES: You may send comments, identified by RIN 1018–AD87, by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *part23@fws.gov.*
- Fax: (703) 358–2280.
- Mail or hand delivery: Dr. Peter Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203.

See Public Comments Solicited at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments. All comments received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the above address.

Comments specific to the information collection aspects of this proposed rule should be submitted to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the U.S. Fish and Wildlife Service's Information Collection Officer, 4401 N. Fairfax Drive, MS 222 ARLSQ, Arlington, Virginia 22203; (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Dr. Peter Thomas, at the above address (telephone, (703) 358–2093; fax, (703) 358–2280).

SUPPLEMENTARY INFORMATION:

What Acronyms and Abbreviations Are Used in This Rule?

AECA African Elephant Conservation Act
APHIS U.S. Department of Agriculture, Animal and Plant Health Inspection Service
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, also referred to as the Convention or Treaty
CBP Department of Homeland Security, U.S. Customs and Border Protection
CFR Code of Federal Regulations
CoP CITES Conference of the Parties or meeting of the Conference of the Parties
ESA Endangered Species Act
FOIA Freedom of Information Act
FWS U.S. Fish and Wildlife Service
IATA LAR International Air Transport Association Live Animals Regulations
ISO International Organization for Standardization
WBCA Wild Bird Conservation Act

Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after the required 10 countries had ratified it. Section 8A of the ESA, as amended in 1982, designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the FWS. The U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first CoP was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES Appendices. Currently 169 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Previous proposed rule and comments received: We published a proposed rule on May 8, 2000 (65 FR 26664) (2000 proposal), to incorporate changes from CoP2 through CoP10. The 2000 proposal was never finalized, and we are here proposing a new rule, which includes consideration of the 206 comments we received on the 2000 proposal. A little over half of the comments were general comments. Most of these were submitted by orchid hobbyists, commercial orchid growers, or taxidermists. We also received 88 letters with specific comments from 42 individuals, 35 organizations, and 11 governmental agencies. We reviewed all of the comments on the 2000 proposal and addressed them where appropriate in this current proposed rule. We received conflicting recommendations, and not all comments were incorporated into this new proposal.

Current proposed rule: We propose to revise the current regulations contained in 50 CFR part 23 to incorporate, as appropriate, applicable resolutions adopted at CoP2 through CoP13 which continue to remain in effect. In this proposed rule, we retained most of the general information in the current 50 CFR part 23. We are reproposing the regulations to include certain resolutions adopted at CoP11 through CoP13, and to incorporate changes that resulted from public comment on the 2000 proposal. We retained the organizational structure set out in the 2000 proposal in this new proposed rule.

Resolution consolidation and incorporation: Since 1976, the Parties have adopted 256 resolutions or revisions to resolutions. In 1994, the Parties began an effort to consolidate some of these resolutions. Some resolutions were no longer relevant, and

others needed to be combined because several resolutions were adopted at different CoPs on the same or similar subjects. As a result of this process, there are currently 79 resolutions in effect. This proposed rule incorporates certain of these consolidated resolutions, as appropriate and relevant to U.S. implementation of the Treaty. We cite the current numbers of resolutions since previous resolutions have been renumbered. This allows the reader to easily access the documents currently in effect on the CITES Web site (*http://www.cites.org*).

One commenter thought we said in the 2000 proposal that we were incorporating the provisions of treaties other than CITES, such as the Convention on Biological Diversity, and questioned the legal basis for such inclusion. To clarify, these regulations are based on CITES and do not implement other treaties, including the Convention on Biological Diversity. Two commenters asked us to develop a plan to regularly review and update the regulations after each CoP. We plan to evaluate newly adopted decisions and resolutions after each CoP and will update the regulations when appropriate and necessary.

Stricter national measures: Article XIV of the Treaty explicitly recognizes the rights of Parties to adopt stricter national measures to restrict or prohibit trade, taking, possession, or transport of any wildlife or plant species. Resolution Conf. 11.3 (Rev. CoP13) recommends that Parties make use of stricter national measures if they have determined ''that an Appendix-II or -III species is being traded in a manner detrimental to the survival of that species' or is being ''traded in contravention of the laws of any country involved in the transaction.'' The United States has adopted stricter national measures, such as the ESA, Marine Mammal Protection Act, and Lacey Act.

One commenter pointed out that the adoption of a resolution endorsing stricter national measures does not in itself confer authority on a Party to undertake regulatory actions that are not otherwise provided for by national law. We acknowledge that it is the adoption of the stricter national measures by legislative or executive action that provides the legal basis for a country to take an action.

The same commenter considered this provision one of the major problems with CITES: Because each Party adopts its own set of requirements regarding imports and exports, the result is conflicting CITES requirements among Parties. The commenter also thought the imposition of more restrictive import requirements may be considered an intrusion on an exporting country's sovereignty. As outlined in the preamble to CITES, ''peoples and States are and should be the best protectors of their own wild fauna and flora.'' CITES recognizes the sovereign right of a country to regulate trade by passing stricter national measures to help in the conservation of species. Under CITES, an exporting country does not have a sovereign right to override an importing country's laws. When a Party sends information to the Secretariat on how its stricter national measures will affect trade in CITES species, the Secretariat provides that information to other Parties through a notification. These notifications are available to the public on the CITES Web site.

Plain language: We revised the text of the previous regulations using plain language to make the regulations clearer and easier to use. One commenter considered them to be written at too high a reading level, and thought we should have several members of the general public read the regulations for clarity. Several commenters, however, found the overall approach to be user friendly and easy to understand, and thought the use of charts and tables was helpful. We believe the regulations use an appropriate level of language to lay out the technical requirements of a multilateral treaty.

Section-by-Section Analysis

The following parts of the preamble explain the proposed rule and present a discussion of the substantive issues of each section and responses to public comments on the 2000 proposal.

What Are the Proposed Changes to 50 CFR Parts 10, 13, and 17?

Definitions (section 10.12): We propose to revise the definition of the ''United States'' to reflect changes in areas under U.S. jurisdiction.

General permit procedures (section 13.1): We propose to revise section 13.1 to reflect that, under very limited circumstances, permits for certain CITES shipments may be issued after the activity has occurred (see proposed section 23.53 on retrospective documents).

Application procedures (section 13.11): We propose to amend the paragraphs on permit processing fees (section 13.11(d)(1) and (4)) to clarify that the fee must be paid in U.S. dollars and to include requests to participate in the Plant Rescue Center Program and requests for approval of a CITES export program for American ginseng, certain furbearers, or American alligator by a State or Tribe as described in the proposed revision to 50 CFR part 23. We also propose to add Introduction from the Sea and Registration of Appendix-I Commercial Breeding Operations which were inadvertently left out of the fee schedule for all FWS permits published on April 11, 2005 (70 FR 18311). The proposed processing fees are to help defray the cost of administering the permit program. We based the fees on a number of factors, including the complexity of processing the permit type, whether the permittee stands to benefit commercially from the permit, and whether the permitted activity serves the public interest.

As noted in our final rule on FWS permit fees, we will not charge a fee to any Federal, tribal, State, or local government agency. Therefore, we propose not to charge a fee to a State or Tribe seeking to gain approval of a CITES export program. We also propose not to charge a fee to add an institution to the Plant Rescue Center Program because this is a voluntary program designed to place live plant specimens that have been confiscated upon import or export, and thereby helps the U.S. fulfill its CITES implementing responsibilities.

U.S. address for permit applicants (section 13.12): We propose to revise this section to require an applicant to provide an address within the United States when applying for a permit. In a number of situations, a business or an individual in a foreign country has requested a CITES document from us for a shipment the entity owned, but that is being shipped out of the United States. We cannot issue the CITES document showing the exporter's foreign address for items that are leaving the United States.

For commercial activities conducted by applicants that reside or are located outside of the United States, the name and address of the commercial entity's agent in the United States must be included. One commenter questioned whether the agent must formally agree to accept service for the foreign entity. We note that an applicant may select any agent as long as the agent is authorized to receive service. Another commenter suggested that we define what constitutes ''conducting commercial activities'' to clarify whether the import of a personal sport-hunted trophy would be considered conducting a commercial activity. We do not believe it is necessary to define ''conducting commercial activities'' because we have defined ''commercial.'' We consider any transaction involving a seller and a buyer, or any retail or wholesale transaction that provides a valuable consideration in exchange for

the transfer of a wildlife or plant specimen as conducting a commercial activity. However, a hunter who exports his or her personal sport-hunted trophy would not be involved in a commercial activity that would require an agent under this section.

Two commenters questioned what U.S. address should be used for an individual staying at a hotel or for tourists visiting the United States. For these individuals, we would accept a U.S. address where the individual is temporarily residing, including a hotel. Another commenter was concerned that foreign individuals may not have a social security number and another that some applicants do not have fax or e-mail information. We clarify that this information is only required if available.

Continuation of permitted activity during renewal (section 13.22(c)): We propose to revise this paragraph that sets out the general permit procedures that allow continuation of the permitted activity after application for renewal. One commenter suggested all businesses should be required to renew permits before they expire. The regulations in 50 CFR part 13 follow the Administrative Procedure Act (5 U.S.C. 558(c)). When a permittee has made timely and sufficient application for renewal of a permit for an activity of a continuing nature, the permit does not expire until the agency has made a final determination on the application.

CITES documents do not cover an activity of a continuing nature and are considered void upon expiration. Therefore, we propose to revise this section to clarify that a permittee may not use a CITES document once it has expired. For other permits of a continuing nature, however, we propose to retain the process that allows the permittee to conduct permitted activities during renewal if the conditions outlined in 50 CFR part 13 are met.

Another commenter suggested that the FWS include a 60-day time limit to respond to an applicant. We refer the commenter to the current regulations that already provide a general expectation of processing times in section 13.11(c). We process applications as quickly as possible taking into account the number and complexity of applications received and our resources.

Maintenance of records (section 13.46): Permittees are required to maintain records. However, our authority to inspect records is limited to areas within the United States. Therefore, to ensure that we are able to carry out our responsibility to inspect records when necessary, we propose to revise section 13.46 to require permittees who reside or are located in the United States and permittees who reside or are located outside the United States and are conducting commercial activities within the United States to maintain records in this country.

Import exemption for threatened, Appendix-II wildlife (section 17.8): We propose to add this new section to 50 CFR part 17. The ESA in Section 9(c)(2) sets out an exemption to the import prohibition for threatened, Appendix-II wildlife when the taking and export meet the provisions of CITES and the import is not made in the course of a commercial activity. This ESA provision only exempts import; it does not exempt acquisition in foreign commerce in the course of a commercial activity. Therefore, we require both the acquisition and import to be noncommercial because we consider any transfer of a specimen in pursuit of gain or profit to be a commercial activity. Thus, we are proposing that a person who is importing a specimen under this provision must provide documentation to the FWS at the time of import that shows the specimen was not acquired in foreign commerce in the course of a commercial activity.

One commenter stated that this section violates the ESA and should be deleted because a regulation permitting import of sport-hunted trophies of threatened species is not consistent with the duty to conserve such species. We disagree with the commenter because we believe that this section faithfully implements section 9(c)(2) of the ESA, and the Congress has stated on frequent occasions that scientifically based hunting programs can be conducted for threatened species in foreign countries consistent with the conservation of those species.

Some commenters seemed to think that this section only applied to sport-hunted trophies, which is not the case. The proposed rule clarifies that section 17.8 applies to live and dead wildlife.

Two commenters suggested that the exemption for ''personally taken trophies'' should not allow trophies taken ''for the importer,'' but only allow trophies taken ''by the importer.'' We agree, but note that this proposed section no longer defines ''sport-hunted trophy.'' Instead, it requires that a specimen meet the provisions of 50 CFR part 23, which defines the term, including the requirement that the trophy must be taken by the importer, exporter, or re-exporter.

Two commenters stated that threatened wildlife species that have been transferred from Appendix-I to Appendix-II subject to a substantive annotation under CITES should qualify for the import exemption in section 9(c)(2) of the ESA, especially in the case of sport-hunted trophies of African elephants in Botswana, Namibia, South Africa, and Zimbabwe. They expressed concern that the apparent effect of proposed section 17.8 would be to require the issuance of threatened species import permits for personal sport-hunted trophies of Appendix-II African elephants, regardless of the statutory exemption in section 9(c)(2) of the ESA. We agree that no ESA import permits are required for trophies of Appendix-II species that are imported for personal use and that are properly declared in accordance with paragraphs (d), (e), and (f) of section 9 of the ESA. Appropriate corrections have been made in the new proposed rule. However, it is important to note that if a threatened species, such as the African elephant, has a special rule, proposed section 17.8 does not apply; the provisions of the special rule apply.

One commenter questioned the legality of proposed section 17.8 because any special rule promulgated by the FWS that imposes restrictions on the import of threatened, Appendix-II fish or wildlife specimens that are tighter than the requirements imposed by CITES is not authorized except in ''very narrow and limited circumstances'' under section 9(c)(2). The commenter argued further that existing import restrictions in special rules for threatened species ''become inapplicable by operation of law'' when such species are transferred from Appendix-I to Appendix-II. We disagree. Import restrictions adopted by special rule for threatened species are based upon an explicit determination that such measures are ''necessary and advisable to provide for the conservation'' of such species. See section 4(d) of the ESA. Once that determination is made, the protective regulations that set out those measures must be promulgated and enforced to carry out the conservation purposes of the ESA for threatened species. Any presumption of lawful import that otherwise would result from the operation of section 9(c)(2) of the ESA is rebutted on the basis of the rulemaking record and our administrative finding. As noted by the United States District Court for the Western District of Texas in *Safari Club International* v. *Babbitt* (Aug. 12, 1993), no provision of the ESA indicates that ''the Secretary's duty and authority to issue protective regulations [special rules] is preempted, circumscribed, or modified by section 9(c)(2).'' See slip

op. at 29–30. The exemption, therefore, would not apply to species that have a special rule in 50 CFR part 17, such as the argali in section 17.40(j).

Special rule for American alligator (section 17.42(a)): We propose to revise the special rule for American alligator for clarity, to renumber the paragraphs, and to delete outdated information. We propose to change the term ''hides'' to ''skins'' to be consistent with the language in 50 CFR part 23 and in the special rule for threatened crocodilians. For consistency, we also propose to apply the definitions of ''crocodilian skins'' and ''crocodilian parts'' proposed in 50 CFR part 23 to the American alligator special rule. In addition, we clarify that marking and tagging requirements for American alligator meat and skulls are different from those for other threatened crocodilians. We also propose to remove specific tagging language and instead direct the public to the CITES tagging requirements in 50 CFR part 23.

Special rules for threatened crocodilians and caiman (sections 17.42(c) and (g)): We propose to delete section 17.42(g) for threatened caiman, and add the requirements of that special rule into section 17.42(c) for threatened crocodilians. We propose to combine these special rules to bring them up-to-date and harmonize them with the proposed language in Subpart E of 50 CFR part 23 regarding crocodilian tagging and import and export requirements. This results in one special rule that covers all threatened crocodilians except the American alligator.

We propose to harmonize the definitions of ''skins'' and ''parts'' and clarify that skins of sport-hunted trophies are included in the definition of ''skins.'' The proposed revisions would move the definitions of ''crocodilian skins'' and ''crocodilian parts'' to 50 CFR part 23 and incorporate them by reference in the special rule to avoid redundancy. We propose to not define ''caiman product'' currently in section 17.42(g). We think the definition is unnecessary since the common usage of the term is clear, *i.e.,* products include processed or manufactured items, including curios and souvenirs. In addition, the use of the phrase ''that are ready for retail sale'' currently found in the definition of ''caiman product'' is misleading and appears to narrow the definition of what caiman products are regulated by the special rule. We propose to remove the specific CITES tagging language and instead direct the public to 50 CFR part 23 for CITES tagging requirements. We propose to make the following technical corrections: (a) Delete the definition of ''country of export'' because the rule references 50 CFR part 23, which defines ''export;'' (b) delete the phrase ''or present for export or re-export'' currently found in the threatened caiman special rule and instead use the phrase ''to attempt to'' found in the ESA regulations; and (c) delete the definition of and references to the CITES ''tagging resolution'' and instead refer simply to the Convention.

We also propose to allow meat of saltwater crocodiles originating in Australia and Appendix-II Nile crocodiles to be traded without tags as is currently allowed for threatened caiman. We clarify that this includes all forms of meat by not using the phrase ''processed meat.'' We do not believe that international trade in crocodilian meat poses a significant conservation risk, but we note that CITES documents still would be required for any meat shipments. The proposed revisions to the special rule also would prohibit import into the United States of live specimens and viable eggs of any threatened crocodilians without an ESA import permit. Currently this provision applies only to threatened caiman. This revision is necessary and advisable for the conservation of all listed crocodilians which cannot withstand pressure from non-native crocodilians.

We are also proposing to amend this combined special rule to include yacare caiman status reporting requirements for range countries. In our final rule (65 FR 25867) published on May 4, 2000, we noted that the Service depends primarily on range countries to monitor yacare caiman. We also said that to monitor the status of yacare caiman, governments of the range countries (Argentina, Bolivia, Brazil, and Paraguay) wishing to export such specimens to the United States for commercial purposes must provide us every two years, for the following 10 years, with the most recent information available on the status of the species, gathered by the respective range countries to fulfill their CITES scientific and management requirements. The first submission of status reports was due December 31, 2001. We provided a list of information that must be included in the range country status report. However, we unintentionally excluded from the regulatory language the reporting requirements as discussed in the preamble. We propose to add these reporting requirements to correct that error. We also propose to not limit the submission of biannual status reports to 10 years beyond the publication of the final rule. The collection of this information is important in determining the most current conservation status of the species. Indeed, it would be used to consider whether the species is recovering and may warrant delisting. We have also added a section describing conditions under which trade restrictions can be applied to the import of yacare caiman from range countries, including the failure to submit the reports or failure to respond to requests for additional information. These conditions are necessary and advisable for the conservation of the species, and are similar to conditions for other threatened species with special rules such as the *Vicugna vicugna* in section17.40(m)(4)(ii).

What Are the Proposed Changes to Subpart A of 50 CFR Part 23—Introduction?

We propose to expand this subpart to give a clearer picture of our responsibilities under CITES. We also propose to delete some information from the current regulations, such as the list of countries (section 23.4) that are Parties. To keep this list of Parties up to date, we would need to continually revise it when new countries join or when a Party's contact information changes. The list of Parties (including addresses and telephone and fax numbers) is available from us or on the CITES Web site (see proposed section 23.7). As changes occur, these sources can be more quickly and easily updated than issuing a revised rule.

Purposes (section 23.1): This proposed section outlines the aim of CITES as stated in the preamble to the Treaty. The Parties acknowledge that wildlife and plants have aesthetic, scientific, cultural, recreational, and other nonconsumptive values as well as economic importance. One commenter stated that the ESA is different from CITES and did not understand the reference to the ESA in this section. We agree that CITES and the ESA are different. However, the ESA is the U.S. law that provides the authority for the United States to carry out its responsibilities under CITES.

Scope (section 23.2): This proposed section consists of a table with a series of questions and answers to help people determine if CITES regulations apply to their proposed activities. Decisions involve whether a specimen is listed by CITES, is exempt from CITES, is involved in a type of international trade regulated by CITES, and was illegally acquired or traded in contravention of CITES.

The possession and domestic trade of legal specimens are not regulated by CITES unless the specimens had been traded internationally under specific

conditions of a CITES document and the conditions still apply. The possession and domestic or international trade of illegally imported specimens, however, are prohibited. Further, any possession of offspring of illegal specimens is also considered illegal. Two commenters considered this statement concerning offspring to be unacceptable, with one of the commenters suggesting that we establish a grace period for illegal offspring. We do not agree with this suggestion since we treat specimens traded contrary to CITES the same as other forms of illegally acquired goods. A specimen that has been traded contrary to CITES becomes contraband at the time it enters the jurisdiction of the United States. If such a specimen makes its way into the United States, the individual or business holding or having control of the specimen has no custodial or property rights to the specimen and, therefore, no right to possess, transfer, breed, or propagate such specimens.

One commenter expressed confusion as to why we had included intrastate and interstate trade if this regulation applies only to international trade. Although CITES regulates international trade, we wanted to ensure that the public knows that it is unlawful under section 9(c)(1) of the ESA to possess any CITES specimen that was traded contrary to CITES. We clarify that intrastate or interstate movement of specimens traded contrary to CITES involves possession of unlawfully traded specimens and is, therefore, prohibited.

We further note that these prohibitions are not new with this proposed rule. The regulatory requirements for CITES specimens, including possession, have been in place since 1977, and the statutory prohibition has been in effect since July 1975.

Other applicable regulations (section 23.3): We reference in this proposed section applicable regulations in other parts of subchapter B and title 50 since many CITES species are covered by one or more other laws. One commenter suggested that we include other Federal laws, such as the Marine Mammal Protection Act (MMPA) Amendments of 1994, the Rhinoceros and Tiger Conservation Act (RTCA), and the African Elephant Conservation Act (AECA). We did not adopt this suggestion. The MMPA regulations contained in 50 CFR part 18 are already referenced, and permit requirements are administered consistent with the 1994 Amendments to the MMPA. The AECA contains prohibitions that affect the trade in African elephant ivory, and the RTCA contains prohibitions regarding the import, export, and sale of products containing or labeled or advertised as containing products derived from rhinoceros and tiger, but these laws have no separate implementing regulations. This section refers readers to other regulations that might apply to CITES species and is not the appropriate place to cross-reference all laws that may have an impact on trade.

Another commenter suggested that we include a reference to State and local regulations. Since all CITES documents issued by us are conditioned such that all applicable State, tribal, and local requirements must be met, we propose to add a new paragraph (d) to notify the public about the possible application of these laws. Under Article XIV(1)(a) of the Treaty, each Party retains the right to adopt stricter national measures that regulate or prohibit the import, export, taking, possession, or transport of CITES species. More restrictive State or local laws that regulate or prohibit the import, export, or re-export of such species, or their parts, products, or derivatives, must be observed for CITES species that are not listed under the ESA. See *H.J. Justin & Sons, Inc.* v. *Deukmejian,* 702 F.2d 758 (9th Cir. 1983), *cert denied,* 464 U.S. 823. However, in instances where a CITES species is also listed as endangered or threatened under the ESA, any State or local law that would effectively prohibit the import or export of, or interstate or foreign commerce in, specimens of such species is void to the extent that such trade is authorized under the ESA, its implementing regulations, or any ESA permit or exemption. *See* 16 U.S.C. section 1535(f); *Man Hing Ivory & Imports, Inc.* v. *Deukmejian,* 702 F.2d 760 (9th Cir. 1983).

Appendices I, II, and III (section 23.4): Species are listed in one of three Appendices that provide for different levels of regulation and have different requirements for permits and certificates (CITES documents). This section briefly defines Appendices I, II, and III. One commenter stated that all exemptions should be included in this section. We revised this section to provide the basic definitions for the Appendices based on those in the Convention rather than discuss exemptions in this section. Exemptions that may apply are discussed in proposed section 23.20(d).

Definitions (section 23.5): We propose to add a number of definitions. Whenever possible we have defined terms using the wording of the Treaty and the resolutions. Most defined terms are included in this section, but some less frequently used terms are defined in the section that applies to a specific situation. For example, ''caviar'' is defined in section 23.71 on trade in sturgeon caviar, not in the general definition section.

Definition of applicant: One commenter suggested that we define ''applicant'' to exclude any person acting solely as a freight broker, freight consolidator, customhouse broker, or carrier. The commenter suggested that we should not issue permits to these entities because they are not the owners of the specimen and are not required to have import/export licenses. Although in most instances the applicant is the owner of the specimen, we decline to make ownership a requirement for obtaining a permit. We believe that an entity, such as a broker, is not precluded from being an applicant just because he or she is not required to obtain an import/export license under 50 CFR part 14.

We are not proposing to define ''applicant'' in this part since the general permit regulations in 50 CFR 13.1 provide sufficient guidance concerning the applicant. An applicant must have a valid connection to the transaction and be the person who is responsible for meeting the terms and conditions of the permit. When a broker, attorney, taxidermist, or other person applies for a permit on behalf of the owner of the specimen, he or she must establish a connection to the transaction through a contract or power of attorney and, along with the person represented, becomes the responsible party to meet the terms and conditions of the permit.

Definitions of bred for commercial purposes and bred for noncommercial purposes: We propose to define these two terms as they relate to the export and re-export of Appendix-I wildlife specimens. These definitions are the result of in-depth discussions by the Parties over the registration of commercial breeding facilities, which resulted in the adoption of Resolution Conf. 12.10 (Rev. CoP13). The Treaty provides in Article VII(4) that specimens of Appendix-I species bred-in-captivity for commercial purposes shall be deemed to be in Appendix II (see proposed section 23.46). It also provides in Article VII(5) that specimens that are bred-in-captivity may be issued an exemption certificate (see proposed section 23.41). Although the Treaty does not use the term ''bred for noncommercial purposes'' in this paragraph, the Parties have agreed to use this term as the intended meaning of Article VII(5) because Article VII(4) addresses bred for commercial purposes. In Resolution Conf. 12.10 (Rev. CoP13), the Parties agreed to strict definitions for these two terms.

Facilities that are breeding for commercial purposes must be registered to export specimens. Facilities that are breeding for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for that species.

Definition of captive-bred: We propose to define this term to help distinguish wildlife bred and born in captivity from the CITES definition of ''bred-in-captivity.''

Definitions of coral (dead, fragments, live, coral rock, and coral sand): The Parties agreed at CoP11 to a number of definitions of coral because of its unique nature, namely that coral skeletons are persistent and that coral forms the foundations of reefs. The definitions provide the basis of whether CITES regulates a specific form of coral and what scientific name must appear on CITES documents.

Definition of country of origin: The term ''country of origin'' is defined in 50 CFR 10.12. We are proposing to define the term in section 23.5 for CITES purposes to include plants. At CoP13, the Parties agreed that, in the case of a plant specimen that ceases to qualify for an exemption under CITES (*e.g.*, plants grown from exempt seeds), the country of origin would be the country in which the specimen ceased to qualify for the exemption. One commenter opposed the inclusion of plants in the definition of ''country of origin'' because a person cannot determine country of origin for artificially propagated species or parental stock of orchid hybrids. We propose to adopt the definition to include plants since CITES requires us to obtain and report information on country of origin for specimens in international trade. The country of origin is an important piece of information used to evaluate the impact of trade and to track the legal movement of wildlife and plants. We note that the United States would be the country of origin for plants artificially propagated in the United States.

Definitions of import, export, re-export, international trade, and shipment: We use these basic terms throughout the regulations and define them to reflect the way the terms are used by the Parties. These definitions refer to international movement of wildlife and plant specimens, whether the purpose is commercial or noncommercial. ''Import'' and ''export'' are further defined in 50 CFR part 14. We have also defined the term ''shipment'' to eliminate confusion.

Definition of introduction from the sea: In 2000, we proposed to define this term. One commenter wanted us to re-examine the proposed definition since considerable discussion of the term occurred at CoP11. We believe, however, that it is important to define the term in the regulations at this time with the language in Article I(e) of the Treaty. We recognize that the Parties may decide on an interpretation of this term in the future, but in the meantime the regulations need to clarify when the prohibition applies and when and what types of CITES documents are needed for international trade. Over the last few years, a number of important events have occurred related to introduction from the sea. At CoP11 and CoP13, the Parties considered proposed resolutions on introduction from the sea and were unable to reach consensus on a definition. At CoP12, the Parties agreed to look at marine issues, including introduction from the sea, in consultation with the Food and Agriculture Organization of the United Nations (FAO). In May and June of 2004, FAO convened two Expert Consultations to consider introduction from the sea and other issues related to marine species covered by CITES. At CoP13, the Parties agreed to convene a workshop on introduction from the sea, taking into account the work done through FAO and the relevant documents and discussions from previous CoPs. The workshop was held in November–December 2005. The CITES Secretariat will prepare a document on introduction from the sea, based on discussions at the workshop, for consideration by the Parties at CoP14.

Definitions of Management and Scientific Authorities: The current regulations (section 23.3) define the Management Authority in terms of Parties only and do not define Scientific Authority. We propose to define both and to include non-Parties in the definitions. If non-Parties wish to trade with Parties, they must have entities officially designated that fulfill the roles of Management and Scientific Authorities to make the required findings and to issue comparable CITES documents. One commenter stated that including non-Parties in the definition of Management and Scientific Authorities is incorrect under the Convention, has no basis in current law, and would violate the Administrative Procedure Act. We do not agree, and we endorse the steps taken by the CITES Secretariat to ask non-Parties that wish to trade with Parties to provide information on what authority is competent to provide comparable findings and documentation. See the discussion in the preamble on non-Party documents (section 23.25).

Definition of parental stock: In 2000, we proposed to define the terms ''founder stock'' and ''parental stock.'' However, we now propose no longer to use the term ''founder stock'' in these regulations because the term is not used in the resolutions adopted by the CITES Parties. Thus, based on the language in Conf. 9.19 (Rev. CoP13) on nursery registration and Conf. 12.10 (Rev. CoP13) on registration of operations that breed Appendix–I wildlife for commercial purposes, we are proposing to use the term ''parental stock'' to mean the original breeding or propagating specimens that produced subsequent generations of captive specimens.

Definitions of permit, certificate, CITES document, and CITES exemption document: The text of the Treaty uses the terms ''permits'' (for import and export) and ''certificates'' (for re-export, exemptions, certificates of origin, and introduction from the sea) in referring to documents issued by a CITES Management Authority. However, some Parties refer to all CITES documents as ''permits.'' For this reason, we propose to define the term ''CITES documents'' to refer to all permits and certificates that are issued by a Management Authority. We also propose to expand the definition of ''permit'' in this section from the definition of ''permits'' in 50 CFR 10.12 to include documents issued by any Management Authority, not just documents ''issued by the FWS.''

Definition of precautionary measures: When there is uncertainty regarding the status of a species or the impact of trade on the conservation of a species we are cautious and act in the best interest of the conservation of the species in making decisions on CITES listings and permit findings. We define and use the term ''precautionary measures'' to describe this approach. One commenter stated that the definition is ambiguous and appears to be a new policy. It is not a new policy. While the proposed definition is taken from the concept described in Annex 4 of Resolution Conf. 9.24 (Rev. CoP13), we use it in these regulations because it describes the way we have always approached non-detriment findings and species listing decisions when there is uncertainty regarding the status of a species or the impact of trade on the conservation of a species. The use of precautionary measures in these instances is consistent with the intent of the Treaty, which is to protect species against over-exploitation. We disagree that the definition is ambiguous and we believe the proposed definition represents an important concept in the effective implementation of CITES.

Definition of ranching: We are not proposing to define the term at this time. At CoP13, the Animals and Plants Committees (committees established by the Parties to provide administrative and technical support to the Parties and to the Secretariat) were tasked with looking at production systems, including the consideration of source codes, which include ''R'' for ranching.

Definition of readily recognizable: Although this term is used in Article I of the Treaty, it is not specifically defined. However, Resolution Conf. 9.6 (Rev.) defines the term, and we have based our proposed definition on the text of the resolution. Several commenters supported the inclusion of this definition in the regulations. Another commenter suggested that we use the CITES term ''derivatives'' in the definition. Although the term ''derivative'' is not commonly used in the United States, we accepted the commenter's suggestion since the term is used in the Treaty.

Based on questions we routinely receive from the public, we wish to clarify here that venom is considered a readily recognizable product, and that antivenin, which is either produced from non-CITES listed species or produced synthetically, is not subject to CITES.

Definition of specimen: We used the definition of ''specimen'' given in the Treaty to clarify that, under these regulations, the term refers only to species listed in any of the CITES Appendices.

Definition of sustainable use: We propose to define this term as the use of a species in a manner and at a level that maintains wild populations at biologically viable levels for the long term. It is essentially the same definition used in 50 CFR part 15 under the WBCA. The wording has been slightly edited to be consistent with language used in these regulations. One commenter thought it was inappropriate to use the definition from the WBCA because the CITES non-detriment finding is narrower than the WBCA finding. We point out that the WBCA's primary purpose is to encourage and support effective implementation of CITES. The non-detriment finding is the same under both, and the concept of sustainable use remains the same, regardless of context.

Two commenters argued that the definition of ''sustainable use'' is excessive for meeting the non-detriment finding for the issuance of permits. We believe that sustainable use is the essence of a CITES non-detriment finding, and these proposed regulations provide a clear, scientifically based definition of the term. An exporting country can make a finding of non-detriment only if it can show that a given level of harvest is consistent with the long-term viability of the species. This finding must be based on professionally recognized management practices and the best available biological information. The Parties adopted Resolution Conf. 12.8 (Rev. CoP13), which provides for review of significantly traded species, to ensure that countries exporting those species have made the appropriate findings and the export levels are sustainable. Countries with species subject to this review must demonstrate the scientific basis for the quantity of exports they are allowing.

One commenter stated that the terms ''ecosystem'' and ''role or function of a species in its ecosystem'' do not appear in the Treaty. We note these terms are used in Article IV(3) of the Convention, which specifically requires the Scientific Authority of each Party to determine whether exports of specimens of a species ''* * * should be limited in order to maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs * * *'' Although the phrase ''or function'' does not appear in the text, it is implicit since a species' function relates to its role. Another commenter thought it was too burdensome to require an applicant to provide information on a species' role and function in the ecosystem. See the discussion in the preamble on non-detriment findings (section 23.61).

One commenter stated that the proposed definition precluded the use of adaptive management. We believe the use of adaptive management could fit under this definition in certain circumstances. Under adaptive management, production rates are monitored and the amount of harvest allowed is commensurate with increases and decreases in productivity of the species. Thus, Parties could use adaptive management in terms of changing decisions if new information becomes available. Adaptive management, however, does not imply that when there are gaps in information the assumption would be that trade would be sustainable.

Two commenters contended that the proposed definition will require range countries to undertake costly studies to demonstrate the productive capacity of the species and its ecosystem. The proposed definition does not dictate the type of studies a country needs to conduct, only that the use of a species must allow for the maintenance of viable population levels for the long term. Exporting countries must conduct some level of monitoring of productivity and impact of harvest to determine whether exports are detrimental to the survival of the species. Resources are needed for a country to manage species sustainably, and only a range country can determine whether the expenditure of resources is cost effective relative to the benefits of trade.

Definition of trade: One commenter stated that the definition of ''trade'' should not include both commercial and noncommercial shipments and should be based on economic value or intent since there is conservation value in a healthy public interest in natural history. The commenter believed that, by not discriminating between commercial trade and noncommercial activities, we are failing to adequately protect species and are promoting inconsistency and confusion in enforcement.

Our proposed definition of ''trade'' is based on Article I(c) of the Treaty, which explicitly states that ''trade'' means ''export, re-export, import and introduction from the sea.'' We propose to define ''trade'' to include both commercial and noncommercial transactions since there is no mention of intent in the Treaty definition. CITES and our proposed regulations, however, afford greater flexibility to noncommercial shipments, such as through the registration of scientific institutions and the limited exemption for personal and household effects. We believe this broad definition of ''trade'' and the flexibility recognized by CITES and our proposed regulations provide consistency, assist in enforcement, and offer a system that promotes species conservation.

Management and Scientific Authorities (section 23.6): Under Article IX of the Treaty, each Party must designate at least one Management Authority and one Scientific Authority. In the United States, these authorities have been delegated by the Secretary of the Interior and the Director of the FWS to different offices within the FWS. We propose to add a section to summarize the major roles of these authorities in the United States. The roles include a wide range of activities, such as the issuance and denial of permits; making scientific and management findings; monitoring of trade and trade impacts; communication with the Secretariat and other countries on scientific, administrative, and enforcement issues; and evaluation of species' status and trade. Another role is to provide training and technical assistance to countries when possible (Resolution Conf. 3.4 on Technical cooperation). Other Federal

agencies also play a role in CITES efforts, for example in communicating with the Secretariat and representing the United States at CITES meetings.

One commenter noted that there appears to be duplication in the roles of the Management and Scientific Authorities as shown in the chart. We note that, although there is some interrelationship in activities carried out by the Management and Scientific Authorities, the focus of these activities and the expertise of both offices are different. Within the broad categories, the Management Authority is responsible for dealing primarily with management and regulatory issues, and the Scientific Authority is responsible for dealing primarily with scientific issues. Text was added to the proposed rule to show this distinction.

Another commenter urged the addition of a clause in the regulations requiring Management and Scientific Authorities to fulfill their roles as required under the Treaty. We do not believe this is necessary. These offices are charged with the responsibility of fulfilling certain roles under the Treaty by their designation as Management and Scientific Authorities.

Contact information (section 23.7): The table in this proposed section outlines the type of information available from the U.S. Management Authority, U.S. Scientific Authority, Law Enforcement, APHIS, CBP, and the Secretariat, and the different ways you can contact each office. APHIS is the contact office for information on plant clearance procedures even though the formation of CBP split CITES responsibilities for import and export of plants. CBP inspects and clears shipments of dead CITES plant materials being imported into the United States and live plants being imported from Canada at a designated border port. CBP also identifies and regulates CITES materials in passenger baggage, including live plants. APHIS continues to inspect and clear shipments for the export and re-export of live and dead plants, and the import of live plants, except for live plants being imported from Canada at a designated border port.

One commenter stated that this section should also contain contact information for the National Marine Fisheries Service and information on import, export, possession, and sale of marine mammal parts and products under the MMPA. We disagree because the purpose of these regulations is to explain and implement CITES. To assist those dealing with such species, we provided information in proposed section 23.3 on where to find those requirements. Persons with questions about CITES compliance should contact the office identified in this section. Persons with questions about other laws that apply should contact the office that is responsible for administering those laws.

Information collection (section 23.8): Each information collection, including each application form, that we use must be reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act. These information collections undergo review every 3 years. This process gives the public an opportunity to provide input concerning the amount of time it takes to complete the forms and reports and to prepare the information requested. One commenter suggested that the term ''amend'' be added to paragraph (c). We made this revision to the new proposed rule to make the paragraph consistent with 50 CFR 13.23.

What Are the Proposed Changes to Subpart B of 50 CFR Part 23—Prohibitions, Exemptions, and Requirements?

In this proposed subpart, we detail the activities that are prohibited, circumstances when exemptions may apply, and requirements for international movement of specimens. CITES uses a system of documents to ensure that trade in protected species is legal and does not threaten the survival of wildlife or plant species in the wild. The Treaty outlines standardized information that needs to be included on these documents, and based on experience in inspecting shipments and enforcing CITES, the Parties have adopted a number of resolutions to refine the types of information that need to be included on documents for Parties and non-Parties.

Prohibitions (section 23.13): We are proposing minor changes to the prohibitions section in the current regulations. This section implements the prohibitions on international trade under CITES. We listed ''introduction from the sea'' separately from ''import'' to clarify that CITES treats these activities differently. We added the phrase ''engage in international trade'' to the list of prohibitions to clarify that international trade in specimens in violation of these regulations by any person subject to U.S. jurisdiction is prohibited even if specimens are not actually imported into or exported from the United States.

One commenter supported the language ''engaging in international trade,'' whereas two commenters opposed it. Several commenters expressed confusion over how this activity could be regulated. The regulatory language is derived from the language in section 9(c)(1) of the ESA, which makes it unlawful for any person subject to the jurisdiction of the United States to engage in trade contrary to the provisions of CITES. The ESA does not limit this prohibition to import into or export from the United States, but further requires U.S. citizens, and others subject to U.S. jurisdiction, engaging in trade outside of the United States to abide by CITES requirements as a matter of U.S. law. Although this activity may be difficult to detect, we will take enforcement action when appropriate. For example, a U.S. company engaging in illegal international trade of tiger products could be found in violation of this section even if the items never entered the United States.

One commenter suggested that the prohibition on engaging in trade should apply only to intentional acts. We disagree because the prohibitions in section 9(c)(1) of the ESA do not recognize an exception for unintentional conduct. Further, penalties and enforcement provisions that address CITES violations already distinguish between violations that are knowingly or intentionally committed and those that are not.

One commenter opposed the prohibition on possession and stated that simple possession should not be a violation. We agree that possession alone is not a violation. However, the regulations specifically implement the statutory language that prohibits possession of any specimen traded contrary to the provisions of CITES. If a specimen was traded in violation of CITES, any possession of that illegally traded specimen is prohibited.

Several commenters questioned whether ''possession'' and ''traded contrary to CITES'' were considered prohibitions just because there was no positive documentation provided in an application to the U.S. Management Authority. The lack of supporting documentation in a permit application does not necessarily mean a specimen is illegally possessed or has been traded contrary to CITES. However, we may not be able to make the required findings or issue CITES documents if there is a lack of documentation or other evidence showing legality (see the discussion in the preamble for proposed section 23.60).

Personal and household effects (section 23.15): Article VII(3) of the Treaty provides for the import, export, or re-export of specimens that are personal or household effects without CITES documents under certain circumstances. We propose to clarify the

current regulations (section 23.13(d)) based on our experience in administering the Convention and Resolution Conf. 13.7. This section details the circumstances under which a person may travel with personal items of CITES wildlife and plants worn as clothing or accessories, or contained in accompanying luggage. It also details how a person may move personal items of CITES wildlife and plants from one country to another as part of a change of residence. We propose to define ''personal effects'' and ''household effects'' in section 23.5. Based on one commenter's recommendation, we clarify that we consider qualifying tourist souvenirs to be personal effects.

In Resolution Conf. 13.7, the Parties agreed not to require CITES documents for personal or household effects of dead specimens, parts, products, or derivatives of Appendix-II species unless a Party requires a CITES document. Parties are to notify the Secretariat if they require CITES documents for personal and household effects, and the Secretariat will maintain a list on the CITES Web site. Importing countries would generally assume that an export permit is not required if the exporting country had not notified the Secretariat otherwise. For species covered by the Lacey Act, however, the United States would require an export permit if a Party requires such a permit even if the Party had not notified the Secretariat of the requirement. It is the responsibility of the importer to consult with the exporting country to determine whether an export permit is needed in such instances.

For certain species, the Parties also agreed to numerical limits of specific types of specimens that qualify as personal and household effects. These specimens include sturgeon caviar, seahorse and crocodilian products, giant clam and queen conch shells, and rainsticks. We note that if someone wants to import, export, or re-export more than the quantity designated in the regulations, the specimens no longer qualify for the personal effects exemption, and they must be accompanied by a valid CITES document for the entire quantity. For example, if a person is bringing in more than 250 grams of caviar, a CITES document is required that covers the entire amount, not just the amount over 250 grams. If a person arrives in the United States with 265 grams of sturgeon caviar without a CITES document for 265 grams, the whole amount would be subject to seizure. The importer would not be allowed to keep 250 grams as a personal effect.

We propose to exclude live wildlife and plants (including eggs and non-exempt seeds) and most Appendix-I specimens from the exemption. The drafting history of CITES, as well as significant debate that occurred at CoP4, clearly supports the view that this exemption applies only to dead items, such as clothing or jewelry, that are being used by an individual for personal needs and are not for resale. In addition, few countries allow the import or export of Appendix-I specimens, including personal pets, without CITES documents. In the United States, many Appendix-I species are also listed under the ESA and other laws that do not provide an exemption for personal or household effects. Therefore, to assist in the enforcement of the Convention and to reduce the risk to Appendix-I species in the wild, we propose to require CITES documents for all Appendix-I specimens, except for certain worked items made from African elephant ivory (see proposed section 23.15(f)).

Several commenters supported the limitations that were placed upon live and Appendix-I specimens, caviar, and African elephant ivory. Another commenter thought we should remove this section since some Parties do not recognize the personal and household effects exemption, and it allegedly undermines protection of species. We did not accept this suggestion. The exemption reflects the agreement of the Parties, yet allows us to further conserve species when we or other countries have stricter national measures in place. The proposed regulations inform the public that CITES documents for personal and household effects may be required by other Parties.

In 2000, the Canadian Management Authority commented that they allow the shipment of live plants and Appendix-I specimens as personal effects and, thus, require no CITES documents. We recognize that there are differences in how Parties implement this exemption, and we strongly encourage travelers to check with the Management Authority in the foreign country they intend to visit to find out that country's requirements for importing and exporting personal effects.

We clarify that personal effects must be personally owned by the traveler for exclusively noncommercial purposes, be reasonably appropriate for the purpose of the trip or stay, and either be worn as clothing or accessories or be part of accompanying personal baggage. Three commenters stated that the requirement for the effects to be reasonably appropriate was unenforceable or vague. We believe this requirement provides additional assistance to inspectors at the port when determining whether items are personal effects or are commercial items that a person is attempting to import without CITES documents under the exemption.

One commenter recommended that we use the definition of commercial in 50 CFR part 14 that provides the presumption that eight or more similar unused items are for commercial use. We do not believe that this standard is appropriate for making CITES decisions under the terms of the Convention because the general standard in place in 50 CFR part 14 applies to all wildlife whether it is protected or not. In addition, as described above, the Parties have acknowledged that the quantity of items that qualify as personal or household effects can vary by species. A blanket statement regarding the number of items that might be considered commercial may be appropriate for determining licensing requirements under 50 CFR part 14, but CITES requires a different approach.

We have encountered a number of instances, both in the United States as well as abroad, when individuals have had souvenirs or other items seized when these items were mailed or shipped to them. Although these could be considered items for personal use, the CITES exemption does not apply unless the specimens accompany the individuals.

We also clarify that household effects must be personally owned items that are part of a noncommercial household move. A shipment may contain only items acquired before the individual moves. It may not include items purchased, inherited, or otherwise acquired after the person has moved, even though the household goods have not yet been shipped.

We understand that sometimes it is not possible to ship household goods all at one time. Thus, we propose to allow a person to make as many shipments as needed to accomplish the move as long as they occur within 1 year of the person's change in residence. One commenter opposed the 1-year limitation on this exemption. We retained the timeframe because we believe it is reasonably appropriate for completing the shipment of household goods to a new residence. A person is not precluded from shipping his or her household effects after 1 year, although such a shipment would require the appropriate CITES documents.

The AECA and ESA include stricter U.S. legislation concerning international trade of African elephant ivory. We propose to allow U.S. residents to travel out of and return to the United States

with pre-Convention worked African elephant ivory as personal or household effects under certain conditions, including registering the items. Registration consists of obtaining a U.S. CITES pre-Convention certificate, FWS Wildlife Declaration (Form 3–177), or CBP Certificate of Registration for Personal Effects Taken Abroad (Form 4457). This exemption is limited to ivory already owned in the United States and is not a special opportunity for trade. Upon re-import, travelers need to show records that the ivory is pre-Convention and that they registered it before leaving the United States. The exemption does not include items that are purchased while abroad or intended as gifts. We propose to adopt the same definition of ''raw ivory'' as found in the special rule concerning African elephants in 50 CFR 17.40(e), which is similar to the definition found in Resolution Conf. 10.10 (Rev. CoP12). Individuals should contact the Management Authority in the country of their destination to find out about its requirements for African elephant ivory.

Urine, feces, and synthetically derived DNA (section 23.16): We propose that the international trade of these specimens be exempt from CITES requirements under certain circumstances. We consider samples of urine and feces to be wildlife byproducts, rather than parts, products, or derivatives. We differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. At CoP8, the Parties rejected Denmark's draft resolution to exempt blood and tissue samples to be used for DNA studies. The Parties agreed that such tissues should not be exempt from CITES controls.

One commenter stated that all DNA should be exempt, not just synthetic DNA. We disagree since the Treaty contains strict language on the regulation of ''readily recognizable parts or derivatives'' of CITES species. Virtually all trade in DNA samples extracted from CITES species involves the use of packaging that identifies the specimen as a part, product, or derivative of that species. Under Resolution Conf. 9.6 (Rev.), any specimen or its packaging that is marked, labeled, or otherwise identified as a part or derivative of a CITES species is considered to be readily recognizable. Trade in all readily recognizable parts and derivatives of Appendix-I and Appendix-II wildlife and Appendix-I plants is regulated by CITES, and the Parties cannot create or assert exemptions for these specimens beyond those provided in Article VII of the Treaty. The Parties' discretion to limit the trade controls of CITES to a limited set of ''readily recognizable parts or derivatives'' is confined to Appendix-III wildlife and to Appendix-II and Appendix-III plants as provided by Article I(b) of CITES. Therefore, to implement the commenter's request for an exemption would require an amendment to the Treaty, an initiative that the United States has historically opposed.

On the other hand, another commenter recommended that urine, feces, and synthetic DNA should not be exempt from CITES permitting requirements because they could have been obtained in a manner that required capture and restraint of animals. We believe that trade in urine, feces, and synthetically derived DNA samples will not adversely affect the conservation of, or effective regulation of trade in, CITES species and their parts, products, or derivatives. While we will not regulate these specimens under CITES, we believe it is important that researchers collect samples in a manner that does not harm the wildlife and that complies with the laws of the country where the collection occurs. Before collecting samples, researchers should contact the foreign Management Authority or other relevant wildlife or plant authorities to obtain information on collecting and exporting requirements.

One commenter asked why, if the United States considers urine, feces, and synthetic DNA to be exempt, we require CITES permits for these specimens if another country requires them for import or export. Because the Parties have not agreed whether urine, feces, or synthetically derived DNA are regulated by CITES, some countries may require CITES documents for these types of samples. If a country requires CITES documents, we will honor that country's interpretation and process an application because we must facilitate compliance with foreign laws consistent with the Lacey Act Amendments of 1981. At CoP12 and CoP13, there were proposals to annotate the list of species to exempt these types of samples. The proposals were withdrawn. It should be noted, however, that some Parties do not agree that these specimens should be exempt from CITES controls.

Another commenter suggested that submission of a wildlife declaration Form 3–177 should suffice for trade in any tissue or blood for DNA research, especially from salvaged dead specimens. We disagree since no provision in the Treaty exempts such tissues from requirements for CITES documentation. Declaration of specimens using Form 3–177 does not meet CITES document requirements that ensure that the specimens were acquired legally and the export will not be detrimental to the survival of the species. There is also no declaration mechanism, like Form 3–177, for plants.

One commenter stated that the proposed regulation imposes new restrictions on import of blood and tissue taken from sport-hunted game animals for DNA analysis. We disagree, since blood and tissue for research have always required CITES permits. We refer you to proposed section 23.74 for the definition of ''sport-hunted trophy.''

Diplomats and other customs-exempt persons (section 23.17): CITES Decision 9.15 urges the Parties to remind their diplomatic missions, their delegates in foreign countries, and their troops serving under the flag of the United Nations that they are not exempt from the provisions of the Convention. In these regulations we propose to remind all persons who receive duty-free or inspection exemption privileges that CITES specimens traded internationally must meet the requirements of CITES and these regulations.

Required CITES documents (sections 23.18–23.20): Articles III, IV, and V of the Treaty outline the types of documents that must accompany Appendix-I, -II, or -III specimens in international trade. Article VII and Article XIV of the Treaty recognize exemptions for certain specimens, such as those that qualify as pre-Convention, bred-in-captivity, or artificially propagated. Generally, these specimens must be accompanied by CITES exemption documents. The proposed regulations remind people who trade in wildlife and plants to check with the Management Authorities of all countries concerned to determine their requirements before importing, introducing from the sea, exporting, or re-exporting CITES specimens.

We propose to organize the information on what types of CITES documents are required into two decision trees and three tables. We developed separate decision trees specifically to address the confusion expressed by the public on the different export requirements for Appendix-I wildlife and plants.

The decision trees and tables should make it easier for importers and exporters to understand what type of document is needed for a shipment. They refer the user to the section in these proposed regulations that explains the application procedures, general provisions, issuance and acceptance criteria, and conditions.

One commenter suggested that we add information to detail what constitutes confirmation that the importing country has or will issue an import permit. We agree and have revised the proposed regulation by adding language to proposed section 23.35(e) on import permits (see the discussion in that section of the preamble).

Export of Appendix-I wildlife (section 23.18): The decision tree reflects the changes we are proposing to ensure that international trade in Appendix-I wildlife is not for commercial purposes when permits are issued under Article III of the Treaty. Article II of the Treaty states that Appendix-I specimens ''* * * must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.'' The Parties have agreed that Appendix-I wildlife specimens should not be traded for commercial purposes unless the specimens originated from a CITES-registered Appendix-I commercial breeding operation. In the past, the FWS has allowed commercial breeders of Appendix-I wildlife to export specimens that have been sold to individuals outside the United States provided that the Management Authority of the importing country can make a ''not primarily commercial'' finding and issues an import permit. After review of this type of trade, we do not believe that Article III of the Treaty was intended to allow such commercial trade. Thus, we propose no longer to allow the use of Article III of the Treaty to export Appendix-I wildlife unless the export is for noncommercial purposes. We also propose to allow the export of Appendix-I wildlife that qualifies for an exemption under Article VII(4) and (5) as bred-in-captivity only if the specimen was bred at a CITES-registered breeding operation or was bred for noncommercial purposes, respectively. Other Appendix-I wildlife bred-in-captivity will be given a source code ''F,'' rather than a ''C,'' and the export would be allowed only if the export is for noncommercial purposes and an import permit was granted.

Reservations (section 23.21): Articles XV, XVI, and XXIII of the Treaty allow a Party to take a reservation on a species listing in Appendix I, II, or III. Generally, a reserving Party is treated as a non-Party with respect to trade in the reserved species. Countries that choose not to recognize a listing and take a reservation may continue trading in the species without CITES documents with other Parties that have taken the same reservation or with non-Parties provided the shipment does not transit a Party country. Trade with Parties that have not taken the same reservation requires CITES documents.

We propose to add this section to emphasize what types of documents are required from Parties that have taken a reservation on a species. We propose to incorporate Resolution Conf. 4.25, which recommends that, when a species is newly listed in Appendix I or is transferred from Appendix II to Appendix I, Parties that take a reservation issue a CITES document and treat the species as if it were listed in Appendix II, rather than not listed, when trading with other reserving Parties or non-Parties. This provision should promote the conservation of species listed in Appendix I because the reserving Party would continue to issue CITES documents based on legal acquisition and non-detriment findings, and report such trade in its annual report. We also propose to incorporate Resolution Conf. 9.7 (Rev. CoP13) which clarifies the requirements of the Treaty that a shipment containing specimens of CITES species traded between non-Parties or reserving Parties or between a non-Party and a reserving Party must be accompanied by CITES documents if it transits a Party country before reaching its final destination.

One commenter suggested that we add specific provisions in case the United States took a reservation. We did not incorporate this suggestion because if the United States entered a reservation to a listing the requirements in proposed section 23.21(d) would apply. We did, however, add a paragraph on how a person could provide relevant information and request that the United States consider taking a reservation. Additionally, we added text indicating that if the United States entered a reservation to the listing of a species in Appendix I, we would require a CITES document that met Appendix-II permit criteria for international trade in specimens of that species. To date, the United States has not taken a reservation. Entering a reservation would do very little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 make it a Federal offense to import into the United States any animal taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted CITES and has not taken a reservation with regard to the species, the United States would continue to require CITES documents as a condition of import. A reservation by the United States also would provide exporters in this county with little relief from the need for U.S. export documents. Unless the receiving country had entered the same reservation or was a non-Party, U.S. exporters would continue to be required to obtain CITES comparable documents because the Parties have agreed to trade with non-Parties and reserving Parties only if they issue permits and certificates that substantially conform with CITES requirements and contain the required information outlined in Resolution Conf. 9.5 (Rev. CoP13).

Another commenter did not understand the section and wondered if the intent was that a country could not take a reservation on all species. The Treaty does not restrict the number of species for which a Party may take a reservation, but Parties seldom take a reservation on large numbers of species. A reserving Party is still bound by the provisions of CITES as outlined in this section.

In-transit (section 23.22): Due to limited transportation routes and schedules, exporters and re-exporters may not always be able to ship specimens from one country directly to another without transhipping them through intermediary countries. Shipments of marine specimens harvested from international waters may need to move through waters under the jurisdiction of intermediary countries before reaching their port of introduction. Shipments of sample collections may transit a number of countries before returning to the originating country. Article VII(1) of the Treaty provides an exemption for specimens that are in transit through a country while the specimens remain under customs control. We propose to define an ''in-transit shipment'' as the transhipment of any wildlife or plant through an intermediary country when the specimen remains under customs control and meets either the requirements of this section or the requirements in section 23.50 for sample collections covered by an ATA carnet. (ATA is an acronym of the French and English words ''Admission Temporaire/Temporary Admission.'') In-transit shipments, other than sample collections in section 23.50, may stay in an intermediary country, including storage in a duty-free, bonded, or other kind of warehouse or a free trade zone, only for the time necessary to transfer the specimens to the mode of transport used to continue to the final destination.

In 1983, the CoP recognized the potential for abuse of the in-transit provision, such as when importers claimed the exemption and delayed shipment of the transiting specimen while they found a buyer in a foreign

country. In 1989, the CoP noted that if a valid CITES export document was required to accompany shipments through intermediary countries, Parties could discover illegal trade by drawing attention to undocumented shipments. The inspection of in-transit shipments was recommended in 1992. Resolution Conf. 9.7 (Rev. CoP13) consolidates the earlier resolutions concerning in-transit shipments.

These proposed regulations reflect the recommendations of the CoP to prevent misuse of the in-transit exemption. Based on comments received about the loss of documents during transit, we revised this section to allow the use of a copy of the valid original document for in-transit shipments. Transhippers should be aware, though, that if shipments are not accompanied by an original CITES document, intermediary countries could delay movement of the shipment while they determine whether a copy is an accurate copy of the original valid document. If we have reason to question an accompanying copy, we will contact the Management Authorities in the countries of export or re-export and final destination.

The CITES document must designate the name of the importer in the country of final destination. The shipment must also be accompanied by a copy of a valid import permit for Appendix-I specimens, where required, and transportation routing documents that show that the shipment has been consigned to the importer listed on the CITES documents.

In 2000, we proposed that in-transit shipments may not be sold, manipulated, or split. One commenter stated that this requirement does not address what happens if there is a problem with part of a shipment. To clarify, we revised the proposed regulations to indicate that an inspecting official has the authority to order a shipment to be split or manipulated if problems are detected with part of the shipment. Another commenter suggested that we add the phrase ''solicited for sale'' to the requirement that shipments may not be sold. We did not accept this suggestion as it goes beyond the intent of the resolution. As long as the goods are not sold while in transit, we are not concerned about what kind of solicitations occur.

A shipment that contains specimens of CITES species protected under other U.S. regulations, such as migratory birds, bald and golden eagles, injurious wildlife, endangered or threatened species, or marine mammals, that arrives in the United States before continuing on to another country is considered an import and must meet all import requirements. One commenter thought that, if shipments are treated as an import, the possible ramifications were unclear. Shippers must meet the requirements of all applicable regulations. To clarify, we revised this proposed section to reference § 23.3 on other specific regulations that may affect the import of protected species, including 50 CFR part 14.

Required information on CITES documents (section 23.23): We propose a new section to provide details on what information CITES documents must contain. It applies not only to documents issued by the United States, but also to those issued by other Parties and non-Parties. Article VI of the Treaty provides basic requirements for CITES documents for import, introduction from the sea, export, and re-export. At the first CoP, the Parties recognized the importance of having standardized documents. They also recognized that the process of developing the standards would be a continuous one. The resolution on permits and certificates has been revised at CoPs 2, 3, 7, 9, 10, 11, 12, and 13. The resulting comprehensive resolution (Resolution Conf. 12.3 (Rev. CoP13)) provides guidance on all aspects of CITES documents.

Two commenters stated that we should not reject what they thought were otherwise valid documents just because they do not comply with U.S. standards. The document standards in these proposed regulations are not just U.S. standards, but are based on the Treaty and resolutions agreed to by the Parties. The use of standardized documents assists Parties in implementing CITES. Such standardization allows countries to verify that the specimen being shipped is the one listed on the document and helps identify false and invalid CITES documents. It facilitates the collection of information on the volume of trade in wildlife and plants, provides standard information for annual reports, and allows better monitoring of the levels of commercial trade on a species-specific basis. It also facilitates the clearance of shipments at ports of exit and entry by making all necessary information available to the inspector in a familiar format. Documents that do not contain the required information may be considered invalid documents and rejected by any CITES Party.

One commenter stated that there was no basis to require non-Parties to comply with document information requirements. Article X of the Treaty requires that documents issued by non-Parties must ''substantially conform'' with these requirements of the Convention. See discussion of proposed section 23.25 in the preamble.

Most of the information in this proposed section is presented in a series of tables, organized alphabetically by required information, code, or type of document. This format should help those shipping and receiving specimens to understand what information is needed on CITES documents. We discuss some of the requirements here to clarify issues raised in the past.

Bill of lading or air waybill (section 23.23(c)(3)): APHIS suggested that we make the air waybill and bill of lading information mandatory on all documents to assist inspection officials. Although we agree that this information helps match a shipment to a document, we decline to make this mandatory since the specific information is not always known at the time the CITES document is validated.

Dates (section 23.23(c)(4)): We have had many questions about the ''valid until date.'' We clarify that the validity of a document expires at midnight (local time at the place of presentation) on the date indicated on the document. All activities, including but not limited to transport and presentation for import, must be completed before that time.

Description of the specimen (section 23.23(c)(5)): The use of standard descriptions for a specimen is needed to perform accurate global trade analyses, particularly for purposes of evaluating the impact of trade on the conservation of the species in the wild. We propose to require that descriptions on CITES documents from Parties be in English, Spanish, or French (the three working languages of the Treaty) to assist inspectors in determining if documents match the accompanying shipment.

One commenter believed that the form should not have to be in English, French, or Spanish. The Parties agreed that the form itself should be in one of the three working languages of the Treaty to ensure that inspecting officials could read the documents. The required information on the form itself does not have to be in one of the three languages, except for the description of the specimen, which is a critical piece of information for inspecting officials. The Parties recognized that it is unreasonable to expect inspecting officials globally to be conversant in all languages of CITES permit-issuing countries. We have experienced difficulties in processing CITES documents written in languages other than English, Spanish, or French, and clearance of some shipments has been delayed. Limiting descriptions to the three languages of the Treaty should

help prevent or reduce such delays, while assisting in enforcement efforts.

Humane transport (section 23.23(c)(7)): One commenter requested that we add a reference to the IATA LAR and CITES guidelines for humane shipping in many other sections of the regulations. We do not believe it is necessary to repeat this reference throughout the regulations, since it is this proposed section that outlines all document requirements for the export or re-export of live specimens. Another commenter suggested that we not reference a specific IATA LAR volume because of continuous changes. We decline to adopt this recommendation and have kept the reference to a specific volume since we do not have the authority to automatically codify future editions of the IATA LAR.

Identification of specimen (section 23.23(c)(8)): We propose to require that the CITES document contain information on any unique number or mark that is used to identify a specimen. If the specimen has a microchip, the specific information concerning the code, trademark of the transponder manufacturer, and location of the chip will need to be on the CITES document and, if necessary, we may ask the importer, exporter, or re-exporter to have the equipment on hand to read the microchip at the time of import, export, or re-export.

One commenter stated that we should not mandate marking that is required under a resolution unless that resolution is also codified. We revised the proposed regulations to clarify that specimens must be marked using any mark required under these regulations or a CITES listing annotation. To effectively implement CITES, we may require that specimens be marked if a mark is necessary to support findings of legal acquisition and non-detriment. We also require marking information for CITES documents that we issue to ensure that exports or re-exports are not seized abroad.

Purpose of transaction (section 23.23(c)(11)): Resolution Conf. 12.3 (Rev. CoP13) lists standard transaction codes that are to be used on documents. These are the same codes used by Parties in their CITES annual reports.

Quantity (section 23.23(c)(12)): Shipments have been presented for clearance with quantities identified as ''one box'' or ''one case.'' These quantities lack clear information about the actual amount of wildlife or plants in the shipment. One box may contain one wildlife or plant specimen, or it may contain hundreds. The unit of measurement should be appropriate for the type of specimen and agree with the preferred or alternative unit to be used in the CITES annual report, if possible. The unit should be in metric measurement. If weight is given, it is important to provide the weight of the specimen, not the packing material. Some items are more accurately reported by volume, such as logs and sawn wood, which should be shown as cubic meters. Based upon comments from APHIS, and information from CBP, the timber industry, and other CITES Parties, we have clarified that veneer and plywood should be shown as either square meters or cubic meters. To monitor trade effectively, we need records on quantities that actually reflect the volume of that trade.

Scientific name (section 23.23(c)(13)): We propose that a CITES document must contain the scientific name of the species, which must follow the standard nomenclature as it appears in the CITES Appendices or in the references adopted by the CoP. The CITES website contains the Appendices and a species database for easy query by common or scientific name. Resolution Conf. 12.11 (Rev. CoP13) provides guidelines on standard nomenclature and contains a list of taxonomic and nomenclatural references adopted by the CoP as the official standard references for species included in the Appendices. UNEP-World Conservation Monitoring Centre (WCMC) publishes the *Checklist of CITES Species,* which provides the official digest of scientific names contained in the standard references. The checklist contains an alphabetical list of CITES species, their scientific synonyms, their common names in English, French, and Spanish (to the extent that these were available to the compilers) and the Appendix in which they are listed. Taxonomy evolves, and different references may use different scientific names for the same organism. Having one standard that we can follow is important to ensure that documents are issued for the correct species.

One commenter stated that we should not require subspecies information on the CITES document. The scientific name of the species on the CITES document must include the subspecies when that information is needed to determine the level of protection of the specimen under CITES. For example, under CITES, three subspecies of cougar (*Puma* (=*Felis*) *concolor coryi, P. c. costaricensis,* and *P. c. cougar*) are listed in Appendix I, while all other subspecies are listed in Appendix II.

Resolution Conf. 12.3 (Rev. CoP13) recommends situations when a higher taxon name (such as genus or family) could be used on a CITES document. We propose to accept a CITES document that uses a higher taxon name only when the CoP has agreed to its use, the issuing Party can show it is well justified and has communicated the information to the Secretariat, or when the item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level. The Parties have agreed to the use of higher taxon names for coral rock and live and dead coral under certain conditions.

Signature (section 23.23(c)(16)): We propose to require that the signatures of individuals authorized to sign CITES documents for a Management Authority must be on file with the Secretariat. This requirement will help us determine if a document is valid and avoid delays in the clearance of shipments.

Validation (section 23.23(c)(21)): We revised the paragraph to reflect one commenter's statement that validation is required whether the shipment is physically inspected or not.

Additional information (section 23.23(e)): The table in paragraph (e) provides details on additional information that is required for specific types of documents, such as an annex or certificate of origin. Some documents require additional information because of the type of transaction, the specimen involved, or special provisions, such as quotas.

One commenter noted that quota information is not standardized so that this required section was premature. We did not change this section since the information that is required to appear on the face of a CITES document has been standardized by the Parties. We agree, however, that the system used internally in each country to account for quotas is not standardized. The Parties discussed export quotas at CoP12 and CoP13 and forwarded the issue to the Standing Committee for further consideration.

Phytosanitary certificates (section 23.23(f)): CITES allows phytosanitary certificates to be used in lieu of CITES certificates to export certain artificially propagated plants under specific circumstances. At CoP12, the Parties agreed in Resolution Conf. 12.3 (Rev. CoP13) that the phytosanitary certificate was valid only to export plants that were artificially propagated in the exporting country. The phytosanitary certificate should not be used for the subsequent re-export of such plants. Paragraph (f) lists information that is required on these certificates. At this time, the United States does not use phytosanitary certificates in lieu of CITES certificates.

Source of the specimen (section 23.24): The source of a specimen is

needed by Management and Scientific Authorities to make the findings required to issue CITES documents and is an important component in analyzing data and monitoring trade. We are providing a list of standardized codes that Management Authorities use on documents. Each code is defined as to the source of the specimen under CITES. The U.S. Management Authority will determine the appropriate code based on information provided in an application. At CoP12, the Parties agreed to add source code ''O'' for pre-Convention specimens to conform with the *Guidelines for the preparation and submission of CITES annual reports.* Parties should assign the code ''O'' in conjunction with another code.

We often receive questions about the difference between the source codes ''C'' and ''F.'' Wildlife bred-in-captivity can be given the source code ''C'' and traded under an Article-VII exemption certificate only if the specimen meets the requirements adopted by the CoP as ''bred-in-captivity'' (see proposed section 23.63). In addition, for Appendix-I wildlife, the specimen must have been bred for noncommercial purposes. If a specimen does not meet these criteria, it is assigned the source code ''F'' and requires CITES documents under Articles III, IV, or V of the Treaty. For export of Appendix-I wildlife, see the discussion in the preamble for section 23.18.

Additional information required on non-Party documents (section 23.25): This section provides the additional information that is required on non-Party documents. Article X of the Treaty allows a Party to accept documentation from a non-Party if it is issued by the competent authority and substantially conforms to the requirements of CITES. Because the Parties were concerned that the trade of CITES specimens through non-Parties might jeopardize the effectiveness of the Convention, Resolution Conf. 9.5 (Rev. CoP13) was adopted. This resolution recommends that Parties accept documents from non-Parties only if they contain certain basic information, including certifications that they have made the findings required under Articles III, IV, and V of the Treaty. Therefore, we propose to incorporate the requirements of Resolution Conf. 9.5 (Rev. CoP13) on trade with non-Parties and Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates. This means a non-Party CITES document would need to contain essentially the same information as a Party document plus the additional certifications in this section for us to consider it valid.

Valid CITES documents (section 23.26): Article VIII of the Treaty outlines measures that Parties should take to enforce the provisions of the Convention. Resolutions Conf. 9.9, 11.3 (Rev. CoP13), and 12.3 (Rev. CoP13) further detail these measures. For CITES to be effective, shipments must be accompanied by valid CITES documents issued by the appropriate authority and must meet all conditions of those documents. Each Party must have border controls for the inspection and validation of CITES documents. To ensure that specimens traded in violation of CITES are not re-entered into illegal trade, Parties are to consider seizure of specimens, rather than refusal of entry of the shipment. Parties are encouraged to cooperate with other Parties, the Secretariat, and international enforcement organizations to further effective enforcement of the Treaty and provide protection to CITES species.

We propose to include this section in the regulations to outline what requirements must be met for CITES documents to be considered valid. Several commenters objected to our reviewing the legal and scientific bases for a CITES document issued by another country. They believe we should accept a document if it is not procured by fraud and meets Article VI of the Treaty. We have the authority to question any shipment and its accompanying documents if the surrounding facts indicate a potential violation or create a reasonable suspicion of a violation. Section 10(g) of the ESA places the burden on a permittee to prove that the document was valid and in force at the time of entry into the United States. Foreign countries have the same discretion to inquire about documents we have issued. As noted by the United States District Court for the District of Columbia in *Castlewood Products* v. *Norton* (Apr. 16, 2003), the role of all CITES Parties is to ensure that international trade in CITES specimens meets the provisions of the Convention, and that the Government has the authority to decline to accept export permits at face value when reason is shown to doubt their validity.

We present this information on valid documents in a table arranged alphabetically by key phrase to assist importers and exporters. Most of the requirements are self-explanatory. However, we believe it would be helpful to discuss some in more detail.

Management Authority and Scientific Authority (section 23.26(c)(7)): We propose to incorporate the recommendations of Resolutions Conf. 9.5 (Rev. CoP13), 10.3, and 11.3 (Rev. CoP13) that documents should be accepted only from Parties and non-Parties that have designated a Management Authority and Scientific Authority and have provided that information to the Secretariat.

One commenter objected to this requirement while two commenters supported it. To clear a shipment, we must be satisfied that the required findings have been made for documents issued by a Party or non-Party. Without these findings, CITES documents are not valid. When a country designates a Management Authority and Scientific Authority, those offices assume the responsibility to make the needed findings before issuing CITES documents. Information provided through the Secretariat on the designation of these offices allows the U.S. to ensure that the government office issuing the CITES document had the capability and legal authority to make the required findings and issue the document.

One commenter thought that this section implied that a nation must have its own authorities. Although most countries designate their own Management Authority and Scientific Authority, joint authorities could meet the criteria. For example, CITES has supported the concept of shared Management Authorities or shared Scientific Authorities for island developing nations.

Ranched specimen: In 2000, we proposed not to allow trade in specimens from species that have been transferred from Appendix I to Appendix II based on ranching from a non-Party or a Party that has taken a reservation on the species based on a recommendation in Resolution Conf. 10.18. That resolution was repealed at CoP11. We agree that this provision is not necessary as we accept shipments from a non-Party or a reserving Party only when the document is issued by a competent authority and it substantially conforms to the requirements of the Treaty. Thus, we have not included any conditions for ranched specimens in the table in this new proposal.

Shipment contents (section 23.26(c)(13)): The proposed language reflects current practice. CITES documents must be obtained before the shipment occurs; the specimen must be identified on the document; and the shipper may not substitute a new specimen to replace the one authorized. The inspecting official may inspect the shipment and verify that the contents match the specimens described on the document. The official will validate or certify on the CITES document the actual quantity being shipped. The

quantity may be less than the quantity shown on the document at the time it was issued, but cannot be more than that quantity.

Quotas (section 23.26(c)(14)): Quotas may be established voluntarily by Parties, adopted by the CoP through a resolution or proposal to amend Appendices I or II, or put into place through the review of significant trade in Appendix-II species (Resolution Conf. 12.8 (Rev. CoP13). The Secretariat notifies the Parties of these quotas each year, and we propose to require that the quantity exported may not exceed the quota.

Verification of CITES documents (section 23.26(d)): This section outlines the situations when we may request verification of documents from the Secretariat or the Management Authority of any country involved in the shipment. They include instances when we have reasonable grounds to believe a document is not valid or authentic.

Two commenters recommended that the United States request specific information to support the non-detriment findings made by other countries for each species they export to the United States. We did not incorporate this suggestion and believe it goes beyond the intent of the Treaty. Although we agree it is important that certain CITES documents only be used when a non-detriment finding has been made, we rely on Parties or non-Parties to make appropriate findings and would seek additional information only when we have a specific reason to do so. The Plants and Animals Committees regularly evaluate whether Parties are properly making non-detriment findings through the significant trade review process. In addition, we request information on non-detriment findings made by other countries, including quotas established by Parties, when we have a need to question a shipment or a pattern of trade. If the commenters are concerned about a non-detriment finding that is currently being accepted, they should provide us with any relevant information for our review.

Presentation of CITES documents at the port (section 23.27): Inspecting officials at the ports of exit and entry must verify that shipments are accompanied by valid CITES documents and take enforcement action when shipments do not comply with CITES. To help importers and exporters, we propose this new section, which provides a table that outlines the type of U.S. and foreign documents they must present for validation or certification or surrender when importing, introducing from the sea, exporting, or re-exporting CITES species. Based on comments from APHIS, we updated the reference to the general requirements for import and export of plants.

One commenter believed that we should allow CITES documents to be submitted after the fact for CITES specimens that are part of accompanying baggage when Customs and Agriculture fail to collect the documents. We, or APHIS or CBP for plants, are the agency from which any importer or exporter must obtain release under CITES. Persons should contact the responsible agency prior to importing wildlife or plants as accompanying baggage. Importers unable to submit CITES documents to us, APHIS, or CBP for noncommercial shipments in accompanying baggage at the time of entry should contact the appropriate office as soon as possible after arrival.

Based upon suggestions from APHIS, we clarified sections of the table to indicate that we, APHIS, or CBP will validate a copy of a multiple-use document if the document is so conditioned. We also added a footnote indicating that the CITES mailing label for scientific institutions does not require validation, but the scientific institution must present the package, which has the CITES mailing label affixed to it, for inspection at the time of export, re-export, or import (see 50 CFR part 14).

What Are the Proposed Changes to Subpart C of 50 CFR Part 23—Application Procedures, Criteria, and Conditions?

This proposed subpart expands the current section 23.15(c) through (f) to provide information on how to apply for a U.S. CITES document. It also contains proposed general provisions and criteria that apply to both U.S. and foreign CITES documents.

Application procedures (section 23.32): We propose a new section that gives a general overview of the application process for U.S. CITES documents. A number of CITES species are protected under other laws or treaties that we implement. If appropriate, we will accept one application if the applicant provides the information needed under all relevant regulations. An applicant should review the issuance criteria for all relevant regulations when preparing an application to ensure he or she understands the kinds of information we need. This review will help the applicant submit a more complete application and prevent delays in processing. When we review an application, we decide whether the requirements of an exemption document under Article VII of the Treaty can be met or whether we need to process the application under the standard CITES requirements of Articles III, IV, or V (see proposed sections 23.35–23.39). If we find that the application is incomplete, we will contact the applicant for additional information. If the applicant does not respond to our request within 45 days, we will abandon the file. We will not re-open the application if the applicant sends the additional information at a later date. The applicant may, however, submit a new application, including any relevant application fees, if he or she still wants to pursue obtaining a permit.

Decisions on applications (section 23.33): This new proposed section explains the procedures we follow in making a decision on an application. When an application is complete, we review the information under all applicable issuance criteria, including 50 CFR part 13, regulations under other wildlife and plant laws, and the CITES regulations. We may consult with outside experts, scientists, and staff within the Federal Government, State and tribal agencies, the Secretariat, or foreign Management or Scientific Authorities before we make our findings. The burden of proof in establishing that the issuance criteria are met lies with the applicant. We can issue a CITES document only if we are satisfied that all criteria specific to the proposed activity are met.

One commenter suggested that we accept at face value biological non-detriment findings of the exporting range countries and the quotas set by the CoP. We decline to incorporate this suggestion (see discussion for proposed section 23.61 in the preamble). Another commenter asserted that the regulations do not provide a reasonable alternative to expensive court action when permits are denied. We note that the general permit procedures in 50 CFR part 13 set out a review process to be followed if an application, including a CITES application, is denied. If the applicant objects to the denial of an application, he or she may request reconsideration and then appeal the decision, if necessary. The reconsideration or appeal review will be based on the original application and any explanation of either how we have misinterpreted the information or made a procedural or technical error in our original review of the application.

Records (section 23.34): We propose this new section to summarize the types of general records that potential applicants may want to keep for specimens that have been in or may

enter international trade. Many orchid hobbyists and commercial growers expressed great concern that the documentation requirements in the 2000 proposal were excessive and impractical. Concerns included comments that plants are traded, gifted, and otherwise exchanged freely within the United States without specific receipts; document requirements should be different for orchids since they are easy to propagate, produce a large number of offspring, and are easy to hybridize; recordkeeping requirements should not be the same for hobbyists and commercial nurseries; and hybrids should be exempt from regulation since they are artificially propagated.

After considering the comments, we recognize that our 2000 proposal on records and legal acquisition (see proposed section 23.60 in the current proposal) was not clear. Our intent was to reflect how we currently conduct business. Thus, we revised the proposed regulations. This section on records provides examples of the kinds of records potential applicants may want to keep if they intend to trade in CITES species internationally (see the discussion for proposed section 23.2 in the preamble concerning possession and domestic trade). Although the applicant for a CITES document needs to provide sufficient information for us to make the legal acquisition finding, we base the amount of information we need on the risk that the specimen was illegally acquired. These factors take into account many of the issues raised by commenters. For example, we consider whether the specimen is a hybrid; is common in captivity in the United States; breeds or propagates readily; has little illegal trade; and is commonly imported. We give less scrutiny and require less information when the trade poses a low risk and exert more scrutiny and require more detailed information when the proposed activity poses greater risk.

A few commenters believed that the recordkeeping provisions for exempt plant material, such as flasked orchid seedlings, went beyond the requirements of CITES. We disagree because the exemptions recognized by the Parties for a number of plants are narrowly applied to those particular specimens. Once those exempt plant materials take a different form (such as a seedling removed from a flask and entered into cultivation or a plant grown from an exempt seed), the new specimen requires CITES documents to be traded internationally. We have, however, revised the proposal to only ask for records that document the name and address of the source of the exempt plant material. We are no longer proposing to ask for information on the cultivated origin of exempt seeds because at CoP13 the Parties agreed that plants grown from exempt plant material under controlled conditions qualify as artificially propagated.

Some commenters contended that we should grandfather or grant amnesty to Appendix-II specimens known in cultivation for more than a set number of years. We did not adopt this suggestion. For specimens to be eligible for certain CITES documents, we have to be satisfied that the specimens were legally acquired. We cannot exempt specimens from this finding regardless of the length of time they have been in cultivation. We can, however, use a less rigorous paperwork requirement, as we have done through the risk assessment process described above.

A few commenters contended that documentation is all but useless in effectively monitoring whether the trade in orchids is legal. We disagree and believe that documents have effectively worked as the centerpiece of CITES trade controls. A CITES document indicates that a Party has made the findings to show that the specimen was legally acquired and the trade is not detrimental to the survival of the species. In addition, our use of risk assessment as described above allows us to consider all factors, not just documents.

One commenter thought it would be anti-competitive for a nursery to be required to disclose the source of plants. We note that each application form contains a notice under FOIA. Organizations, businesses, or individuals operating as a business must identify any information that should be considered privileged and confidential business information to allow us to meet our responsibilities under FOIA. Confidential business information must be clearly marked ''Business Confidential'' and be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary and remaining documents may be made available to the public under FOIA.

One commenter suggested we use ''sequential ownership'' rather than ''multiple ownership'' to clarify that we do not mean joint title. We agree and revised the text to reflect this change. Several commenters were concerned that importers were not provided copies of CITES documents at the port of entry and asked if we would provide free copies of prior documents if requested. We note that it is important for persons who plan to conduct international trade to keep copies of CITES documents. This is especially true if the specimen or its parts, products, or derivatives are to be re-exported. A re-export certificate can be issued only if we have the permit number and date of issuance of the foreign CITES document under which the specimen was imported. This is one instance when we will be looking for sequential ownership records. If a person did not get a copy of a CITES document at the time of entry into the United States, he or she should contact us to obtain copies as soon as possible. Copies of CITES documents may be requested from us through FOIA, but such documents may not be available after a few years. If the requester qualifies for the fee waiver under FOIA, there is no charge.

Two commenters questioned the legal basis for requiring records to show (a) that the cultivated parental stock was established in accordance with CITES and relevant national laws for a plant to qualify as artificially propagated or (b) the chain of custody. We have a responsibility under the Treaty to make a legal acquisition finding before issuing certain CITES documents. In the case of artificially propagated plants, the Parties agreed to an interpretation of ''artificially propagated,'' which includes whether the cultivated parental stock was legally established. In the case of sequential ownership, we may need to look further to be satisfied that there is no illegality in the chain of custody. The amount of information we need depends on the risk associated with the proposed activity as described in the application.

A few commenters thought we should change the recordkeeping for wild-collected specimens taken on public land where no permit is required. We agree and have revised the text. When applying for a permit, persons who collect on public land where no permit is required should provide information on when and where the specimen was collected and state that no permission was required. We will contact the appropriate State or Federal agency that has jurisdiction over collection of wildlife or plants on that land.

General requirements for standard CITES documents (sections 23.35–23.39): The basic requirements for U.S. and foreign CITES documents have not changed since the Treaty took effect in 1975, and are the same as in the current regulations (section 23.15). We have designed U.S. application forms for specific activities and protection levels to make applications easier to complete and to clarify what information is needed. Each proposed section provides information to help an applicant determine which application form to

request. The forms can be obtained from our website or requested by phone, mail, or e-mail (see proposed section 23.7).

Each proposed section lists the issuance criteria for each type of document and references the appropriate section for factors we consider in making a decision on certain criteria. The issuance criteria are based on the provisions of the Convention (Articles III, IV, V, and XIV) and resolutions, including Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates.

As discussed earlier, to comply with Resolution Conf. 12.3 (Rev. CoP13), CITES documents must show the scientific name of the species based on the standard nomenclature in the CITES Appendices or the references adopted by the CoP. We propose to add this requirement as an issuance criterion to conform to the resolution, expedite review of permit applications, and ensure that documents are issued for the correct species.

Prior issuance of an import permit (section 23.35(e)): Under Article III of the Treaty, before a Management Authority can issue an export permit for an Appendix-I specimen, it must be satisfied that an import permit has been issued for the specimen. However, some countries have stricter national measures that require the export permit to be issued before they can issue an import permit. Resolutions Conf. 10.14 (Rev. CoP13) and 10.15 (Rev. CoP12) recommend that this requirement may be satisfied when the Management Authority of the importing country has provided written assurance that an import permit will be issued. Thus, for the export of live and dead Appendix-I specimens and re-export of live Appendix-I specimens (as required by Article III of the Treaty), we propose that the issuance criteria can be met either by showing that the import permit has been issued or by providing confirmation from the Management Authority of the importing country that the import permit will be issued. For re-export of dead specimens, the Management Authority does not need to see the import permit before issuing a re-export certificate, but the shipment still must be accompanied by an import permit.

One commenter suggested that a written confirmation from the appropriate authority in the form of a letter, fax, e-mail, or similar media should be acceptable, with allowance for oral confirmation in an urgent situation to be followed by written confirmation. We agree that these types of written communications could confirm that an import permit has been or will be issued. We also agree that oral confirmation may be acceptable, but only under exceptional circumstances since oral confirmation is open to misunderstanding. We revised the text to clarify that confirmation should be in writing except when the life or health of a specimen is threatened and no timely means of written communication is possible.

Export permits (section 23.36): To comply with Article II of the Treaty, we propose that the export of Appendix-I wildlife that only qualifies as source code ''W'' or ''F'' must be for noncommercial purposes (see discussion in the preamble for proposed section 23.18). This proposed new provision means that facilities that are commercially breeding Appendix-I wildlife need to become registered under proposed section 23.46 before they can export Appendix-I specimens. This does not affect the sale of specimens within the United States, only the commercial export of such specimens, nor does it preclude the export of specimens where the export is noncommercial, such as for purposes of science, conservation, or personal use.

We propose to add language to address the exemption in Article XIV paragraphs 4 and 5 for certain Appendix-II marine species protected under another treaty, convention, or international agreement that was in force on July 1, 1975 (the date of entry into force of CITES). Export of a marine specimen exempted under Article XIV requires a CITES certificate indicating that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement.

Re-export certificate (section 23.37): A re-export certificate is required for the export of Appendix-I, -II, and -III specimens that were previously imported, including items subsequently converted to manufactured goods. A certificate may be issued when evidence of legal import has been provided.

Certificate of origin (section 23.38): This document allows the export of a specimen of species listed in Appendix III when the specimen originated in a non-listing country. Current regulations (section 23.12(b)(2)) provide only general information about a certificate of origin. We are proposing a new section to provide specific information on the application form and issuance criteria for a certificate of origin. One commenter was concerned about the inconvenience of obtaining a CITES certificate of origin from a country's Management Authority when often a certificate is issued on a local level, especially for hunting trophies. The commenter suggested that a certificate of origin from the local authorities should be acceptable for Appendix-III and some Appendix-II species. We note that a certificate of origin is acceptable under CITES only for Appendix-III species. Resolution Conf. 12.3 (Rev. CoP13) recommends that a certificate of origin be issued by a country's designated Management Authority and that Parties accept a document only if it is issued by such authorities. Although permission to hunt may be granted locally, export is often a function of a country's national government. However, a central national office that is the designated Management Authority may delegate issuance authority to field or local offices, such as provincial offices, for all CITES documents, not just certificates of origin.

Introduction from the sea (section 23.39): Paragraphs 4 and 5 of Article XIV of the Treaty provide a limited exemption for certain Appendix-II species when a country is a party to another treaty, convention, or international agreement that protects the listed marine species and was in force on July 1, 1975 (the date of entry into force of CITES). For introductions from the sea, this exemption applies only to specimens that were harvested by a ship registered in the country of introduction that is also a party to the pre-existing treaty. This is in keeping with Article XIV paragraph 4 and with the intent of the provisions of Article IV of the Treaty. It also supports the CITES goal of exempting only those introductions from the sea that are certified as being in compliance with a pre-existing treaty by a party to that treaty who is competent to make such a certification. Should a commercially exploited marine species that is exempt under Article XIV be listed in the future, implementation details may need to be addressed at the time of listing.

Certificates for artificially propagated plants (section 23.40): The Parties recognize that it is sometimes necessary to approach plants differently than wildlife because of the unique aspects of plant biology and trade. This proposed section implements Article VII(5) of the Treaty and allows us to issue a certificate for artificially propagated plants. This includes specimens of Appendix-I species propagated for noncommercial purposes or traveling as part of an exhibition, certain Appendix-I hybrids (see proposed section 23.42), and specimens of Appendix-II or -III species propagated for any purpose. (See proposed section 23.47 to export Appendix-I plants propagated for

commercial purposes under Article VII(4) of the Treaty.)

We propose to adopt the conditions of Resolution Conf. 11.11 (Rev. CoP13) to decide whether plants qualify as artificially propagated (see proposed section 23.64). This resolution clarifies that not all cultivated plants grown under controlled conditions qualify as artificially propagated, and a shipper may need a CITES export permit rather than a certificate for artificially propagated plants. An Appendix-I plant that qualifies for this exemption does not need a CITES import permit.

Some certificates for artificially propagated plants are issued with an inventory sheet as part of the CITES document. APHIS asked that we clarify whether a permittee is authorized to add native plants to the inventory sheet. Generally, propagators of native plant species are issued a CITES document on which we list the native plant species authorized for export. The permittee is not authorized to add species to the CITES document. All CITES documents are issued with specific conditions that contain language on how a permittee is to use the document. This language is found in block 5 of the CITES document and on the accompanying inventory sheet and, in some cases, on a separate sheet containing special conditions attached to the document. We emphasize how important it is that permittees and inspectors read all the conditions on the CITES document and call the U.S. Management Authority if questions arise or if the conditions are not clear.

Several commenters urged us to revise the CITES regulations to make artificially propagated Appendix-I specimens available for any purpose, including commercial purposes, since they believe that the widespread artificial propagation of orchid species serves as a major deterrent to the collection of orchid species from the wild. The proposed regulations in section 23.47 already provide procedures for the export of Appendix-I plants that were artificially propagated for commercial purposes.

Bred-in-captivity certificates (section 23.41): Wildlife bred-in-captivity is also covered under Paragraphs 4 and 5 of Article VII of the Treaty. In adopting Resolutions Conf. 10.16 (Rev.) and 12.10 (Rev. CoP13), the Parties recognized the need for a standard interpretation of these two paragraphs. The Parties have expressed concern that trade in specimens falsely declared as bred-in-captivity is contrary to the Convention and may be detrimental to the survival of wild populations. (See proposed section 23.46 concerning the registration of operations that breed Appendix-I wildlife for commercial purposes to meet the provisions of Article VII(4).)

This proposed section implements Article VII(5) and allows us to issue a bred-in-captivity certificate for specimens of Appendix-I species bred for noncommercial purposes (see proposed section 23.5) or traveling as part of an exhibition, and specimens of Appendix-II or -III species bred for any purpose. At CoP12, the Parties agreed that facilities that are breeding Appendix-I species for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for that species. We propose to adopt this provision. If the breeding facility is not participating in a cooperative conservation program, specimens will be assigned the source code ''F'' and are not eligible for a bred-in-captivity certificate. Export of such Appendix-I specimens would only be allowed when the export is for noncommercial purposes (see the discussion in the preamble to proposed section 23.18). We also propose to adopt the recommendations of Resolution Conf. 10.16 (Rev.) for specimens bred-in-captivity (see proposed section 23.63). Appendix-I wildlife that qualifies for a bred-in-captivity certificate does not need a CITES import permit.

General information on hybrids (sections 23.42 and 23.43): At CoP2, the Parties recognized that it is difficult to distinguish between purebred and hybrid specimens for trade identification purposes. If hybrids were not subject to CITES controls, persons wishing to avoid the controls of CITES could falsely claim that the specimens in question were hybrids. Resolution Conf. 2.13 recommended that hybrids, even though not specifically listed in any of the Appendices, are subject to CITES if one or both parents are listed. The Parties agreed at CoP10 to treat plant hybrids differently from wildlife hybrids. Resolution Conf. 2.13 was repealed, and provisions for hybrids were placed in other resolutions.

Plant hybrids (section 23.42): Resolution Conf. 11.11 (Rev. CoP13) on trade in plants contains provisions on trade in plant hybrids. We are proposing a new section in the regulations to implement this resolution. Trade in plant hybrids must meet the requirements of CITES unless the Parties agree to exempt an Appendix-II or -III hybrid by a specific annotation to the Appendices (see proposed section 23.92). At CoP10, a number of artificially propagated hybrids of some ''supermarket'' cacti were granted a general exemption, and at CoP13, artificially propagated hybrids of the orchid genera *Cymbidium*, *Dendrobium*, *Phalaenopsis*, and *Vanda* were granted an exemption under certain conditions.

Plant hybrids are subject to CITES controls if one or both parents are listed in the Appendices. If the hybrid includes two CITES species in its lineage, it is listed in the more restrictive Appendix of either parent, with Appendix I being the most restrictive. Most plant hybrids are the product of artificial propagation using well-established nursery stocks that have been artificially propagated for many years. Thus, the Parties agreed to allow artificially propagated hybrids of one or more Appendix-I species or taxa that had not been annotated to include hybrids to be traded with a certificate for artificially propagated plants. In addition, seeds and pollen (including pollinia), cut flowers, and flasked seedlings or tissue cultures of these Appendix-I artificially propagated hybrids are exempt from CITES controls and do not require CITES documents (see proposed section 23.92).

One commenter stated that all hybrids should be exempt from CITES document requirements. We did not accept this suggestion. See the general discussion of hybrids above for the basis of applying CITES requirements to hybrids of CITES species.

Another commenter stated that CITES Resolution Conf. 9.18 (Rev.) (replaced by Resolution Conf. 11.11 (Rev. CoP13)) amounted to an amendment of the Treaty and, therefore, should not be implemented until it has been ratified by Congress. We disagree since resolutions are not amendments to the Treaty, but are interpretations of the Treaty's requirements that are agreed upon by the Parties. Absent an amendment to the Treaty, there is no requirement to seek the advice and consent of the Senate. If such consultation were required for interpretations of CITES, we would not be able to readily implement any of the interpretations of the Treaty agreed to by the Parties, including measures like the flasked seedling exemption, which represents a relaxation of permit requirements for plant specimens.

The same commenter stated that the rule would increase the reach of the Treaty by treating orchid hybrids the same as species. We again disagree because the treatment of plant hybrids in the proposed rule is based on existing CITES resolutions, and we have always regulated hybrids according to the interpretation of the Treaty by the Parties. Therefore, these proposed regulations do not represent a change in

the scope of the Treaty or the way we apply it to plants.

Wildlife hybrids (section 23.43): In Resolution Conf. 10.17 (Rev.), the Parties agreed that wildlife hybrids with one or more Appendix-I or -II specimens in their recent lineage are controlled under CITES. The term ''recent lineage'' means the previous four generations of a specimen's ancestry. We anticipate most hybrids that include a CITES species will continue to be regulated by CITES (note that the proposed definition of ''species'' includes hybrids since hybrids are controlled under CITES). A hybrid would be excluded from CITES controls only when non-listed CITES species appear in its ancestry for the past four generations. For example, a specimen who's ''great-great-great grandfather'' was a CITES-listed species would not be considered to be listed under CITES if all specimens within the past four generations of direct line of descent were species that are not listed under CITES. Also, a hybrid of species included in a higher-taxon listing, such as parrots or cats (excluding domestic cats) generally would be regulated by CITES because the crosses usually are between species within that taxon.

We propose to require an excluded wildlife hybrid to be accompanied by a CITES document or letter, issued by the Management Authority of the country of export or re-export. The letter would need to certify that the wildlife hybrid contains no CITES species in its recent lineage. Because not all countries will be aware of this U.S. requirement, a person who plans to import an excluded wildlife hybrid needs to contact the Management Authority of the exporting or re-exporting country to get the appropriate letter or CITES document before making a shipment. For export or re-export from the United States, a person should submit an application to our office that includes information on the hybrid's lineage. After reviewing the information, we will determine if we can issue a letter or if a CITES document is required.

We propose not to require a domestic dog or cat that has no CITES species in its recent lineage to be accompanied by a letter or CITES document. Note, however, that wolf (*Canis lupus*)-domestic dog hybrids that include wolf in the last four generations and domestic cats that include CITES cats in the last four generations (*e.g.*, some Bengal cats) would need to be accompanied by a letter or CITES document upon export, re-export, or import.

Two commenters questioned the legal basis for the four-generation rule, stating that captive hybrids are biologically dead as a wild species. This proposed section addresses the issue of hybrids in a manner that reflects the multilateral interpretation by the Parties. Because some hybrids are phenotypically similar in appearance to the parent species, the failure to control trade in hybrids would create difficulties in enforcing CITES for the listed parent species. We believe the four-generation rule is a reasonable approach to ensure that trade in hybrids does not undermine the effective control of trade in CITES species.

The same two commenters also questioned the scientific basis for the four-generation rule. The Parties adopted the four-generation rule because they made the judgment that a fifth-generation or more distant generation hybrid of a listed species had a negligible genetic relationship to the listed species.

One commenter recommended that we delete this provision and questioned the practicality of the rule as it would be impossible to show that no CITES species is within four generations of the lineage of a specimen, especially for specimens taken on game ranches where hybridization is known to occur with some species. We did not adopt this suggestion because the provision provides a mechanism to exclude some hybrids from CITES controls while helping us maintain trade controls on hybrids that the Parties have agreed to regulate. To qualify for the exclusion, a person needs to provide genealogical records (pedigrees) showing that no specimen of a CITES species was included in the past four generations. Without such records, which are generally kept by breeders, you must apply for a CITES document.

Another commenter was concerned that the importer of wildlife hybrids will frequently get caught without a proper document and suggested that retrospective documents should be available to importers who were unaware of the requirement. We disagree and note that this section provides an exclusion under very limited circumstances. We emphasize that for an importer to be eligible for a retrospective document, he or she must meet the proposed requirements of section 23.53.

Personally owned live wildlife (section 23.44): Article VII(3) of the Treaty provides that, in some circumstances, the provisions of Articles III, IV, and V of the Treaty do not apply to specimens that are personal or household effects. As discussed previously, Parties have generally excluded live wildlife from this exception. However, in Resolution Conf. 10.20, the Parties recommend that the term ''personal and household effects'' include personally owned, live wildlife that is registered by the Management Authority in the country where the owner usually resides. To monitor frequent international movement and reduce administrative and technical problems, the Parties agreed to use a certificate of ownership under specific conditions.

We propose to implement this resolution, which should simplify the procedure for people who frequently travel internationally with companion animals or wildlife used in noncommercial competitions, such as falconry. The certificate of ownership acts like a passport, but can be issued only after agreement between the Management Authorities of the Parties concerned. The owner must accompany the specimen when crossing international borders, and the wildlife cannot be sold or otherwise transferred when traveling abroad.

Several commenters strongly supported this provision as a way to reduce the burden on pet owners and the U.S. Management Authority while supporting wildlife protection laws. One commenter suggested that, when the permittee no longer owns the wildlife, he or she should be required to provide information on the disposition of the wildlife, such as death or sale, at the time he or she returns the certificate. We agree and have revised the condition to include this requirement.

Pre-Convention specimen (section 23.45): Under Article VII(2) of the Treaty, a specimen acquired before the provisions of CITES applied to the species is exempt from Articles III, IV, and V of the Treaty when a Management Authority issues a certificate. Resolution Conf. 13.6 provides guidance on determining when a specimen is considered pre-Convention. We propose to define the term ''pre-Convention'' in section 23.5 and clarify in this proposed section the general provisions that apply to the acceptance and issuance of pre-Convention documents. One commenter suggested we define ''acquisition date.'' Another suggested we define ''pre-Convention date'' separate from ''pre-Convention'' since the date is an additional piece of information required for a valid pre-Convention document. We did not adopt these suggestions, but did revise the definition of ''pre-Convention'' in proposed section 23.5 and the text in proposed section 23.23(e)(9) for clarity.

Before CoP13, the date that a Party considered a specimen to be pre-Convention varied depending on when the Party joined CITES and if it had taken a reservation on the species listing. At CoP13, the Parties agreed that

the pre-Convention date should be the same for all Parties and set it as the date on which the species was first listed in the Appendices. The Parties also agreed to advise holders of pre-Convention certificates to check with the importer or with the Management Authority of the country of destination whether the importing country would accept the certificate.

Before we can issue a pre-Convention certificate, the applicant must provide sufficient information for us to determine that the wildlife or plant (including parts, products, and derivatives) was removed from the wild or born or propagated in a controlled environment before the first date that CITES applied to the specimen. This information also is needed for products (such as manufactured items) or derivatives subsequently made from such specimens. If the specific acquisition date is unknown or cannot be proved, then the applicant should provide any subsequent and provable date on which the item was first possessed by a person.

The pre-Convention status applies to the specimen, not to when it was possessed by the current owner. The applicant can provide information to show the specific date the specimen was acquired, or if that specific date is not known, he or she can provide information to show that it was acquired prior to the date the species was first listed in CITES. The Treaty requires that, before issuing an exemption document, a Management Authority must be satisfied that a specimen was acquired before the date the provisions of CITES applied to it. We recognize that exact purchase or import records may not be available for some pre-Convention specimens and accept a wide range of information to show the pre-Convention status of a specimen. An applicant should state that the specimen is pre-Convention and document the origin to the best of his or her ability. If receipts or invoices are not available, applicants may provide other documents, such as photographs, catalogs, advertisements, or inventories that can attest to the origin of the specimen. For example, an antique dealer may not be able to provide the specific date an item was manufactured, but may be able to provide information that shows the item dates to the 16th Century.

Even antiques that are at least 100 years old that clearly qualify as pre-Convention must be accompanied by pre-Convention documents. One commenter suggested that we be flexible in evaluating the documentation for antiques and accept errors in the description of antiques. We note that the description of an item on a CITES document, whether an antique or not, needs to be accurate to ensure that the item being shipped is what was authorized. An error in a description may cause a delay in clearing a shipment or result in a shipment being detained or seized. An unintentional technical error would be considered in any forfeiture proceeding.

Another commenter thought the regulations should not require a person to trace ownership of antiques over the past 100 years. The general import regulations for antiques under the ESA are found in 50 CFR part 14. Except in rare situations, we do not require a person to show the sequential ownership of pre-Convention specimens including antiques. If a CITES species is also listed under the ESA and does not qualify under the ESA as an antique, we will ask for information on whether the specimen has been sold or offered for sale because an ESA species loses its pre-Act status when placed in commerce.

One commenter questioned whether plants obtained before CITES was ratified and their progeny (offspring), including divisions or seedlings, were exempt. The Treaty sets out a limited exemption for pre-Convention specimens, but requires that such specimens in international trade be accompanied by a CITES exemption document. This exemption does not include offspring of pre-Convention specimens, including plants grown from divisions and seeds. Article VII(2) of the Treaty, allows for a Management Authority to issue an exemption document when it ''is satisfied that a *specimen* was acquired before the provisions of the present Convention applied to *that specimen*'' [emphasis added]. Offspring of pre-Convention specimens do not meet this provision since they did not exist before the provisions of the Convention applied. However, plants grown under controlled conditions may be eligible for an exemption document as artificially propagated.

Further, we will no longer apply the definition of pre-Convention to cell lines whose originating line was established prior to the listing date of the species. These cell lines are continually growing and cells are harvested from growing cultures. Applicants who wish to export cell lines must comply with CITES requirements, including legal acquisition and establishment of the cell line. Cells grown in a controlled environment may be eligible for a CITES exemption document, such as a bred-in-captivity certificate.

Another commenter suggested that if the exemption did not apply to offspring of pre-Convention specimens, it would constitute a retroactive application of requirements. We disagree with the commenter's interpretation of the legal concept of ''retroactive.'' The provisions that apply to offspring of pre-Convention specimens do not apply to international trade that occurred before the effective date of the existing CITES regulations, only to subsequent trade.

One commenter expressed concern that we require proof that a specimen was acquired before the provisions of CITES applied to it since orchids have been gathered for cultivation for about 150 years. The commenter stated that, prior to CITES, few hobbyists, hybridizers, or commercial growers had reason to maintain records to support the legality of the original acquisition, and many orchid specimens were acquired over the years at auctions, as gifts, or in trade. We are puzzled by this comment since we have not had requests for pre-Convention certificates to export orchids. All orchids have been listed under CITES since July 1975, and we assume there is little international trade in pre-Convention specimens. We also note that this is not a change from the regulations that have been in place since 1977. Again we clarify that the offspring of a pre-Convention specimen does not qualify for this exemption.

One commenter said that, since virtually all who enter the plant trade started as amateur growers of plants, the failure to provide some means for documenting, for CITES purposes, these plants would cause a taking of the commercial productive value of the collection of every amateur. We emphasize that the provisions for pre-Convention in these regulations do not go beyond the terms of the Treaty. We merely are adopting the interpretation of the Parties. There is no taking of property, either as a matter of fact or law. We are not limiting trade, nor are we affecting the use or transfer of plants within the United States. For individuals to be eligible to trade in protected plants internationally, they need to follow the provisions of the Treaty, which is a multilateral agreement. In fact, meeting the requirements agreed upon by the Parties protects property from detention and seizure when in international trade.

One commenter suggested that the use of the word ''qualifying'' in the proposed regulations is confusing as it gives the impression that only certain Appendix-I species qualify for the exemption. To address this concern, we

revised the text to clarify that no CITES import permit is required for an Appendix-I specimen that meets the pre-Convention exemption.

One commenter asked us to add the term ''manufactured items'' to the list of what is pre-Convention under issuance criteria in paragraph (d)(1). We adopted this suggestion in the current proposal. Although a manufactured item is a subset of the term ''product,'' for some items, the date of manufacture into a product can help establish that the item qualifies as pre-Convention.

In 2000, we proposed to establish a voluntary registration of any inventory or stockpile of live specimens or parts, products, or derivatives when species are initially listed on the CITES Appendices. In this notice, we are not proposing to establish such a registration. Based on comments received, the purpose of such an inventory was confusing to the public. It also created another layer of regulation that is not needed to effectively issue pre-Convention certificates.

Registration of Appendix-I commercial breeding operations (section 23.46): Article VII(4) of the Treaty provides that specimens of Appendix-I species bred for commercial purposes will be deemed to be in Appendix II for CITES document requirements. To clarify, a Management Authority may grant an export permit or a re-export certificate without requiring the prior grant of an import permit, thus allowing specimens that originate in a CITES-registered breeding operation to be traded commercially. The specimens are still listed in Appendix I and are not eligible for any exemption granted to an Appendix-II species or taxon, such as less restrictive provisions for personal and household effects.

The Parties recognize the potential abuse inherent in this exemption because it is difficult for inspectors to distinguish between specimens bred-in-captivity and those removed from the wild. They also recognize that captive breeding for commercial and conservation purposes is increasing. We propose to implement Resolution Conf. 12.10 (Rev. CoP13) and establish application procedures to allow an operation to become registered for each Appendix-I species maintained at the operation. The registration criteria would include whether the species qualifies as bred-in-captivity (see proposed section 23.63).

In May 2000, we proposed to publish a notice when a registration request is received and invite public comment. We now believe that publication of such notices in the **Federal Register** is unnecessary because Resolution Conf. 12.10 (Rev. CoP13) requires the CITES Secretariat to notify all Parties of all registration requests. If a Party objects to, or expresses concern about, the registration within 90 days from the date of the Secretariat's notification, the Secretariat refers the application to the Animals Committee. The Secretariat then communicates the recommendations of the Committee to the Management Authority of the Party that submitted the application and assists in the resolution of the identified problems. If the objection is not withdrawn, approval of the registration will require a two-thirds majority vote by the parties at the next CoP or by a postal vote. Publication of registration requests in the **Federal Register** would not only be duplicative of the review process embodied in Resolution Conf. 12.10 (Rev. CoP13), but would also result in delays in the processing of registration requests. Moreover, as noted earlier, no legal requirement exists for us to obtain public comments on CITES applications, and we already make determinations on whether specimens qualify as bred-in-captivity for other CITES documents without obtaining public comments.

Appendix-I wildlife from a registered breeding operation can be exported with an export permit under Article IV of the Treaty. An import permit is not required, and specimens can be used for primarily commercial purposes. To date, only four U.S. operations have chosen to complete the process of registering, and most U.S. commercial breeders are applying for permits under Article III of the Treaty. We propose to issue permits under Article III only in exceptional circumstances. This reflects the intent of CITES to prohibit trade in Appendix-I specimens for primarily commercial purposes when they do not qualify for an exemption to allow it. Thus, we encourage breeders to register their operations if they plan to trade in Appendix-I specimens internationally (see discussion in the preamble for proposed section 23.18).

One commenter recommended that closed bands should not be required on all birds and that the use of microchips should be allowed as an alternative. We agree and have revised the wording in this section to indicate that closed-banding is an option and that other marking methods may be used. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have the equipment on hand to read the microchip at the time of import, export, or re-export.

Two commenters stated that what is to be included in a study of ecological risks is not clear. We have revised this text so that it no longer states that the applicant must conduct a study of the ecological risks. In this proposal we have added a criterion for registering an Appendix-I breeding operation which states that potential escape of specimens or pathogens from the facility may not pose a risk to the ecosystem and native species. The Scientific Authority would assess the potential impact of the commercial breeding operation on the environment in which it is located. Persons requesting registration of their breeding operation must provide information on whether there is a risk of escape of animals from the facility and identify specific measures that have been taken to prevent escape. Applicants should address possible risks should these measures fail, including the potential for the animals to be invasive if the species is not native to the area where the breeding facility is located. If the species involved is native to the area, a determination should be made whether the stock of the breeding operation is of a different genetic stock than the surrounding wild populations. The application must also demonstrate that disease will not be transmitted from the breeding operation to wild populations, either directly (contact among animals) or indirectly (disposal of animal waste, disposal of waste water, air exchange, or other means). We will not forward a request to the CITES Secretariat to register a breeding operation if the assessment of ecological risks indicates a potential for the breeding operation to result in harm to the surrounding environment.

One commenter stated that no system allowing expedited treatment of commercial facilities should exclude amateurs. Article VII of CITES has different procedures for commercial and noncommercial breeders of Appendix-I wildlife. CITES requires a Party to decide which type of CITES document to issue based on the purpose of the transaction and the ability of the exporter to breed the specimen in captivity. This proposed section outlines the registration requirements for operations that are breeding Appendix-I wildlife for commercial purposes. The requirements for CITES documents for entities that are breeding wildlife for noncommercial purposes are found in proposed section 23.41.

Exporting Appendix-I plants commercially (section 23.47): The Parties recognize that the artificial propagation of plants is essentially different from captive breeding of wildlife and requires a different approach. Artificial propagation of native plants can provide an economic

alternative to traditional agriculture in countries of origin. By making specimens readily available, artificial propagation may have a positive effect on the conservation of wild populations by reducing pressure from collection, provided the parental stock was legally obtained in a non-detrimental manner.

Article VII(4) of the Treaty provides that specimens of Appendix-I plants artificially propagated for commercial purposes will be deemed to be in Appendix II for CITES document requirements. Just as for wildlife in the previous section, this means that a Management Authority may grant an export permit without requiring the prior grant of an import permit. The specimens are still listed in Appendix I, and they are not eligible for any exemption granted to an Appendix-II species or taxon. For example, seeds of Appendix-I cycads require CITES documents, even if from plants that were artificially propagated for commercial purposes and treated as if listed in Appendix II. These seeds require a CITES document upon export or re-export showing them as artificially propagated and as listed in Appendix I, but they do not require an import permit. They would not be exempt from CITES requirements, as are seeds of Appendix-II cycads, and they also would not be eligible for the personal effects exemption (see proposed section 23.15) if obtained outside a person's country of usual residence.

Two commenters thought that a registration system should be provided for facilities that propagate Appendix-I plants similar to the registration system for wildlife. We note that, at CoP9, the Parties adopted Resolution Conf. 9.19 (Rev. CoP13), which recommends guidelines on the registration of nurseries that export artificially propagated Appendix-I plants. At the same time, the Parties recognized that nurseries that are not registered could still export artificially propagated Appendix-I plants using the standard procedures. Although we recognize that there may be some advantages to developing a registration process, we propose not to incorporate Resolution Conf. 9.19 (Rev. CoP13) into the regulations due to the complex issues resulting from the decentralized system of regulating nurseries in the United States. Instead, we propose to reserve section 23.47(e) for nursery registration, because we will need to work with nurseries, regulators, and the interested public to develop regulations.

We continue to implement Article VII(4) of the Convention by reviewing a nursery's facilities during the application process and issuing CITES export permits with a source code ''D.'' This type of export permit indicates to other Parties that we have treated the nurseries as propagating Appendix-I plants for commercial purposes. No import permit is required under CITES for the trade of those specimens.

One commenter stated that registration of nurseries should be by a Management Authority, not the Secretariat. The resolution on nursery registration lays out roles for the nursery, Management Authority, and Secretariat. A Management Authority is to notify the Secretariat to register a nursery. The Secretariat is responsible for reviewing the application, monitoring the registration, and maintaining a Register of nurseries.

One commenter thought that commercial propagators should not be afforded expedited treatment that is not also accessible to amateurs. We have streamlined the application and review process for entities that are propagating plants for either commercial or noncommercial purposes in a similar manner. As required under CITES, our decisions are based on the purpose of the transaction and the ability of the exporter to propagate the specimens. The provisions in this proposed section allow artificially propagated Appendix-I plants to be traded commercially and do not adversely affect the trade in Appendix-I plants artificially propagated for noncommercial purposes. The requirements for CITES documents for entities that are propagating for noncommercial purposes are found in proposed § 23.40.

Registered scientific institutions (section 23.48): Article VII(6) of the Treaty provides an exemption from strict CITES controls for preserved, dried, or embedded museum specimens, herbarium specimens, and live plant materials that carry an approved label. The exemption covers the noncommercial loan, donation, or exchange of these items between scientific institutions registered by each country's Management Authority. Resolution Conf. 11.15 (Rev. CoP12) recommends that Parties encourage their natural history museums and herbaria to inventory their holdings of rare and endangered species. This recommendation is to allow researchers to efficiently borrow specimens for study and reduce any potential adverse impacts that museum needs for research specimens can have on small populations of rare wildlife and plants.

This proposed section would combine sections 23.13(g), 23.15(d)(8)(iii), and 23.15(e)(3) in the current regulations and adopt the guidelines in the resolution for registration of scientific institutions. A scientist who wishes to use this exemption must be affiliated with a registered scientific institution. Specimens are to be acquired primarily for research that is to be reported in scientific publications and no CITES specimens obtained through the use of this exemption may be used for commercial purposes. We are proposing to clarify that offspring (*i.e.*, cuttings, seeds, or propagules) may not be commercialized including sale through a catalog or as a fund-raising effort because the registration is for scientific purposes only.

We propose that biological samples, including blood and tissue samples of preserved, frozen, dried, or embedded museum samples, herbarium specimens, or live plant material that will be destroyed during analysis will be eligible for this exemption provided a portion of the sample is maintained and permanently recorded at a registered institution for future scientific reference. Because not all countries recognize these types of samples as being eligible to be traded under this exemption, registered scientific institutions should check with the foreign Management Authority before shipping such specimens under a scientific exchange certificate.

We also propose that all specimens for which the exemption is being claimed must have been legally acquired. The specimens must have been permanently recorded by the sending registered institution before being shipped for exchange, donation, or loan for scientific research purposes. The Parties were concerned about possible abuse of the exemption by scientists who might collect specimens and directly export them without the permission of a registered institution in the exporting country. Thus, the registration criteria require the orderly handling and permanent recording of specimens, including the maintenance of permanent records for loans and transfers of specimens to other institutions. In addition, scientists may still need permits under other parts of this subchapter (see proposed section 23.3).

Traveling exhibitions (section 23.49): Article VII(7) of the Treaty allows for the international movement without CITES certificates of pre-Convention, bred-in-captivity, or artificially propagated specimens that are part of a traveling zoo, circus, menagerie, plant exhibition, or other traveling exhibition. The exhibition must register each specimen with its Management Authority, and live specimens must be transported and cared for humanely. At CoP8 in Resolution Conf. 8.16, the

Parties agreed to require traveling live-animal exhibitions to be accompanied by CITES certificates to verify such registration, address technical problems, and to prevent potential fraud. At CoP12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. Thus, Resolution Conf. 8.16 was repealed and Resolution Conf. 12.3 (Rev. CoP13) on permits and certificates was revised to include provisions for all traveling exhibitions. We propose to incorporate provisions for traveling exhibitions into these regulations and to define the term ''traveling exhibition'' in proposed section 23.5.

One commenter was concerned that the definition of ''traveling live-animal exhibition'' in the 2000 proposal inappropriately narrowed the activities of exhibitions to display and entertainment and suggested we use the language of Article VII(7) of the Treaty and resolution. We note that, although the Treaty and resolution provide examples of what could be considered a traveling exhibition, neither specifically defines the term. The word ''exhibition,'' however, carries a connotation of display as the purpose of the activity. We revised the definition to acknowledge the large range of activities included in the term, to include exhibitions of live plants and dead items (specimens that contain CITES species, such as herbarium and museum specimens), and to emphasize that the purpose of these activities must be exhibition.

An exhibition certificate acts like a passport. The exhibitor must obtain a separate certificate for each live animal. The exhibitor of live plants or dead parts, products, or derivatives may be issued a certificate with an inventory for all the specimens in the exhibition. The exhibitor retains the original certificate, which must be validated at each border crossing. We are also proposing a number of conditions to ensure these certificates are used only for temporary cross-border movement by the exhibitor who owns the specimen. A document may not be transferred to another exhibitor, and specimens cannot be sold or otherwise transferred when traveling abroad. Specimens can be transported internationally only for temporary display activities, not for breeding, propagating, or other purposes, and the specimens must return to the country in which the exhibition is based before the exhibition certificate expires.

Many specimens covered by this exemption are Appendix-I specimens. We propose under the general conditions (see proposed section 23.56(a)(4)) that all live Appendix-I specimens must be securely marked or uniquely identified in a way that border officials can verify that the specimen and CITES document correspond. To ensure that each specimen exported or imported is the specimen indicated on the certificate, we recommend that Appendix-II and -III specimens also be clearly identified and, if appropriate, uniquely marked. Tattoos, microchips, tags, or other marks may be used. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

Two commenters liked the provisions that require the unique marking of each Appendix-I animal, a certificate for each animal, and the exclusion of breeding as a purpose for use of the certificate. One commenter asked the FWS to adopt regulations to prohibit the international movement of animals in traveling exhibitions because of the increased stress and probability of injury of animals. It is not necessary to prohibit the international movement of animals to ensure their humane care. The provisions of CITES help ensure the humane care of live animals being shipped by requiring that animals be shipped in accordance with IATA LAR or *CITES Guidelines for Transport* and that shipments be inspected.

Sample collections section 23.50: At CoP13, in an effort to address the international movement of display samples, such as sets of shoes or reptile skin samples, the Parties defined such shipments as sample collections and agreed to allow the in-transit shipment of such collections under specific conditions. Management Authorities could issue a CITES document that would allow the shipment to move from one country to another before returning to the originating country, rather than requiring the issuance of a re-export certificate from each country visited. Such a CITES document must be accompanied by a valid ATA carnet. The ATA carnet is an international customs document that allows the temporary introduction of goods destined for fairs, shows, exhibitions, and other events.

The CITES document must list the same specimens that the accompanying ATA carnet lists and must include the number of the ATA carnet on its face. The CITES document can only be valid for the same length of time as the ATA carnet or 6 months, whichever is shorter, and the shipment must return to the originating country prior to the expiration of the CITES document. None of the specimens within the sample collection may be sold, donated, or transferred while outside the originating country. The CITES document must be presented at border crossings, but only the ATA carnet must be stamped and signed at each intermediary border crossing by customs officials. At the time of first export or re-export and at re-import, the originating Party is to check the CITES document and sample collection closely to ensure that the collection was not changed.

Partially completed CITES documents (section 23.51): Under Article VIII(3) of the Treaty, Parties are to ensure that CITES specimens are traded with a minimum of delay. At CoP12, the Parties agreed to issue partially completed documents when the permitted trade would have a negligible impact or no impact on the conservation of the species (see Resolution Conf. 12.3 (Rev. CoP13)). The permittee would be authorized to complete specifically identified boxes on the document and would be required to sign the document to certify that the information entered is true and correct.

We propose to implement these procedures and issue single-use documents that are partially completed under specific circumstances. We issue a number of CITES documents to authorize exports that are repetitive in nature; the same types of specimens or the same specimens are exported shipment after shipment. This is particularly true for biological samples derived from cell lines that are maintained by a biomedical company and for traveling exhibition specimens that do not qualify as pre-Convention, bred-in-captivity, or artificially propagated.

In the past, in an effort to facilitate the timely movement of specimens that are of low conservation risk, we have issued multiple-use documents that allowed the use of photocopies. However, many countries will no longer accept photocopied multiple-use documents. In June of 2005 we stopped issuing multiple-use documents and set up new procedures to issue single-use permits for these types of activities (for more information, see the preamble in the April 11, 2005, **Federal Register** (70 FR 18311) on revisions to general permit procedures). An applicant should submit the appropriate application form for the proposed activity (see proposed sections 23.18–23.20) and show that the use of this type of document is beneficial and appropriate. At that time, if appropriate, we would create a master file or annual program file for native species that contains all of the relevant information about the proposed activity. We would issue single-use partially

completed documents based on the master file or annual program file when we find that the issuance criteria for the proposed activity and the issuance criteria for a partially completed document are met.

Replacement documents (section 23.52): We propose to adopt the provisions of Resolution Conf. 12.3 (Rev. CoP13) on replacing documents that are lost, damaged, stolen, or accidentally destroyed. We clarify when replacement documents may be available and how to request one. One of the proposed issuance criteria requires a full and reasonable explanation of the circumstances under which the CITES document was lost, damaged, stolen, or accidentally destroyed. We will also check to see if the exporter has requested a replacement document before and review the circumstances surrounding any previous request.

We propose that a replacement document indicate on its face the reason the document was replaced. Since we sometimes receive a replacement document that does not provide this information, we propose to add a paragraph to section 23.26(d)(8) to indicate that we may verify the validity of such a document with the issuing Management Authority. It is important that we issue and accept replacement documents only when the circumstances warrant doing so and that issuance of such documents prevents the use of the original CITES document for a different shipment.

Several commenters found these provisions to be extremely helpful. One suggested that we establish procedures to help U.S. companies in contacting foreign Management Authorities, particularly for antique products. In most instances, the U.S. importer or exporter should not need to contact the foreign Management Authority. When a replacement document is requested after a commercial shipment has left the United States, we will consult with the Management Authority of the importing country. When a replacement document is needed for a shipment that arrives in the United States, the importer should contact the exporter or re-exporter in the foreign country to assess the circumstances surrounding a lost, damaged, stolen, or accidentally destroyed CITES document. Then, the exporter or re-exporter should contact the Management Authority in that country concerning replacement documents, and the Management Authority will contact us directly.

One commenter stated that all CITES documents leaving the United States, even replacement documents, must be validated for the amount that was originally exported as shown on the Wildlife Declaration Form (3–177). Although the U.S. CITES document states in block 15 that it is ''valid only with inspecting official's ORIGINAL stamp, signature and date in this block,'' we propose that we not validate U.S. replacement documents for shipments that have already left the United States because we cannot compare the actual shipment contents to the document. Instead, we will issue a replacement document only for the quantity that was originally exported as shown on a cleared copy of the Wildlife Declaration for wildlife or a copy of the validated CITES document for plants and condition the document so the importing country can accept it as valid.

APHIS requested clarification of the phrase ''true copy of the original.'' Most CITES replacement documents they see state ''replacement'' and reference the original permit number. In their opinion, this is an ''original'' document, not a ''true copy of the original.'' We agree that this is confusing and have revised the regulations to reflect the two types of documents used by Management Authorities: (1) a newly issued original document that indicates it is a replacement document for the original document or (2) a copy marked as a ''true copy of the original.'' We also clarified that a ''true copy'' must contain a new date and original signature of the issuing Management Authority.

Retrospective documents (section 23.53): A retrospective document authorizes an export or re-export after that activity has occurred, but before the shipment is cleared for import. One commenter did not understand the reason the document had to be requested at the time of import of the shipment. To clarify, a shipment must be cleared when it first arrives at the port of import. At that time, we, APHIS, or CBP inspect the paperwork to see that it meets the requirements of CITES. The request for a retrospective document needs to be made at the time the specimens are available for inspection.

Resolution Conf. 12.3 (Rev. CoP13) recommends that a Party neither issue nor accept retrospective documents, but recognizes that there may be some limited exceptions. We propose to add this new section to allow for the issuance and acceptance of retrospective documents based on the resolution and to amend 50 CFR 13.1 to reflect this change. We generally limit issuance of retrospective documents to noncommercial items and even then, only in certain prescribed circumstances. We propose to clarify the limited circumstances under which we will issue or accept retrospective CITES documents. Management Authorities of both the exporting or re-exporting and the importing countries must be satisfied either that any irregularities that have occurred are not attributable to the exporter or re-exporter or the importer, or in addition in the case of items for personal use, that evidence indicates a genuine error was made and there was no attempt to deceive. Thus, before a retrospective document can be issued, the exporter or re-exporter or importer must demonstrate either that he or she was misinformed by an official who should have known the CITES requirements (in the United States, an employee of the FWS for any species, or APHIS or CBP for plants; or in a foreign country, an employee of the Management Authority or CITES inspection authorities), or that the issuing Management Authority made a technical error on the CITES document that was not prompted by the applicant. An additional provision limited to individuals exporting or re-exporting certain specimens for personal use allows them to demonstrate that they made a genuine error and did not attempt to deceive.

While several commenters supported the effort to establish an efficient process for addressing irregularities, one commenter opposed the issuance of documents retrospectively except for noncommercial, personally owned, live animals where the welfare of the animal was at stake. The commenter stated that importers and exporters, particularly businesses, should be expected to know the law, and saw no conservation or other benefit in issuing such documents for dead specimens. We agree that commercial importers and exporters are expected to know the laws that apply to how they conduct business and, generally, would not qualify for retrospective documents. To prevent the use of retrospective documents to circumvent CITES, the Parties laid out the rigorous process described above.

Another commenter stated that the provision would be difficult to implement and would confuse foreign Management Authorities. Although this process can be difficult to implement, we recognize the need for a system to correct any technical errors made by a Management Authority and to assist uninformed travelers with specimens for personal use to comply with CITES.

A retrospective document would be issued and accepted only after the Management Authorities of both the exporting or re-exporting and importing countries have thoroughly investigated the situation and agreed to the issuance of the document. One commenter

suggested that we make it clear that such consultation is required. Another commenter pointed out that we, not the importer or exporter, should consult directly with the foreign Management Authority. We revised the text to clarify these two points.

One commenter stated that we should not require the importing Management Authority to agree to accept the retrospective document since it would create a stalemate, with each government waiting for the other. We did not accept this suggestion. Although the consultation process can be time consuming, it is a basic tenet of the resolution and is important in assessing the circumstances surrounding a shipment.

We received comments that suggested that ''irregularities'' should include errors made by officials, not just misinformation; clerical error, mistake of fact, or other inadvertence; and procedural errors. We agree that Management Authority staff can make mistakes, and we revised the regulations to include unintentional technical errors on a CITES document as an irregularity. We limited this criterion to errors that were not prompted by information provided by the applicant.

Other commenters suggested we allow all errors regardless of who makes them if no unlawful scheme or intentional wrongdoing is involved. These comments on expanding the range of circumstances for issuing a retrospective document exceed the intent of the resolution. The Parties intended for this provision to be used rarely and only under very narrow circumstances. The exporter is responsible for obtaining CITES documents before making a shipment and for inspecting the CITES documents to ensure the key information on the face of the permit, such as quantity and species, match what was requested and what is in the shipment. The provisions for retrospective documents are not to help resolve an enforcement issue, but to resolve a mistake by the government or a genuine error made by a person exporting or re-exporting specimens for their personal use.

Another commenter thought we should allow the use of an affidavit to explain the circumstances if the specific officer cannot be identified. We note the regulations state that the applicant must provide ''sufficient information.'' Retaining the current language allows us more flexibility to consider all pertinent information, including an affidavit, if the circumstances warrant. At the same time, it is misleading to state that the mere filing of an affidavit will be sufficient information in most instances.

One commenter suggested that we include customs officials in the list of people misinforming the exporter or importer. We revised this section to reflect that a customs agency may be the responsible agency in some cases. We recognize that in some countries customs officials inspect and clear CITES shipments on behalf of the Management Authority, and we will consider that in making a decision. In the United States, however, although CBP officials have the authority under the ESA to enforce CITES, they are not generally responsible for the clearance of CITES wildlife or live plant shipments except for live plants being imported from Canada (see proposed section 23.7(e)).

To avoid expensive storage costs and possible harm to the specimen, two commenters suggested shipments be held in ''constructive seizure'' pending issuance of a retrospective CITES document. Another suggested allowing importers to get retrospective documents before a shipment is seized. The issuance and acceptance of a retrospective document and the seizure of shipments are two separate decision processes. The CITES regulations provide the criteria that need to be met for a Management Authority to issue or accept a retrospective document. The regulations that establish procedures relating to property seizure and forfeiture are found in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162. Although these processes are independent, enforcement officials consider the issuance or denial of a retrospective CITES document in making a decision concerning seizure or forfeiture on a case.

One commenter thought the FWS should allow import of collected material into proper facilities with temporary papers since many developing countries do not have the manpower to issue CITES documents in a timely manner. Neither the Treaty nor Resolution Conf. 12.3 (Rev. CoP13) allows a temporary paper to be used to import CITES specimens. The Parties stressed that a Management Authority should not issue CITES documents retrospectively except under very limited circumstances. When a person anticipates collecting perishable or fragile specimens, he or she needs to work with the foreign Management Authority to meet its requirements and lay the groundwork to obtain a CITES document within the needed timeframe.

We propose to issue a retrospective document only if the Management Authority of the importing country agrees to accept it. APHIS asked us to clarify that the provision applies not only to the issuance of retrospective documents, but to the acceptance of such documents. We agree this section includes the acceptance of documents, and we revised the text.

In 2000, the Canadian CITES Management Authority stated that their law allows the issuance or acceptance of retrospective documents only when specimens are found to be legal and the importer or exporter can demonstrate that he or she was misinformed about permit requirements by a Canadian official or an official of the foreign country. We note that Canada and a number of other CITES countries interpret this provision more strictly than the United States, and travelers may not qualify for a retrospective document for specimens, especially live wildlife or plants, taken with them to these countries.

One commenter wrote that we should either define ''personal use'' or add ''and is for noncommercial purposes'' to the end of the sentence. We agree and have defined personal use as use that is not commercial and is for an individual's own consumption or enjoyment (see proposed section 23.5).

One commenter stated that it was unclear who would inform possible candidates of retrospective documents. These proposed regulations would establish the criteria of who could qualify for a retrospective document depending on circumstances. Wildlife and plant inspectors could refer an importer to the regulations when the circumstances of the import appear to fit those outlined in the regulations. Unfortunately, people apply for retrospective documents even though they clearly do not meet the criteria. This unrealistically raises their hopes and causes additional work for us. We emphasize that CITES requires a document be obtained before the activity occurs and the proposed issuance and acceptance of retrospective documents is to be made only in limited circumstances.

Length of document validity (section 23.54): Article VI(2) of the Treaty states that an export permit can be valid only for a period of 6 months from the date of issuance. Resolution Conf. 12.3 (Rev. CoP13) specifies validity timeframes for re-export certificates (6 months), import permits (12 months), certificates of origin (12 months), and traveling exhibitions (3 years). Resolution Conf. 10.20 recommends that certificates of ownership be valid for no more than 3 years.

We propose to incorporate the recommended validity timeframes set by the resolutions. We also propose to set the term for an introduction-from-

the-sea certificate at 12 months since the activity is similar to import. All CITES documents must specify the length of validity. All import and introduction-from-the-sea activities must be completed by midnight (local time at the point of import) of the expiration date indicated on the document. The only situation where an extension of the validity date is authorized is for certain timber species under limited circumstances (see proposed section 23.73).

One commenter contended that restrictions imposed by the air freight industry and recent European Commission transshipment requirements were causing delays in the shipment of sport-hunted trophies to such an extent as to cause the trophies to arrive in the United States after the export permit had expired. The commenter urged us to add a provision to allow for an extension of validity when the importer could provide a certified statement from the air carrier that outlined the date and routing of the shipment. We decline to adopt this suggestion since export permits are limited to a validity period of 6 months. This timeframe is set by the Treaty, and experience has shown it is adequate time for shipments to be made. If some trophy exporters are encountering problems with shipping arrangements, they should ensure that the shipment is made as soon as the CITES document is issued.

Use of CITES specimens after import (section 23.55): Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it can be imported only when the intended use is not for primarily commercial purposes. In addition, the Parties addressed subsequent use of certain Appendix-I sport-hunted trophies by recommending that the trophies be ''imported as personal items that will not be sold in the country of import'' (Resolution Conf. 10.14 (Rev. CoP13) for leopards, Resolution Conf. 10.15 (Rev. CoP12) for markhor, and Resolution Conf. 13.5 for black rhinoceros).

Thus, we propose to add this new section that conditions the import and subsequent use of CITES wildlife or plant specimens. The import and subsequent use of Appendix-I specimens and certain Appendix-II specimens, including a transfer, donation, or exchange, may be only for noncommercial purposes. Such imports are conditioned by the regulation that the specimen and all its parts, products, and derivatives may not be imported and subsequently used for any commercial purpose. The importer will not be allowed to use or transfer the specimen for commercial purposes once in the United States. Any financial benefit or gain would include, but not be limited to, the donation of these types of specimens, including sport-hunted trophies, where the owner claims a tax deduction or benefit on his or her local, State, or Federal tax return. Other Appendix-II specimens and any Appendix-III specimen may be used for any purpose after import, unless the trade allowed under CITES is only for a noncommercial purpose.

One commenter thought this condition was an important clarification, particularly for highly valuable Appendix-I specimens that are in high illegal commercial demand. On the other hand, three commenters considered it to be unreasonable, illegal, and beyond the scope of CITES, and thought we should have no control or interest in how the specimen is subsequently used within the United States. Section 9(c)(1) of the ESA, which contains a prohibition on illegally traded specimens, confirms that the FWS's regulatory responsibility does not end at import. The commercialization of Appendix-I specimens can result in further demand, which is contrary to the intent of allowing limited import of Appendix-I specimens. We note that the condition does not apply to specimens, such as artificially propagated orchids, that are traded under a CITES Article VII exemption.

One commenter specifically requested that the sale of trophies by estates or trusts be allowed. Although we do not consider transfer to an heir a change in the use of a specimen, the sale or donation of a specimen that results in some form of financial benefit or gain would be considered a commercial activity and not allowed.

One commenter thought requiring a letter of approval from us to use or transfer an Appendix-I specimen for a purpose different than the purpose for which it was imported goes beyond CITES, would be an extraordinary burden, and would be arbitrarily enforced. We have deleted this provision from the current proposal because we provide clearer guidance on what constitutes commercial, noncommercial, and personal use.

Another commenter suggested the regulations need to require annual verification that an individual who imported Appendix-I wildlife or plants into the United States under a CITES permit will not subsequently use or transfer the specimens for commercial purposes. We note that an importer is responsible for ensuring that all requirements of the regulations for import are met. If we receive information that imported specimens are being commercialized, we will investigate the situation. However, we do not plan to require an annual report from an importer to verify compliance with the regulations.

CITES document conditions (section 23.56): Current section 23.18(e) would be replaced by this proposed section. General conditions apply to all CITES documents, standard conditions apply to specific types of documents, and special conditions may be placed on a CITES document when the authorized activity warrants it. All CITES document conditions must be met for a shipment to be lawful.

Resolution Conf. 8.13 (Rev.) recommends that Parties, where possible and appropriate, adopt the use of microchip transponders for the secure identification of live Appendix-I wildlife. Because the Parties have identified a number of technical issues that need to be addressed, we are not proposing that all Appendix-I wildlife be marked with microchips. We are proposing, however, that all live Appendix-I wildlife be securely marked or uniquely identified. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export. One commenter recommended that we add language to this condition to clarify that the mark or identification must be done in such a way that border officials can verify that the CITES document and specimen correspond. We agree and have revised the text.

What Are the Proposed Changes to Subpart D of 50 CFR Part 23—Factors Considered in Making Certain Findings?

Legal acquisition (section 23.60): One of the issuance criteria in the current regulations at section 23.15(d)(2) is whether the wildlife or plant was acquired lawfully. Under Articles III, IV, and V of the Treaty, we must make a legal acquisition finding before issuing export permits and re-export certificates for Appendix-I, -II, and -III wildlife and plants. The Parties have also agreed through a number of resolutions to make this finding before issuing certain exemption documents under Article VII of the Treaty. These include Resolutions Conf. 10.16 (Rev.) and 12.10 (Rev. CoP13) on bred-in-captivity wildlife; Conf. 9.19 (Rev. CoP13) and 11.11 (Rev. CoP13) on artificially propagated plants; Conf. 10.20 on personally owned live wildlife; and 11.15 (Rev. CoP12) on scientific exchange.

There are two types of legal acquisition determinations: (a) Whether the specimen and its parental stock were traded internationally under the provisions of CITES and (b) whether they were acquired consistent with national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

We make the legal acquisition finding on a case-by-case basis considering all available information (see the preamble to Subpart E for a discussion of legal acquisition for State or tribal programs). The applicant is responsible for providing sufficient information for us to make this finding. We received a number of comments on records and legal acquisition. See the discussion in the preamble for section 23.34 for comments on records. We propose to add this new section to the regulations to clarify that the amount of information we need to make the legal acquisition finding is based on our review of a number of general and specific factors.

General factors include the status of the species; whether the specimen was cultivated from exempt plant material, is a hybrid, or was bred-in-captivity or artificially propagated; whether the species is common in a controlled environment in the United States and has been documented to breed or propagate readily in a controlled environment; and whether significant illegal trade in the species occurs, specimens have been legally imported into the United States, and the range country allows commercial export of the species. We also consider a number of specific factors, such as whether the specimen was confiscated, a donation of unknown origin, or imported previously. Thus, we consider not only information provided by the applicant, but other relevant trade information, scientific literature, and advice of experts. In making a legal acquisition finding, we may also consult with foreign Management and Scientific Authorities, the CITES Secretariat, other U.S. governmental agencies, and nongovernmental experts.

We propose to hold persons who conduct commercial activities involving protected wildlife and plants to a high standard in understanding and complying with the requirements of the laws that affect their activities. We apply a lower information requirement, in most instances, for persons who acquired a specimen in the United States and want to travel internationally with it for personal use. We believe this proposed system for individuals traveling internationally with their personal items or pets is appropriate for the limited number of specimens involved, for the low conservation risk posed, and because most specimens are purchased from retailers who, as businesses, are expected to comply with the laws. We will, however, request additional information when noncommercial trade in a particular species raises greater conservation concern.

For the export of specimens that are bred-in-captivity or artificially propagated in the United States, we consider whether the breeding stock or cultivated parental stock was established under the provisions of CITES and national laws according to Resolutions Conf. 10.16 (Rev.) and 11.11 (Rev. CoP13). In addition, for the registration of Appendix-I commercial breeding operations or nurseries, Resolutions Conf. 12.10 (Rev. CoP13) and 9.19 (Rev. CoP13) require that a Management Authority find that the parental stock was legally acquired. We propose to define the terms ''parental stock,'' ''breeding stock,'' and ''cultivated parental stock'' (see proposed sections 23.5, 23.63, and 23.64, respectively). We agree with two commenters who supported a rigorous standard for legal acquisition before a CITES document can be issued, especially for Appendix-I specimens, and thought it should satisfy the concerns of Appendix-I species range countries regarding the laundering of wild-caught specimens through captive-breeding programs.

We also propose to allow the export of donated CITES specimens of unknown origin by public institutions on a case-by-case basis under limited circumstances. One commenter thought this paragraph should not refer to re-export, but should refer to import or introduction from the sea because the Scientific Authority is not required to make a non-detriment finding for re-export, but is required to make such a finding for import and introduction from the sea. We clarify that this provision applies to export. We did not include import or introduction from the sea, because in our experience we have never encountered a request to import such specimens. In some instances, public institutions, primarily zoos, aquariums, and botanical gardens, receive unsolicited donations of wildlife and plants. These donations may be brought in by individuals or left anonymously on the doorstep and may include specimens found sick or injured by well-meaning citizens, pets or plants that are no longer wanted, or specimens that owners fear they may possess in violation of the law. When this occurs, the institution may not be able to obtain reliable information concerning the origin of the specimen.

Justifying issuance of a permit under CITES is extremely difficult when no data exist on the origin of the specimen, especially when the donor remains anonymous. We do not wish to open a loophole for laundering specimens that were illegally obtained by the donor or by someone else in the chain of ownership. However, the underlying purpose of CITES is to protect, preserve, and benefit the listed species. We believe that the provisions proposed will assist in the suitable placement of specimens without leading to illegal or unjustified take of wildlife and plants from the wild. One commenter thought we should include specimens of unknown origin owned by private parties who inherited or were given such specimens. We believe it is important to limit this provision to public institutions that generally receive these kinds of unsolicited donations due to their work with wildlife and plants. We emphasize that this provision is only for limited, noncommercial international trade with CITES species.

Non-detriment findings (section 23.61): This proposed section explains how the U.S. Scientific Authority makes its non-detriment findings, as required under Articles III and IV of the Treaty and Resolution Conf. 10.3. Some commenters mistakenly referred to the Management Authority as making non-detriment findings, either alone or with the Scientific Authority. It is the Scientific Authority that advises the Management Authority on whether an export or introduction from the sea will not be detrimental to the survival of the species being traded, or whether an import of Appendix-I specimens will be for purposes that are not detrimental to the survival of the species. If the Scientific Authority advises that it is unable to find that the issuance of a CITES permit would not be detrimental to the survival of the species, the Management Authority may not issue the permit. However, if the Scientific Authority advises that the issuance of the permit would not be detrimental to the survival of the species, the Management Authority decides whether to issue the permit based on other requirements of the Treaty.

One commenter recommended that we should adopt a public comment process for making non-detriment findings. We do not agree, and point out that no legal requirement exists for us to obtain public comments for non-detriment findings on individual permits. Furthermore, instituting such a mechanism would result in delays in the processing of permits and also be a

drain on resources. We also believe such a process would be excessive for the consideration of permit applications for common Appendix-II species and specimens for which adequate information already exists to show that there is little or no conservation risk resulting from trade. We do, however, remain open to information from the public for any species where the information would be useful in evaluating permit applications, whether or not a current application is pending for the species.

Two commenters remarked that non-detriment findings for import and export were treated exactly alike in the proposed rule and, thus, we were not basing the non-detriment finding for import of Appendix-I species on the ''purpose'' of the import as required by the Treaty. One of the commenters asked that the final rule contain separate sections on non-detriment findings for import and export to draw a distinction between the two and make the regulations easier to understand. We discuss the non-detriment findings for import and export together because we are keeping to the essential language of the Treaty, which is that the activity must not be detrimental to the survival of the species. The finding for the import of an Appendix-I species is based on a consideration of purpose for which the specimen will be used upon import into the United States. We can determine the potential for detriment, even when tying it to the purpose, only if we know the biological and management status of the species. Therefore, similar types of information are required for both Appendix-I and -II species. To avoid redundancy in the proposed regulations, we are not treating import and export separately, but we do outline separate additional factors used in making non-detriment findings for Appendix-I and -II species.

Two commenters stated that having applicants ''provide sufficient information for us to make a finding of non-detriment'' is too burdensome on applicants, whereas another commenter stated that this appears to allow the applicant to make the non-detriment finding. Applicants do not make the non-detriment finding. As discussed above, the Scientific Authority makes the non-detriment finding. While applicants must demonstrate their eligibility for a permit, in some cases the actual burden for applicants to provide information to support their application may be small. If an application involves a type of trade that is already occurring and for which we have an established record of information, an applicant may be required to submit little more than a brief description of the proposed activity and the origin of the specimen being traded. The amount of information required from the applicant increases, however, as information otherwise available to us becomes more limited. This is especially true when an application involves a species or circumstance that we have not previously considered, for example if the species is known to be rare and is not commonly in trade.

We are proposing to identify several factors that we consider in making a non-detriment finding. These factors include whether the activity represents sustainable use or would result in net harm to the status of the species in the wild. One commenter stated that a non-detriment finding should not be based on ''no net harm'' but on ''no harm,'' regardless of countervailing benefits. We believe that ''no net harm'' is appropriate because the finding required by CITES is whether a proposed activity will be detrimental to the survival of the species, not individual animals. For both Appendix-I and -II species, this generally involves a determination of whether there is any effect, either adverse or beneficial, on the species in the wild, and if so, an assessment of the productivity of the species to determine whether the removal of specimens from the wild will adversely affect the species' long-term viability. However, Appendix-I species require consideration of additional factors, such as the effect of the import or export on recovery efforts for the species, including long-range strategies to ensure the survival of the species. The evaluation of the ''net harm'' posed to the survival of the species does not allow the balancing of adverse and beneficial effects to reach a ''not detrimental'' finding. Instead, all the effects of the proposed trade, whether direct, indirect, or cumulative, must be assessed to determine the aggregate ''net'' effect on the survival of the species before making the finding.

Another commenter stated that, for demonstrating sustainable use, the requirement to consider ''scientific information'' represents a different standard than using ''the best available biological information.'' We consider these terms to be interchangeable, but for consistency we propose to use the term ''best available biological information.''

Some commenters believed that the general factors listed in section 23.61(c) constitute vague criteria that either preclude or require the use of adaptive management. We believe that the general factors are important considerations and are written broadly to allow flexibility in making this finding. The factors do not proscribe or require adaptive management, which may be used if it is demonstrated to result in sustainable use. See the discussion on sustainable use in the preamble for section 23.5.

One commenter argued that the concept of sustainable use has been the subject of debate, and, therefore, it is premature for us to apply the general factors. Another recommended that we adopt management principles for sustainable use that were developed by the Southern Africa Sustainable Use Specialist Group of IUCN–The World Conservation Union. We agree there is no universally accepted definition or set of criteria for sustainable use, although the term itself has gained wide usage. For the very reason that it is subject to different interpretations, we propose to establish a definition based on sound scientific principles for use in the administration of our permitting program.

One commenter objected to our considering whether removal of an Appendix-I species from the wild would stimulate further trade in making a non-detriment finding, since it would be subjective and could not be proven. We note the preamble of the Treaty provides for the Parties to take action in anticipation of the effects of trade, since it recognizes the need for cooperation in protection of plants and wildlife against over-exploitation. Similarly, Article II of the Treaty allows for listing of species in Appendix-I based on a judgment that they ''are or may be affected by trade.'' We believe it is reasonable to expect that, in some cases, allowing trade in one instance would stimulate additional trade, as was the case of market demand for leopard skin coats before the listing of leopards under CITES. In their actions on particular species, the Parties have also considered that allowing trade in a species may stimulate further unsustainable trade if adequate controls are lacking.

One commenter contended that our evaluating the ''biological impact'' of the proposed activity is outside the scope of a non-detriment finding as required by CITES. We do not agree. We consider a number of factors in making the non-detriment finding, including biological, trade, and management information on the species. The information must include not only what is known about the current status of the species, but the potential biological impact that the proposed import or export will have. For example, we consider whether the biological impact is to reduce the population of the species (by direct removal of animals) or

to interfere with reproduction or recruitment (such as by targeting breeding animals or a specific age-class for removal or sampling). The type and magnitude of the biological impact are weighed against the status and needs of the species to determine whether issuance of the permit will be detrimental to the survival of the species.

One commenter recommended that the non-detriment finding should include whether the proposed activity: (a) Would sustain the species at a level that maintains its role in its ecosystem; (b) is compatible with other uses of the species and is not detrimental to other populations or species and their habitats and ecosystems; (c) would not stimulate illegal trade in other CITES species; and (d) is not wasteful and live animals are treated so as to minimize risk of injury, damage to health, or cruel treatment, at all times, including from the time of capture. In making a non-detriment finding, we consider some of these factors and not others. We consider whether the proposed activity represents sustainable use of the species. This includes a determination of whether the use interferes with the species' ability to perform its role or function in its ecosystem (see definition of ''sustainable use'' in proposed section 23.5). For Appendix-I species, we consider alternative uses and potential impacts on conservation activities, and for Appendix-II species, the sum of uses impacting the species, including the proposed export under consideration. However, as long as the use or combination of uses is not detrimental to the survival of the species, the potential incompatibility of one use with another is irrelevant for CITES purposes. The focus of the non-detriment finding is on the species for which a permit is being sought, and the Treaty includes no explicit provision for considering impacts on other species. We do, though, consider the impact on another species for species listed in Appendix II under the provisions of Article II(2)(b) of the Treaty due to similarity of appearance to other listed species, since that is the specific purpose of such a listing (see discussion of CITES furbearers in proposed § 23.69 in the preamble). For Appendix-I species, we consider whether allowing legal trade is likely to stimulate illegal trade for the species involved. The Treaty lacks any provision to ensure that harvest is not wasteful, as long as it is not detrimental to the survival of the species. In addition, the Treaty does not allow for regulation of the treatment of live animals except for how they are prepared for shipment and the manner in which they are shipped. This does not include capture, which is regulated by range countries through domestic law. The Parties do consider the type of containers in which the animals are shipped, how they are prepared for export, and the mode of shipment, including whether transport to the country of import will be accomplished in a timely manner.

Three commenters expressed concern that we would be unable to make a non-detriment finding for many orchid species in cultivation taking a precautionary approach, due to the lack of definitive information on the status of wild orchid populations and their habitats. We agree that definitive information on the status of wild populations may be lacking for many orchid species, but that may not preclude us from making a non-detriment finding. We base our decisions on the best available information for all pertinent factors. A lack of information on a particular species' status in the wild may be countered by specific information on whether the specimens are artificially propagated, commonly available, long established in cultivation, or similar factors demonstrating a low risk to wild populations.

Another commenter stated that, for some species, allowing trade may promote conservation of the species and preventing trade may not constitute a precautionary measure. We agree that in some instances allowing controlled trade in a species may create incentives for species conservation, including incentives for habitat conservation and the generation of funds to support management programs. The use of precautionary measures does not argue against trade in such instances, but only means that we will be cautious in allowing trade if there is uncertainty as to what effect it will have. CITES recognizes that trade can be a threat to the survival of species, as stated in Article II of the Treaty. Financial or other incentives may result in trade that is unsustainable. A species may also be so rare or reproduce at such a slow rate that it can sustain only very low levels of exploitation, or none at all. Sufficient evidence must exist to show that the level of trade will not be detrimental to the survival of the species, either because demand for the species can be sustained by the productivity of the species, or there is adequate control on harvest and trade to prevent over-exploitation.

This proposed section describes how we use both risk assessment and precautionary measures to make a non-detriment finding. There is a continuum of how stringent the documentation requirements may be for us to make a non-detriment finding. Rarer species will generally require a more complete documentation trail to show that they were obtained in a manner that was not detrimental to the species. Documentation requirements will be strictest for species that have been recently discovered, are not established in cultivation or breeding programs, are difficult to propagate or breed, and most importantly, could be adversely impacted by trade in wild-collected specimens due to a restricted range or other factors. We use precautionary measures when a review of the available information reveals an absence of essential data as to the intensity of the effect of the proposed trade on the status of the species in the wild. The lack of information may cause the Scientific Authority to be unable to find that the import or export will not be detrimental to the survival of the species. This process was upheld by the Federal District court in *Prima* v. *DOI*, (E.D. La. Feb. 19, 1998) when we denied a CITES document based on a lack of sufficient information to make a non-detriment finding.

One commenter stated that risk assessment is contrary to the use of precautionary measures and should not be applied because it allows for some possibility that an activity will be detrimental to the survival of the species. We disagree and note that risk assessment is a way for us to decide how much scrutiny and information we need to make a non-detriment finding. We use precautionary measures where there is uncertainty about the impact of trade on the conservation of the species. This includes when we lack sufficient information to make a non-detriment finding or when the risk is unknown or cannot be adequately determined. We believe this approach gives us the flexibility we need to effectively implement CITES while ensuring the conservation of the species.

Two commenters stated that the invasive potential of a species and the risk of disease transmission should be deleted from the factors we consider in evaluating potential detriment because the non-detriment finding is limited to the impact of the activity on the species involved, not other species. We agree that the invasive potential of a species should not be a factor to consider in the non-detriment determination and have deleted it from the list of general factors. However, we point out that on February 3, 1999, Executive Order 13112 was issued. It, among other things, directs each Federal agency to (a) prevent the

introduction of invasive species, and (b) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere except under special circumstances. We wish to advise the public that to comply with the Executive Order we must give special attention to permit applications involving potentially invasive species. In deciding whether to issue permits, we will consider whether any applicable Federal, State, or foreign laws prohibit the import or export of invasive species and whether those laws would be violated (see proposed section 23.3). We further note that significant attention is being focused on the problem of invasive species, both within the United States and internationally, and is likely to result in further restrictions that would affect the issuance of CITES permits for such species.

Regarding disease transmission, we continue to believe that this is a legitimate factor to consider in evaluating non-detriment for imports or exports. We will consider the possibility of introducing disease to other populations of the species involved, whether in the wild or in captivity, and whether spread of the disease could put the survival of the species at risk.

Two commenters advised that we should follow the recommendation contained in Resolution Conf. 2.11 (Rev.) on trade in hunting trophies of species listed in Appendix I, which is to ''accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species.'' We note that Resolution Conf. 2.11 (Rev.) further allows the importing country's Scientific Authority not to accept the finding of the Scientific Authority of the exporting country if ''there are scientific or management data to indicate otherwise.'' The resolution also reaffirms the complementary findings of the importing and exporting countries for Appendix-I species, as provided for in Article III of the Convention, by recommending that ''the scientific examination by the importing country * * * [be] carried out independently of the result of the scientific assessment by the exporting country * * * and vice versa.'' What effect the purpose of an import may have is impossible to determine without considering scientific and management information on the species from the exporting country.

We only question the finding of the exporting country if our analysis of the best available biological information shows a problem. We can neither accept the finding of the exporting country nor ascertain the potential for detriment derived from the purpose of the import without knowledge of the exporting country's management program for the species (including whether one exists or is being implemented) or what scientific information exists on the species itself. We must also determine whether the effect of allowing imports for a particular purpose can be separated from other potentially detrimental impacts on the species, including trade for other purposes.

Two commenters opposed how we proposed to make a non-detriment finding for Appendix-I species when an export quota has been set. They argued that, according to Resolution Conf. 9.21 (Rev. CoP13), the adoption of export quotas by the Parties for Appendix-I species satisfies the requirement for a non-detriment finding on the purpose of the import and assures exporting countries that their exports will be accepted by importing countries, and they believe no further assessment by the importing country's Scientific Authority is required. However, another commenter urged us to continue to scrutinize biological and management information used as the basis for quotas for Appendix-I species adopted by the Parties since this is consistent with Article-III requirements.

We are bound to base our non-detriment finding on the best available biological and management information, and Resolution Conf. 9.21 (Rev. CoP13) contains sufficient latitude to allow this. The resolution does not require us to accept imports of Appendix-I species blindly if the Parties have approved a quota for the species for the country of export. Rather, the resolution contains a provision that preserves the independent authority of the Scientific Authority of an importing country to make its own non-detriment finding if the quota has been exceeded or if ''new scientific or management data have emerged to indicate that the species'' population in the range State concerned can no longer sustain the agreed quota.'' Similar to our rationale for obtaining information from range countries for making our non-detriment findings on the import of trophies (see above discussion relative to Resolution Conf. 2.11 (Rev.)), we will rely on the best available scientific and management information on the species for the exporting country to determine if the basis for the quota is still valid. We modified proposed section 23.61(h) to show that we will use the best available biological information, not just the information used as the basis for the quota.

Not for primarily commercial purposes (section 23.62): Under Article III of the Treaty, import permits or introduction-from-the-sea certificates for Appendix-I species can be issued only when a Management Authority is satisfied that the specimen is to be used not for primarily commercial purposes. The Parties interpreted ''primarily commercial purposes'' in Resolution Conf. 5.10. We believe this resolution is an accurate interpretation of the Treaty, and we consider the principles and examples set out in the resolution in evaluating applications for import documents for Appendix-I species.

We propose to incorporate the provisions of this resolution in this section and define ''commercial'' and ''primarily commercial purposes'' in section 23.5. One commenter thought we should not use a key word ''commercial'' as a descriptor in the definition, but should first define ''commercial'' then ''primarily.'' ''Commercial'' is already defined in these regulations, and the definition of ''primarily commercial purposes'' is based on language taken directly from the resolution and is further clarified in this proposed section.

Another commenter suggested that we explicitly state in the definition that the import of sport-hunted trophies to be used by the hunter for noncommercial purposes is not considered primarily commercial. We do not believe it is appropriate to add this language to the general definition of ''primarily commercial purposes.'' We point out, though, that in this proposed section ''personal sport-hunted trophy'' is specifically listed under the ''personal use'' example.

For an import or introduction from the sea of an Appendix-I specimen to qualify for a CITES document, the noncommercial aspects of the import or introduction must clearly predominate. One commenter requested that we revise the regulations to clarify that both the transaction and the proposed end use are relevant in making the finding. The commenter thought the proposal mistakenly suggested that direct sales of Appendix-I specimens to collectors would not be subject to the prohibition on trade for primarily commercial purposes. We clarify that, in most cases, the direct sale of Appendix-I specimens to collectors in another country would be considered commercial.

One commenter expressed concern that the regulation grants too much discretion to the permittee when determining whether the transaction is for primarily commercial purposes. We

do not agree. We are responsible for making the finding, but the applicant is responsible for providing sufficient information for us to make that finding. We evaluate each application on a case-by-case basis and take all factors involved into account. The applicant needs to provide core information on the purposes for carrying out the proposed activity and intended use of the specimen after import or introduction from the sea for us to consider.

One commenter asserted that we strayed from the focus of the CITES finding, which is the nature of the use of the specimen, and the requirements laid out in the proposed rule are onerous, potentially expensive, and counterproductive to the future of conservation programs involving Appendix-I species. They thought captive-bred specimens should be treated differently from wild-caught specimens; cautioned that it would be virtually impossible to accurately assess exact net profits over the life of the specimen; and said they did not believe there were species, other than the giant panda, that are of such high public appeal to warrant these regulations.

To help address some of these concerns, we revised this proposed section to conform to the analytical process used in the legal acquisition and non-detriment sections. Instead of outlining a specific list of information that each applicant must provide, we outline how we make our finding, provide examples of types of transactions in which noncommercial aspects may predominate, and outline factors we will consider in assessing the level of information we will need to make a finding. We also added a paragraph on how, for high-risk activities, we will analyze anticipated measurable increases in revenue and other economic value that would be incidental to the proposed import or introduction from the sea.

We propose to give less scrutiny and require less detailed information when the import or introduction from the sea poses a low risk of being primarily commercial, and require more detailed information when the proposed activity poses greater risk. Based on our experience, we anticipate that we will rarely receive an application that involves high-risk activities with anticipated high net profits. We anticipate that only under rare instances would we need to ask the applicant for a detailed analysis of expected revenues and a statement from a licensed, independent certified public accountant that the internal accounting system is sufficient to account for and track funds generated by the proposed activity. We believe this proposed revision is more flexible and a better description of the way we currently make this finding. We will still ask applicants to describe their proposed activity and intended use. If information raises a reasonable question of whether commercial motivation may have influenced the proposed import, we will ask for more detailed information.

One commenter contended that the information requirements exceeded the CITES mandate and questioned the legal basis for our asking for a description of any funded conservation project or monitoring plan. Before we can issue a CITES document, we need sufficient information to make the finding that is required under Article III of the Treaty. The Parties agreed to an interpretation of ''primarily commercial purposes'' in Resolution Conf. 5.10, which calls for an examination of all aspects of the intended use of the import or introduction from the sea. For high-risk activities, descriptions of any funded conservation project and its monitoring plan, including the use of funds, are information we need to consider in making our finding. If the noncommercial aspects do not clearly predominate, we will consider the import or introduction from the sea to be primarily commercial.

Although we deleted the paragraph on for-profit entities, we will still consider the type of entity as a factor in deciding the level of information we need to make a finding. In general, the nature of for-profit organizations, which carry out activities in the pursuit of gain or profit, makes it more difficult for us to find that a proposed import or introduction from the sea is not to be used for primarily commercial purposes.

Even when an applicant states that public education, scientific research, or captive breeding is the primary purpose for the import of an Appendix-I species, the likelihood of measurable increases in revenue or other economic value that would be generated incidental to the declared primary use must be analyzed. In these instances, all net profits generated from high-risk activities in the United States must be used for the conservation of the Appendix-I species in a range country. One commenter strongly supported this requirement, whereas another contended that the requirement is more appropriate as part of an enhancement finding under the ESA. To clarify, it is possible that an import or introduction from the sea, although superficially commercial, may qualify as not for primarily commercial purposes because anticipated profit may be offset by conservation benefits that will be provided through assistance to range countries, research, or other considerations that result from the import or introduction from the sea as long as the primary motivation for the trade is not commercial, and the noncommercial purposes clearly predominate.

Bred-in-captivity (section 23.63): Paragraphs 4 and 5 of Article VII of the Treaty provide exemptions for wildlife bred-in-captivity. To establish a standard interpretation of the term ''bred-in-captivity,'' the Parties adopted Resolution Conf. 10.16 (Rev.). We propose to incorporate provisions of the resolution in this section.

In making this finding, we consider the conditions under which an individual specimen is bred, whether the breeding stock was established legally and in a non-detrimental manner, and whether it is maintained with limited introduction of wild specimens. We also consider whether the breeding stock has reliably produced offspring to at least the second-generation (F2), or whether it is managed in a way that has been demonstrated to result in the reliable production of F2 offspring and has produced some F1 offspring.

One commenter mistakenly thought that the proposed rule requires that the entire U.S. population of a species be managed in a manner that results in production of F2 offspring, which would be a stricter requirement than the resolution. We may consider whether specimens of a species qualify as bred-in-captivity for the breeding population of an individual operation or any larger conglomerate of breeding operations, up to and including the entire U.S. captive population. This approach is more flexible and less burdensome for both the public and the FWS.

The breeding stock of an individual operation may independently meet the bred-in-captivity criteria based on its own history and production data, including the reliable production of F2 offspring. Few operations, however, have sufficient stock to meet the criteria. Also, we may limit bred-in-captivity findings to individual operations when information on a broader captive population is lacking, when there is ongoing import of wild-caught specimens into the United States, or if there is illegal trade in the species. Alternatively, by evaluating a larger population, we have more extensive information with which to make our finding. If we can demonstrate that the entire U.S. population or any conglomerate of breeding operations meets the criteria, then all specimens within that breeding population can be

considered to meet the criteria without requiring a review of each individual breeding facility.

Typically, we may consider the entire U.S. captive population of an exotic species to meet the bred-in-captivity criteria if, among other things, the U.S. population is a ''closed'' population that is not augmented through imports of wild-caught specimens. These often are populations that can be tracked to a limited parental population that qualifies as pre-Convention or was otherwise legally established, and for which there is both a lack of evidence of current illegal trade into the United States and reliable breeding of the species within the United States to F2 or beyond. Thus, we have determined that a number of species commonly held in the United States (such as lions, tigers, and brown eared pheasants) qualify as bred-in-captivity. We may find, however, that only part of the U.S. population qualifies as bred-in-captivity, such as a population managed cooperatively by zoos, if only that part of the population can be shown to meet the criteria.

Another commenter recommended that we modify the regulations to reflect the revision of Resolution Conf. 10.16 (Rev.) that occurred at CoP11. We note that the revision to this resolution did not affect the proposed regulations, which are consistent with Resolution Conf. 10.16 (Rev.).

Artificially propagated (section 23.64): Paragraphs 4 and 5 of Article VII of the Treaty provide exemptions for artificially propagated plants. The Parties recognize the unique aspects of plant biology and trade. Modern developments in plant propagation, such as the use of micropropagation and growth of seedlings in sterile flasks, have allowed large quantities of artificially propagated plants to be produced. Resolution Conf. 11.11 (Rev. CoP13) addresses ways to reduce the paperwork required to trade plants internationally while maintaining protection of wild plants.

This proposed section expands the current regulations at section 23.18(d)(8), is based on Resolution Conf. 11.11 (Rev. CoP13), and incorporates criteria we will use to decide whether plants, including cuttings or divisions, grafted plants, and timber, qualify as artificially propagated. In making this finding, we consider the controlled conditions under which a plant is propagated. Plants grown from exempt plant material, including seeds that may have been collected from the wild, are considered artificially propagated when grown under controlled conditions. For other plants, we also consider whether the cultivated parental stock was established legally and in a non-detrimental manner, and whether it is managed in a way to ensure its long-term maintenance.

At CoP13, the Parties agreed to amend the definition of ''artificially propagated'' to allow, in exceptional circumstances, for some plants grown from wild-collected seeds or spores to be treated as artificially propagated if certain conditions are met. The basis for the exception is the practical limitations that arise for long-lived, late-maturing species, such as certain trees (*e.g.*, the monkey-puzzle tree, *Araucaria araucana*). The exception is allowed only when the seeds or spores are legally collected and propagated in a range country and the Scientific Authority of that country has determined not only that the collection of the seeds or spores was not detrimental to the survival of the species in the wild, but also that allowing trade in such specimens has a positive effect on the conservation of wild populations. A portion of the plants produced must be used for replanting in the wild, to enhance recovery of existing populations or to re-establish populations that have been extirpated. Some plants produced under such circumstances must also be used to establish a cultivated parental stock for future production so that removal of seeds or spores from the wild can eventually be reduced or eliminated.

One commenter questioned why ''the long-term maintenance of cultivated parental stock [must be] guaranteed'' for artificially propagated plants. As discussed above, the purpose of this provision is to encourage the development of artificially propagated stocks to reduce trade impacts on wild plant populations. If propagators are not maintaining their cultivated parental stock for the long term, then continued availability of plants must rely on collection of plants or propagules from the wild.

Another commenter asked why we require a permittee to maintain a specific number of parental stock plants. We may condition a permit to require a permittee to maintain a specific number of cultivated parental stock plants to ensure artificial propagation without continued significant augmentation from the wild. Generally, we will make a determination of whether the long-term maintenance of cultivated parental stock can be guaranteed based on an applicant's description of how his or her stock is managed. We do not necessarily require a propagator to maintain the same plants indefinitely. Applicants must show that they are maintaining sufficient cultivated parental stock plants, either by keeping their original plants or by retaining a sufficient number of the plants they produce for subsequent propagation, so that their operation is essentially self-sustaining or augmented primarily with stock from other artificially propagated sources.

One commenter stated that, in determining whether plants were artificially propagated, we should not consider whether the cultivated parental stock was established according to the provisions of CITES and relevant national laws. We think this is an important requirement agreed to by the Parties in Resolution Conf. 11.11 (Rev. CoP13). We do not make a legal acquisition finding on each plant that is artificially propagated. Instead, we make a legal acquisition finding on the origin of the cultivated parental stock. This prevents the creation of a conduit for illegal specimens to become legitimized. Range countries in particular request the assistance of other Parties to ensure that specimens are legally acquired.

We received some comments on the artificially propagated finding and how it relates to other issues. See discussions in the preamble of recordkeeping (section 23.34), pre-Convention (section 23.45), legal acquisition (section 23.60), and non-detriment (section 23.61).

Suitably equipped to house and care for (section 23.65): Under Article III(3)(b) and (5)(b) of the Treaty, we must determine that an individual or institution has facilities that are suitably equipped to house and care for a live Appendix-I specimen being imported or introduced from the sea. These requirements are to ensure that rare specimens will survive in a controlled environment.

This proposed section outlines the factors we consider in making this finding. All individuals or institutions that will be receiving specimens must be identified in an application, and their facilities approved by us, including individuals or institutions that are likely to receive specimens within 1 year of the specimens' arrival in the country. We will consider all identified uses of the imported specimens that could be reasonably expected to occur, and the housing and care requirements for those uses.

We will base our finding on the best available information on the requirements of the species and information provided by the applicant. We will give closer scrutiny to applications for species with more demanding biological and husbandry or horticultural needs. For a captive-born, commonly held species, like a scarlet macaw (*Ara macao*), we would provide

less scrutiny due to the ease with which such a species can be held in captivity and the availability of veterinary care and commercially prepared diets. For a species, such as the Chinese giant salamander, that is not commonly held in captivity and has very restrictive husbandry and housing requirements, we would require a greater level of detail regarding the facilities and personnel where the specimen would be held.

We also provide the general and specific factors that we consider in making this finding. We consider whether a facility supplies adequate space, appropriate living conditions, adequate veterinary or horticultural care, sufficient security, and properly trained staff to care for the specimen being imported. We revised the proposed paragraph on the amount of information we would need to assess whether a facility has had a reasonable survival rate of specimens. We believe 3 years, rather than 5 years, of data on numbers of animals born or plants propagated, mortalities, and occurrence of significant disease would generally provide sufficient information for us to consider.

An applicant may apply for a CITES document to import or introduce from the sea a specimen before the facility is completed or the staff who will maintain the specimen has been identified or properly trained. In such a case, we review the information, including construction plans or intended staffing, and make the finding based on that information. We would, however, condition any resulting permit to require that the import could not occur until the facility has been completed, or the staff hired and trained, and approved by us.

One commenter recommended that we implement a public comment process for applications requiring findings on suitability of housing and care. We decline to adopt this suggestion. There is no legal requirement for us to institute such a process, and we believe that it could result in unnecessary delays in the issuance of permits. Our staff possesses considerable expertise in the housing and care of captive wildlife and cultivated plants, maintains extensive contacts with relevant experts, and regularly consults current literature on captive animal and plant management. If anyone has relevant information that may not be readily available on a species that has unusual requirements for housing and care in cultivation or captivity, we would appreciate receiving it.

What Are the Proposed Changes to Subpart E of 50 CFR Part 23—International Trade in Certain Specimens?

This proposed subpart deals with situations that are either covered by specific resolutions or by procedures we have developed to deal with certain native CITES species from States or Tribes with appropriate conservation management programs and legal controls.

Export of heavily traded native species (sections 23.68–23.70): Certain native species (American ginseng, bobcat, river otter, Canada lynx, gray wolf, brown bear, and American alligator) that are managed by a State or Tribe conservation program are traded internationally, sometimes in high volumes. As for all CITES species, before we can issue a CITES document to allow export, we must find that the specimens were legally acquired and that the export is not detrimental to the survival of the species in the wild. Over the past 25 years, we have worked with State and tribal governments to develop procedures that allow us to make the necessary findings programmatically rather than on a permit-by-permit basis. When States and Tribes provide information showing that they have established a management program that ensures a sustainable harvest, and that they have the means to identify or mark specimens that have been legally taken under their system, we are able to make findings for specimens harvested within their jurisdiction, thereby approving their program. A tag or certificate issued by the State or Tribe demonstrates that a particular specimen was harvested under an approved program and that the appropriate findings have been made. This alternative to making the legal acquisition and non-detriment findings on a permit-by-permit basis reduces a potentially large workload for exporters as well as for our offices.

States and Tribes for which programmatic findings have been made submit annual reports to us containing information on the previous harvest season. In some cases, such as for many furbearer species, we make our findings on a multiyear basis. Regular reporting from States and Tribes allows us to determine whether our findings remain valid. In these sections, we include the types of information we request from the States and Tribes on an annual basis to maintain approval of their export program.

Although it was not required, in the past we published State- and Tribe-based findings in the **Federal Register** as a convenient way of notifying the public. Since there are now more timely ways to provide this information, we have discontinued publication of the findings in the **Federal Register**. A list of States and Tribes with approved CITES export programs, copies of recent findings on which the approvals are based, and conditions that must be met for lawful export will be posted on our Web site or will be available from us.

American ginseng roots (section 23.68): This proposed section is a revision of the current regulations in section 23.51. Most American ginseng, both collected from the wild and artificially propagated, is exported as roots. Ginseng root is exported in a much larger volume than any other native CITES plant species. Ginseng that has been legally harvested under State or tribal requirements is certified by the appropriate State or tribal authority prior to export. To document the legal origin of the material, State or tribal certificates must accompany the ginseng until the time of export from the United States.

In the 2000 proposal, we developed various ginseng categories (wild, wild simulated, wild cultivated, cultivated, and cultivated woodsgrown) in response to concerns of some States that ginseng originating from artificially propagated seeds and cultivated in a manner to look more like wild ginseng was being reported as wild rather than artificially propagated. In addition, some ginseng dealers and exporters did not want to show on their State certificates that the wild-looking cultivated ginseng was artificially propagated. In meetings with the States and industry on the ginseng trade, we also learned that some ginseng reported as ''cultivated woodsgrown'' did not meet the criteria for artificially propagated plants, as outlined in section 23.64 of this proposed rule. Because of limited manipulation of the growing environment by the grower, this misidentification could allow certain trade to occur under the exemption for artificially propagated plants when in fact the ginseng does not qualify under CITES as artificially propagated. Furthermore, we found that few States had adopted the various ginseng categories.

Thus, in this proposed rule we eliminated all categories other than wild and artificially propagated because CITES only recognizes these two categories. The permits we issue and our annual report to the CITES Secretariat use only these two classifications.

If an applicant wishes to export ginseng as artificially propagated even though it visually resembles wild ginseng, he or she must demonstrate

that the ginseng indeed meets the criteria for artificially propagated plants. We note that the classification of ginseng as either wild or artificially propagated on export permits is only for CITES purposes and is not intended to indicate marketing categories or value of the roots. Furthermore, it does not preclude the use of additional categories by States and Tribes. We continue to monitor the use of additional categories by States and Tribes, and we may use such information in future decision making on ginseng exports as we evaluate the impact of trade on the viability of the wild populations.

This proposed section no longer asks States or Tribes to provide us in their annual reports an estimate of the average age of wild-harvested plants. Instead, the U.S. Scientific Authority will use roots-per-pound information provided by the States as an index to indicate shifts in age structure of harvested roots. In addition, we propose to change the annual report date from May 31 to May 1 to ensure that we receive information in time for us to make required CITES findings before the beginning of the next harvest season.

One commenter questioned what criteria would be used to evaluate applications for export and re-export of ginseng from States and Tribes without approved programs. We would use the same criteria that are used for the evaluation of other requests for export or re-export of CITES species (see proposed section 23.36 for export, section 23.37 for re-export, and section 23.40 for export of artificially propagated plants). For export or re-export of such ginseng, the applicant would be responsible for providing us with sufficient information to allow us to make the required findings. Because a State or Tribe with an approved program has provided information on management and harvest controls on a State or tribal basis, the time required to process such export permit applications is streamlined. However, the time needed to process an application to export ginseng from a State or Tribe without an approved program would likely be extensive, and making the required CITES findings could be problematic depending on the management regimes for ginseng harvest in that State or on those tribal lands.

CITES furbearers (section 23.69): This proposed section consolidates and revises the current regulations in sections 23.52 through 23.56 for furs of certain native species that are sometimes traded in high volumes and originate in States or on tribal lands with appropriate conservation management programs and legal controls. We define ''CITES furbearers'' to include bobcat, river otter, Canada lynx, gray wolf, and brown bear. These species are included in Appendix II under the provisions of Article II(2)(b) of the Treaty because their parts, products, and derivatives are difficult to distinguish from certain similar CITES Appendix-I and -II species.

To streamline the export process for CITES furbearers, we review the programs that States and Tribes have set up for management and harvest. We approve programs for States and Tribes when they have provided information that allows us to make the required non-detriment and legal acquisition findings. Our non-detriment finding takes into account that the CITES furbearers are listed in Appendix II because of their similarity of appearance to other listed species under Article II(2)(b) of the Treaty. These species are listed to ensure that trade in the species to which they are similar is brought under effective control. We are obligated, however, by the Treaty to ensure that a species does not decline to the point that it qualifies to be treated as an Appendix-II species under Article II(2)(a) of the Treaty.

Under the current regulations, States and Tribes with approved programs must have procedures for placement of CITES export tags on fur skins. When a fur skin with a CITES tag is presented for export, the tag provides assurance that the fur was harvested under an approved CITES export program and that the necessary findings have been made. This allows the exporter to more quickly obtain CITES documents from either the U.S. Management Authority or certain FWS Law Enforcement offices (see proposed section 23.7). One commenter objected to the requirement to obtain CITES tags and permits for species listed under Article II(2)(b). The Treaty requires CITES documents for the export of species listed under II(2)(b) and a document cannot be issued until all required findings have been made. However, there may be flexibility in whether furbearer skins must be tagged. The utility and effectiveness of the current U.S. CITES tagging regime has been the subject of ongoing discussions between the FWS and the States and Tribes. Through this process we are exploring other ways to determine legal acquisition, for example, the possible use of a documentation system in lieu of tags, or issuance of a national legal acquisition finding based on State and tribal legal and enforcement systems. Any alternative system of determining legal acquisition would be as reliable as the current system.

We review the information we receive annually from each State or Tribe to determine if our programmatic findings remain correct or if the species needs closer monitoring. Article IV(3) of the Convention requires the Scientific Authority to monitor trade in any Appendix-II species, regardless of whether it is listed under the provisions of Article II(2)(a) or II(2)(b). Species listed in Appendix II are not designated as being listed for similarity of appearance, and the Convention lacks a mechanism for review of Appendix-II species to determine if they should continue to be listed under the provisions of Article II(2)(b). It is the responsibility of each range country to monitor its species listed under Article II(2)(b) and determine whether they subsequently qualify under Article II(2)(a).

Two commenters suggested that for species listed under Article II(2)(b) a non-detriment finding on exports from a given country should be limited to a determination of whether the tagging program is effective in controlling illegal trade in the species to which they are similar. We cannot adopt this suggestion because it would not allow us to fully meet our obligations under the Treaty. For all Appendix-II species being exported, we must determine whether the species is being maintained throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which it might become eligible for inclusion in Appendix I. Therefore, we must obtain sufficient information when a State or tribal program is first approved to establish baseline information for monitoring. In part, the information required for initial approval of a State or tribal export program is necessary to ensure that the population of the species managed by that State or Tribe does not qualify for treatment as a species listed in Appendix II under the provisions of Article II(2)(a). After initial approval, exports are approved as long as the periodic submission of information by the State or Tribe, for monitoring purposes, shows that there is no significant change in harvest levels, management of the species, or status of the species that might lead to different treatment of the species.

Two commenters stated that we require burdensome levels of information from States or Tribes seeking approval of export programs for species listed because they are similar in appearance to other listed species. We believe that the level of information we require for approval of exports is appropriate to ensure that the State or Tribe implements and maintains a

management program that is consistent with the continued treatment of the species as one listed because of similarity of appearance. When making a non-detriment finding, review of a species treated under Article II(2)(b) is less rigorous and requires less-detailed information than if the species is treated under Article II(2)(a). Species treated under Article II(2)(a) require closer review, with the possible establishment of quotas and more stringent information requirements to support a finding of non-detriment by the Scientific Authority.

One commenter suggested that an export of a native U.S. species should be considered to be detrimental to the survival of the species only if the species involved is listed, or is a candidate for listing, under the ESA. The CITES requirement for making a non-detriment finding is wholly independent of any other legal standard, such as those under the ESA. Our experience has shown that many people are confused by the name of the Treaty, because it refers to ''trade in endangered species.'' However, CITES covers many species that are not ESA-listed, but which require trade controls to prevent over-exploitation that could cause the species to become endangered. This is clarified within Article II of the Treaty, which establishes the basis for including species in the different CITES Appendices.

Two commenters requested that the date for submission of the annual report be changed since the information was not usually available by April 30. We agree that many States do not have these data available until later in the year, and we revised the date of submission to October 31.

One commenter thought that the American black bear (*Ursus americanus*) should be included in this section. Although the American black bear is listed in CITES Appendix II, the U.S. trade is almost entirely sport-hunted trophies taken in Alaska. Therefore, we did not include it in this proposed section. To export an American black bear, including its parts, products, or derivatives, you should follow the procedures in proposed section 23.36.

Crocodilians (including American alligator) (section 23.70): This proposed section revises the current regulations in section 23.57 and incorporates Resolution Conf. 11.12 concerning the universal tagging of crocodilian skins. The proposed revision extends the tagging requirements to all crocodilian skins entering international trade, which assists Parties in identifying legal skins. Raw, tanned, or finished crocodilian skins may be imported, exported, or re-exported only if tagged with a non-reusable tag containing specific information.

One commenter suggested that the tagging resolution should not be implemented until we have an adequate tag, and U.S. States are satisfied with the procedure for issuance of replacement tags for American alligators outside the United States. We have been working with the States to identify problems with U.S. tags and tags from other countries where problems have been noted. We will continue to work to try and resolve problems resulting from broken, damaged, or defective tags. However, many Parties have already implemented the tagging resolution. Failure on our part to implement the resolution would leave U.S. importers and exporters at a disadvantage in the international market because of their inability to trade, and could facilitate illegal trade. The requirements of the special rules in 50 CFR part 17 concerning the American alligator and other threatened crocodilians must be met in addition to the requirements of this section.

One commenter questioned the legality of, and procedures for, replacement of broken or detached tags for alligator skins outside the United States. Resolution Conf. 11.12 recommends that replacement tags be placed on skins where the original tag has been lost or removed. Each Party is responsible for setting up its own procedure for providing replacement tags. We are proposing a procedure to obtain replacement tags in the United States. Current U.S. regulations only require that American alligator skins be tagged at the time of export; they do not require that skins being re-imported be tagged. Requiring that these skins now be tagged on re-import (either with the original tag or a replacement tag) should provide better assurances of the legality of skins in international trade, as well as ensuring that the United States complies with CITES.

Like American ginseng and native CITES furbearers, we have developed specific CITES procedures for States and Tribes with an approved conservation program for the American alligator. As part of the reporting required under the program, participating States and Tribes provide us with information as to how many alligators were taken during the wild harvest in the State, and how many alligators were harvested from farming facilities. Two commenters objected to the section of the proposed rule that requested information concerning captive-bred specimens in addition to wild and farmed specimens harvested. We did not intend to require the States to change their methods of collecting harvest data. Although there is some captive breeding of alligators, these specimens represent a small percentage of the overall number of alligators harvested. In addition, we have little information to determine whether or not such specimens meet the conditions of CITES for certification as bred-in-captivity. Therefore, we clarified in this proposed rule that we will ask the States to continue to report the numbers of wild and farmed (including any captive-bred) alligators as they have been doing.

Sturgeon caviar (section 23.71): At CoP10, all sturgeons that were not already included in the CITES Appendices were added to Appendix II. This proposed section implements Resolution Conf. 12.7 (Rev. CoP13) on the conservation of and trade in sturgeons and paddlefish, including labeling of caviar containers, provisions for shared populations subject to annual export quotas, and re-export timeframes for caviar.

To assist Parties in identifying legal caviar in trade, the resolution recommends a universal labeling system. Sturgeon caviar may be imported, exported, or re-exported only if non-reusable labels containing specific information are affixed to primary and secondary containers. If caviar is repackaged before export or re-export, the containers must be re-labeled to reflect the change.

To improve monitoring of re-exports in relation to the original export permits, the Parties agreed to establish time limits for re-exporting caviar. We propose to require that any re-export of caviar take place within 18 months from the issuance date of the original export permit.

Likewise, to assist in monitoring the level of exports in relation to annual export quotas and to address certain unscrupulous trade practices, the Parties agreed to place a time limit on export of caviar from shared stocks subject to quotas. We propose to allow import of sturgeon caviar from shared stocks subject to quotas only during the calendar year in which it was harvested.

One specific recommendation by the Parties is to ''monitor the storage, processing and repackaging of specimens of sturgeon and paddlefish species in customs free zones and free ports, and for airline and cruiseline catering.'' However, the resolution did not provide guidance on how Parties should monitor airline and cruiseline catering, other than to determine that such shipments are not exempt from CITES requirements. In 2000, in an effort to address this issue, we proposed

a registration system for airlines and cruiselines that serve caviar to passengers for on-board consumption. However, we have decided not to propose such a system here. Although we support the idea of a streamlined procedure, after analyzing comments we received and consulting with other Parties, we have been unable to develop a system that would address the unique circumstances faced by these industries and meet CITES requirements for international trade in listed species. The Parties will need to agree on any special provisions for airlines and cruiselines. We do not believe a workable system can be developed by one Party acting alone. For now, movement of caviar (or other CITES species) for passenger consumption on airplanes or cruise ships will continue to require standard CITES documents.

One commenter stated that passenger consumption is not an export or trade, and that airlines should be exempt from CITES. CITES does not provide any exemptions for the movement of caviar internationally except for a specific exemption for caviar in personal effects shipments. We consider a shipment, including specimens for passenger consumption, to be an export as soon as it is consigned to depart from areas under the jurisdiction of the United States. In addition, under the ESA, a shipment is considered an import as soon as it is in an area under the jurisdiction of the United States, whether or not it is considered an import under customs law.

Since all sturgeon have been included in the CITES Appendices since 1998, we no longer accept pre-Convention certificates for caviar. One commenter disagreed with the shelf-life determination and stated that this was not something to be decided by us, but by the U.S. Food and Drug Administration. We note that caviar is perishable and this practice is consistent with CITES Notification to the Parties No. 1999/23, which recommended that no permits or certificates declaring caviar as pre-Convention should be accepted after April 1, 1999. To be imported legally into the United States, shipments of sturgeon caviar must be accompanied by the appropriate export or re-export document.

Trade in plants (section 23.72): This section clarifies that seeds, like other propagules, parts, products, and derivatives, are included in the listing of Appendix-I species, except for seeds of certain artificially propagated hybrids. Seeds may also be included in a listing of Appendix-II or -III species, depending on how the species listing is annotated. International shipments of CITES seeds, including artificially propagated seeds, must be accompanied by valid CITES documents.

Some plant materials of CITES species are exempt from CITES requirements, including certain seeds and flasked seedlings (see proposed section 23.92). However, plants grown from exempt plant materials are regulated under CITES. In general, any plant grown from exempt plant material would be considered artificially propagated if grown under controlled conditions, but records should be kept to document that the plants came from exempt plant materials.

We propose to define ''salvaged plant'' for the purposes of this section and provide conditions that must be met for obtaining CITES documents to trade internationally in salvaged plants. These conditions include that the trade in Appendix-I plants and in Appendix-II plants whose entry into trade might otherwise have been considered detrimental to the survival of the species in the wild must clearly benefit the survival of the species and that the import must be by a *bona fide* botanic garden or scientific institution. Salvaged Appendix-I plants may not be sold or used to establish a commercial propagating operation.

Timber (section 23.73): The Parties recognize that trade in timber may require some variations on standard CITES procedures. Resolution Conf. 10.13 (Rev. CoP13) discusses the implementation of the Convention for timber species and defines some terms used in annotations to certain timber species. Resolution Conf. 12.3 (Rev. CoP13) incorporates specific recommendations for timber species listed in Appendix II or III that have a substantive annotation regulating either the trade in logs, sawn wood, and veneer sheets, or the trade in logs, sawn wood, veneer sheets, and plywood. It allows that under specific circumstances the period of validity for CITES documents for timber may be extended for a maximum of 6 months. It also includes provisions for changing the ultimate consignee for a shipment after export or re-export. We propose to incorporate these definitions and recommendations into this section.

Personal sport-hunted trophies (section 23.74): This proposed section defines ''sport-hunted trophy'' and outlines the requirements for trade in sport-hunted trophies, including the use of a sport-hunted trophy after import (see proposed section 23.55). Some countries allow limited take of Appendix-I species as part of an overall management plan. The export of Appendix-I hunting trophies requires both export and import permits under Article III of the Treaty (see proposed section 23.35). This practice is re-affirmed in Resolution Conf. 2.11 (Rev.).

We propose to define ''sport-hunted trophy'' to provide the public with a clear understanding of what we consider to be included in the term. The definition does not include handicraft items or items manufactured from the trophy used as clothing, curios, ornamentation, jewelry, or other utilitarian items. We based this definition on our experience with international trade in these items and the commonly understood meaning of the term from the dictionary and other wildlife regulations. The definition is similar to one used in 50 CFR part 18 (marine mammals) for sport-hunted polar bear trophies, which was developed to ensure that the trade in trophies was consistent with CITES. We considered language from a House Committee Report (H.R. Rep. No. 439, 103rd Cong., 2nd Sess. (1994)) that states ''trophies normally constitute the hide, hair, skull, teeth, and claws of an animal that can be used by a taxidermist to create a mount of an animal for display or tanned for use as a rug.''

Several commenters believed that any items manufactured from a trophy should be included in the definition. We do not agree that utilitarian items manufactured from a trophy should still be considered a trophy. We recognize that manufactured items have been included in trophy shipments imported in the past, but this practice has caused problems in differentiating between commercial and noncommercial shipments, particularly with Appendix-I specimens. In a number of instances, large quantities of fully manufactured products, such as briefcases, handbags, and golf bags, have been imported as parts of a ''hunting trophy.'' Indeed, one commenter stated that it was routine for commercial curios and other items to be packed and shipped with a trophy. Since we accord a noncommercial status to personal sport-hunted trophies, we must be able to distinguish between a noncommercial trophy and commercial products derived from an animal that may or may not have been taken by the hunter as a sport-hunted trophy.

This does not mean that the import or export of utilitarian items made from a trophy is not allowed. Provided that the items are not identified as a sport-hunted trophy, manufactured items of Appendix-II and -III species may be imported into the United States or exported from the United States with CITES export or re-export documents that indicate an appropriate purpose

code (*e.g.*, ''P'' for personal or ''T'' for commercial). The purpose code ''H'' (sport-hunted) may not be used. However, the Parties have established greater controls over the international movement of Appendix-I specimens. As with Appendix-II or -III species, manufactured items produced from an Appendix-I species outside the United States could be imported provided that all of the required findings have been made and the items are not identified as a sport-hunted trophy.

One commenter stated that the definition failed to include hooves, penis bones, antlers, or meat, and was especially concerned that the definition would prevent a hunter from bringing in the meat of a sport-hunted animal. We note that the definition is not an all-inclusive list of parts of a trophy, but provides examples. It already included bones, antlers, and meat, but, based on the commenter's statement, we have added hooves to the proposed definition.

The commenter also stated that blood, skin, and meat samples from a sport-hunted trophy imported for scientific research should be considered a trophy. We do not agree that these samples are a trophy, and the items should be properly treated as research specimens with the appropriate permits.

One commenter opposed the definition because it would not allow a sport-hunted trophy to be imported by anyone other than the hunter. We believe that the hunter is the individual responsible for the take of a personal sport-hunted trophy and, therefore, the individual eligible for the import and export permit. This is consistent with other regulations on import of personal sport-hunted trophies, including polar bears and migratory birds.

Many commenters were confused by the proposed definition and believed that it applied to any sport-hunted trophy in the United States, including nonprotected species. They stated that the definition would no longer allow them, as taxidermists in the United States, to manufacture utilitarian items from a sport-hunted trophy. To clarify, these proposed regulations do not apply to non-CITES species nor do they restrict the manufacture of utilitarian items from most CITES Appendix-II or Appendix-III specimens once a sport-hunted trophy has been imported into the United States. The export or re-export of utilitarian items manufactured in the United States from most CITES Appendix-II or -III sport-hunted trophies is also allowed when the appropriate CITES documents have been obtained. However, this is not the case with sport-hunted trophies of Appendix-I species or certain Appendix-II species (see proposed section 23.55).

We also propose to include specific conditions for import, export, or re-export of leopard, markhor, and black rhinoceros hunting trophies as provided in Resolutions Conf. 10.14 (Rev. CoP13), Conf. 10.15 (Rev. CoP12), and Conf. 13.5, respectively. In any calendar year, a hunter may import no more than two leopard trophies, one markhor trophy, and one black rhinoceros trophy. Any tagging or marking requirements for skins, horns, or other parts of trophies, mounted or loose, must also be met. These requirements are in addition to any requirements in 50 CFR part 17.

One commenter recommended that we prohibit the import of all sport-hunted trophies listed in the CITES Appendices. We decline to accept this recommendation. CITES allows a limited trade in Appendix-I sport-hunted trophies when the permitting requirements are met, and any Appendix-II and -III specimens may be traded as sport-hunted trophies when the necessary findings are made. We note that some Appendix-II and -III species that are traded as sport-hunted trophies are also commercially harvested for other purposes. CITES did not intend to ban the trade in species just because the specimen is a sport-hunted trophy, nor do we have the authority to impose a ban on the import of any CITES species without legal or scientific justification.

What Are the Proposed Changes to Subpart F of 50 CFR Part 23—Disposal of Confiscated Wildlife and Plants?

Confiscated specimens (section 23.78): Article VIII(4) and (5) of the Treaty outline the requirements for disposal of confiscated live specimens, and the Parties adopted Resolution Conf. 10.7, which sets out detailed guidance. One commenter suggested we prepare an action plan for the disposition of confiscated live wildlife. We recognize that the resolution recommends development of such a plan. However, we deal with confiscated live specimens on a case-by-case basis because of the complexity of the issue, including the variety of species, volume, and lack of resources.

For the United States, the general procedures for disposal of forfeited or abandoned property are in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162. These procedures apply to CITES, as well as the other laws that we, APHIS, or CBP enforce. We are not proposing to revise the regulations concerning disposal of property, but to add a section to these regulations on the process we use in making a decision to dispose of confiscated live CITES wildlife and plants that have been forfeited or abandoned to FWS Law Enforcement, APHIS, or CBP. One commenter suggested that a similar paragraph be included in this subpart to explain how we dispose of confiscated dead specimens, including plant products and byproducts. Although CITES has not addressed the issue of disposal of dead specimens, including their parts, products, or derivatives, we revised the regulations to clarify that the procedures set out in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162 apply to both living and dead specimens.

Sometimes the country of export requests that a shipment of confiscated live specimens be returned. Although under Article VIII of the Treaty, this is one of the options a country should consider, we are not always able to select this option or return specimens quickly. For example, when criminal charges are brought in connection with confiscated specimens, litigation may require us to hold the specimens as evidence for an extended period of time, and the court may decide how we are to dispose of them.

Many factors must be considered when live specimens are seized. The most important of these factors is the welfare of the wildlife or plants. Resolution Conf. 10.7 details a number of options for disposal as well as the difficulties associated with each option. We propose to consult this guidance as necessary in making a decision. For wildlife, the options discussed include maintenance in captivity, return to the wild, and euthanasia. For plants, the resolution discusses maintenance in cultivation, return to the wild, and destruction. Two commenters stated that euthanasia should not be considered an option for wildlife, and one commenter stated that destruction should not be considered an option for plants. When other options are not available, we consider euthanasia or destruction since it may present the most humane or appropriate option.

Return to the wild of confiscated specimens is rarely possible. It can carry enormous risks for existing wild populations, such as introduction of disease, and can result in the death of the specimens released due to starvation, disease, or predation. Before return to the wild is considered, a country must decide if that action would make a significant contribution to the conservation of the species or might be harmful to the conservation of the species in the wild.

In many countries, including the United States, some confiscated specimens have been donated to zoos, aquariums, or botanical gardens. However, this option is not always open when large numbers of common species are seized. The zoological community recognizes that placing animals of low conservation value in limited space may benefit those individuals, but may detract from conservation efforts as a whole. As a result, they are setting conservation priorities for space. Botanical gardens are in a similar situation.

To comply with the intent of Resolution Conf. 9.10 (Rev. CoP13) and, in limited circumstances, to return confiscated live Appendix-I specimens to the country of export, we propose to add an issuance criterion for re-export of confiscated specimens in section 23.37(c)(5). It would require us, before issuing a re-export certificate, to find that the proposed re-export of confiscated specimens would not be detrimental to the survival of the species. Regulations in 50 CFR part 12 allow for the sale of confiscated Appendix-II and -III wildlife and plants. When specimens have been confiscated and subsequently sold or transferred by the U.S. Government, we would consider them legally acquired when the applicant provides the appropriate documentation to show the origin of the specimens. However, because the specimens were imported without the proper CITES documents, we need to make the biological finding (that normally would have been made prior to export) before issuing a re-export certificate.

Participation in the Plant Rescue Center Program (section 23.79): We propose to add this section to outline how a public institution can participate in our Plant Rescue Center Program. Shipments of live plants imported into the United States in contravention of CITES are confiscated or seized and generally placed with a participating institution. We have enlisted more than 60 publicly accessible, nonprofit institutions, including botanical gardens, arboretums, zoological parks, and research institutions in the United States, to cooperate with us in this program.

Several commenters expressed concerns that the rescue centers did not want the plants in most cases, had no place to put them, and were ill-equipped to handle them. We disagree with these comments. We realize that many CITES plants require specialized care. This was one of the reasons we initiated the Plant Rescue Center Program. We require information on a rescue center's facilities and the types of plants they are able to maintain when it is accepted into the program. Prior to placing plants, we contact facilities with the expertise to care for them and determine if they are willing and able to care for the seized plants. Acceptance of any shipment is voluntary, and a shipment is placed only after we receive confirmation from the individual rescue center. Some commenters were concerned that there were delays in placing plants in rescue centers. Plants may not always be sent to a rescue center immediately after they are seized. Some shipments may be delayed due to regulatory procedures that APHIS or CBP must follow relative to the seizure of property.

One commenter congratulated us on the establishment of the Plant Rescue Center Program and believed that it was an excellent step in dealing with the complicated and burdensome task of disposal of seized live plants. Another commenter suggested that we continue refining the procedures for treatment of orchids in Plant Rescue Centers and make provisions for better interim care for plants temporarily held. We plan to continue our efforts to provide care for seized plants and to work with APHIS and CBP on care of seized plants.

One commenter stated that the destruction of confiscated plants does not further conservation and that the availability of confiscated wild and propagated plants for propagation would further conservation. The commenter also suggested that if a rescue center rejects confiscated orchids, the specimens should be available for sale. We received several other comments concerning the ultimate disposition of seized plants. We only destroy plants as a last resort. However, the manner in which seized items are ultimately handled, including sale, is addressed in 50 CFR part 12, 7 CFR part 356, and 19 CFR part 162.

What Are the Proposed Changes to Subpart G of 50 CFR Part 23—CITES Administration?

Roles of the Secretariat and the committees (section 23.84): This proposed section outlines the responsibilities of the Secretariat, established under Article XII of the Treaty, and the responsibilities of the committees, which were established under Resolution Conf. 11.1 (Rev. CoP13). The committees provide administrative, technical, and scientific support to the Parties. Resolution Conf. 11.1 (Rev. CoP13) also outlines how regional representatives are selected to serve on the various committees and their responsibilities.

Meetings of the CoP (section 23.85): We propose to add basic information on what a CoP entails, how CoP locations and dates are determined, and who can attend the meetings.

Notice of a CoP (section 23.86): This proposed section revises sections 23.31 through 23.39 to clarify how we provide information to the public concerning a CoP and how the public may participate in preparations for it. We propose to provide, either through published notices in the **Federal Register** or postings on our Web site, information on the location, dates, agenda, proposed amendments to the Appendices, proposed resolutions, and public meetings. Since we will provide up-to-date information on how to participate in the public meetings, including the correct addresses for submission of any written comments and a telephone number for further information, we propose not to include the addresses and telephone numbers in 50 CFR part 23.

Development of U.S. documents and negotiating positions for a CoP (section 23.87): We propose to reorganize the information in sections 23.33, 23.35, and 23.38 of the current regulations to show the process we follow in developing documents for submission to the CoP and our negotiating positions, including how the public can participate in this process. We will outline what the United States is considering and our proposed negotiating positions on agenda items and proposals from other countries either through **Federal Register** notices or postings on our Web site. We will hold one or more public meetings to discuss these issues. One commenter wanted a deadline for publication of final negotiating positions in the **Federal Register**. We propose not to publish final negotiating positions because some issues are extremely complex and require extensive coordination, and our final negotiating positions may not be available prior to the CoP. We hold daily briefings at the CoP for U.S. observers where we often discuss our tentative negotiating positions and any changes to them. We also propose to delete section 23.39 of the current regulations and no longer publish an official report after each CoP. Information on the results of a CoP is available from a number of sources, such as the CITES Web site, so the production of a separate report has become duplicative and not necessary. We propose to delete section 23.36 in the current regulations since this information is incorporated into other newly proposed sections.

Resolutions and decisions (section 23.88): At each CoP, the Parties adopt resolutions and decisions. As noted by the United States Court of Appeals for the District of Columbia in *Castlewood Products, L.L.C.* v. *Norton* (April 30, 2004), the resolutions provide appropriate clarification and guidance when interpreting the Treaty and our regulations. Decisions typically contain instructions to the permanent committees, Parties, or Secretariat on actions that are to be implemented, often within a specific timeframe, and then become redundant or obsolete. We propose to add this new section to provide the legal basis and purpose of resolutions and decisions. We also propose to implement Resolution Conf. 4.6 (Rev. CoP13), which establishes that a resolution or decision becomes effective 90 days after the meeting at which it is adopted, unless the resolution or decision specifies a different date.

What Are the Proposed Changes to Subpart H of 50 CFR Part 23—List of Species?

Listing criteria for Appendix I or II (section 23.89): CITES lists species in one of three Appendices for which there are different levels of regulation, depending on the degree of threat to the survival of the species and the protection in international trade believed to be necessary by the Parties (see proposed section 23.4). In 1992 at CoP8, the Parties directed the Standing Committee to undertake, with the assistance of the Secretariat, a revision of the criteria for amending the Appendices in Resolution Conf. 1.1 (referred to as the Berne criteria). This review, carried out in consultation with the Parties, was based on initial technical work done by IUCN—The World Conservation Union in collaboration with species experts. A joint meeting of the Plants and Animals Committees addressed all aspects of this review, in association with the Standing Committee, in Brussels in September 1993. From this review, the Parties adopted Resolution Conf. 9.24, which established specific criteria for listing species. Between CoP11 and CoP13, the Parties conducted a full review of the listing criteria with regard to the scientific validity of the criteria, definitions, notes, and guidelines, and their applicability to different groups of organisms. That review resulted in the adoption of Resolution Conf. 9.24 (Rev. CoP13). This proposed section adopts the revised resolution as it is written. When considering any proposal to amend Appendix I or II, the Parties should apply precautionary measures so that scientific uncertainty is not used as a reason for failing to act in the best interest of the conservation of the species. We propose to define the terms ''precautionary measures'' and ''affected by trade'' in section 23.5.

According to Article II of the Treaty, Appendix II should include species that could be threatened with extinction if trade is not regulated (Article II(2)(a)) and species where trade should be regulated because of their similarity of appearance or close association with other listed species (Article II(2)(b)). In both cases, our goal is to ensure that international trade does not adversely affect any listed species. In addition, we wish to ensure that trade does not get to a level where the species would meet the criteria for listing in Appendix I and that the species is maintained at a level consistent with its role in its ecosystem. To monitor the effectiveness of protection offered by the Convention, range countries, in cooperation with the Animals Committee or the Plants Committee, are instructed to regularly review the status of species listed in Appendices I and II.

One commenter recommended that the specific resolution containing the criteria for amending Appendix I or II should be referenced within this section of the regulation. We have referenced the current resolution (Conf. 9.24 (Rev. CoP13)) containing these criteria here in the preamble. Because the CITES resolutions are dynamic documents, subject to change by the CoP, we have avoided citing them specifically in any part of the proposed rule. However, we intend that the listing criteria identified in this section will faithfully track the criteria and principles set out in Resolution Conf. 9.24 (Rev. CoP13). If that resolution is substantially modified at a future CoP, then we may propose amendments to this section to maintain our science-based interpretation of criteria for the addition or removal of species from Appendices I and II.

Numerous commenters questioned the biological or management basis for the inclusion of certain species, such as all orchids, in the CITES Appendices. Species were first placed in the Appendices as a negotiated part of the Treaty, based on the advice of experts. Subsequently, species have been proposed for inclusion based on the criteria in effect at the time, and the Parties voted to include them. If anyone believes that a species or higher taxonomic group no longer qualifies for listing in the CITES Appendices, based on an evaluation of the species under the current criteria, then that person is encouraged to submit relevant information to us so that we may consider submission of a proposal to a future CoP.

One commenter suggested that criteria for removal from the Appendices (delisting) and transfer from Appendix I to Appendix II (downlisting) should also be included in this section, not just criteria for listing. The criteria for including a species in the Appendices (listing) are the same as the criteria for delisting, downlisting, and uplisting. If an Appendix-I species no longer meets the criteria for listing in Appendix I, then it may be transferred to Appendix II. Likewise, if the status of an Appendix-II species changes so that it meets the criteria for listing in Appendix I, then it may be transferred to Appendix I. If an Appendix-II species no longer meets the criteria for listing in Appendix II, then it may be removed from the Appendices, unless individual Parties wish to retain the species in Appendix III (see proposed section 23.90).

Listing criteria for Appendix III (section 23.90): Article II(3) of the Treaty sets out that Appendix III includes native species that a Party lists to obtain international cooperation in controlling trade. Under Article XVI of the Treaty, a Party can include a species in Appendix III by submitting information to the Secretariat. No vote of the Parties is required. The criteria to list a species in Appendix III include the requirement that the species must be native to the listing country, be protected under that country's regulations to prevent or restrict exploitation and trade, and be in international trade, with an indication that cooperation of other Parties would help to control illegal trade. The listing Party can request that the species be removed from Appendix III at any time. By listing a species in Appendix III, trade data and other relevant information can be gathered to assist policy makers in a country to determine whether the species should be proposed for listing in Appendix II, removed from Appendix III, or retained in Appendix III.

This proposed section incorporates Resolution Conf. 9.25 (Rev.) by outlining the criteria that a country must address to list a species in Appendix III. In addition, it gives a general description of the process we will use to decide if a species native to the United States should be listed in Appendix III. On December 16, 2005 we published a final rule in the **Federal Register** (70 FR 74700) listing the alligator snapping turtle (*Macroclemys* [=*Macrochelys*] *temminckii*) and all species of map turtle (*Graptemys spp.*) in Appendix III. These listings will

become effective on June 14, 2006. These are the first taxa to be listed by the United States in Appendix III.

Listed species (section 23.91): This proposed section is a revision and reorganization of current section 23.23. It provides information on how to determine if a species is listed in the CITES Appendices and when a listing becomes effective. The official list of CITES species is maintained by the CITES Secretariat and can be found on the CITES Web site (*http://www.cites.org*). In the past, we published an unofficial list of CITES species in the CFR. Because the official CITES list is available on the CITES Web site, we propose to discontinue compilation of our unofficial list and its publication in the CFR. We believe this is a more practical approach since the unofficial list in the CFR was extremely resource intensive to compile and was often outdated because the CFR is only published annually.

Exemptions (section 23.92): This proposed section also is a revision of current section 23.23. It provides details on what materials are exempt. We propose to add coral sand; coral fragments; personal and household effects as provided in proposed section 23.15; urine, feces, and synthetically derived DNA as provided in proposed section 23.16; and certain marine specimens protected under another treaty or international agreement as provided in proposed section 23.39 as exempt from the requirements of CITES. One commenter suggested we include the phrase ''or cultivar'' in paragraph (b) after the word ''hybrid.'' We do not agree because we consider cultivars to be regulated by CITES. At the 53rd Meeting of the Standing Committee in June 2005, the issue of the legality of some plant annotations, including the annotations concerning cultivars, was discussed. This issue will need to be considered by the Parties at the next CoP.

Required Determinations

Regulatory Planning and Review: The Office of Management and Budget (OMB) has determined that this is a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues. Therefore this proposed rule will be reviewed by OMB.

a. This proposed rule will not have an annual economic effect of $100 million or negatively affect a part of the economy, productivity, jobs, the environment, or other units of government. An assessment to clarify the costs and benefits associated with this rule follows. The purpose of this proposed rule is to clarify and update the regulations that implement CITES. It is designed to assist individuals and businesses who import and export specimens of CITES species by clearly outlining the requirements that the United States, as well as the other 168 Parties, must follow under the Convention. As of July 19, 2005, our records show there are 5,988 active U.S. CITES documents (the period of validity for documents ranges from 6 months to 4 years). In the United States, the percentage of CITES documents issued for various uses is generally as follows: 34 percent hunting trophies; 19 percent commercial wildlife; 18 percent personal use; 8 percent scientific research; 6 percent commercial plants; 6 percent zoological parks; 5 percent breeding; 3 percent circuses; and 1 percent miscellaneous.

The overwhelming majority of countries that trade internationally in wildlife and plants are CITES Parties. Because most of these Parties are currently implementing the CITES resolutions, this proposed rule should cause little or no impact for importers or exporters. The foreign suppliers are, in most cases, already required by their own country's laws to follow the CITES resolutions and decisions. In addition, if a U.S. importer were to receive a shipment that did not comply with all of the requirements of the country of export, the import may violate the Lacey Act Amendments of 1981. Exporters need to comply with the requirements of the importing country in addition to U.S. requirements. If a shipment is not in compliance with all applicable laws, it may be seized, detained, or refused clearance at its destination. These proposed revisions include clarifications of the Convention's provisions that have not previously been published. Thus, U.S. businesses are already complying with most of the proposed revisions. Proposed revisions that would impact current business practices are addressed below.

We do not expect that this proposed rule would have a significant effect on the volume or dollar value of wildlife and plants imported, exported, or re-exported to and from the United States. There is no indication that this proposed rule would result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial.

Many of the costs incurred by industry would be associated with changes to required information collections. These are annual, periodic, or one-time collections. The costs presented represent the estimated yearly costs for all types of collections. Refer to the ''Paperwork Reduction Act'' section for more details. The yearly cost associated with new information collections described in the proposed rule is $34,063 ($2,813 in value of burden hours + $31,250 in application fees). The 10-year quantitative cost is $340,630 ($299,281 discounted at 3 percent or $255,991 discounted at 7 percent). We do not anticipate that this rulemaking would have a significant effect on permit application processing time for CITES documents issued under 50 CFR part 23. We do not expect administrative costs to increase.

Costs not associated with information collections are more difficult to quantify. These costs include (1) The need for operations that are breeding Appendix-I wildlife for commercial purposes to become registered, (2) the need for facilities that are breeding Appendix-I wildlife for noncommercial purposes to participate in a cooperative conservation program, (3) conditioned noncommercial use of Appendix-I and certain Appendix-II and -III specimens after import into the United States, and (4) the need to label sturgeon caviar and re-export caviar within 18 months from the date of the issuance of the original export permit.

To comply with Article II of the Treaty, which states that Appendix-I specimens ''* * * must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances,'' we propose no longer to allow the use of Article III of the Treaty for commercial export of Appendix-I wildlife. This proposed new provision means that operations that are breeding Appendix-I wildlife for commercial purposes under Article VII(4) of the Treaty need to become registered. This does not affect the sale of specimens within the United States, only the commercial export of such specimens, nor does it preclude the export of specimens where the export is not commercial, such as scientific, conservation, or personal use.

Wildlife may be exported with an exemption bred-in-captivity certificate under Article VII(5). At CoP12, the Parties agreed that facilities that are breeding Appendix-I species for noncommercial purposes must be participating in a cooperative conservation program with one or more of the range countries for that species to qualify for such a certificate. We propose to adopt this new provision to ensure that trade in Appendix-I species would not be detrimental to the survival of the species in the wild. Many Appendix-I species also are listed under the Endangered Species Act, and an

export permit can be issued only when the activity will provide for the conservation of the species. Thus, we do not expect administrative costs to facilities that want to export Appendix-I species bred for noncommercial purposes to increase.

Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it can be imported only when the intended use is not for primarily commercial purposes. In addition, the Parties agreed that Appendix-I trophies be ''imported as personal items that will not be sold in the country of import'' (Resolution Conf. 10.14 (Rev. CoP13) for leopards, Resolution Conf. 10.15 (Rev. CoP12) for markhor, and Resolution Conf. 13.5 for black rhinoceros). We propose to incorporate into 50 CFR part 23 a provision that Appendix-I specimens and certain Appendix-II and -III specimens may not be imported and subsequently used for a commercial purpose. This provision is to prevent commercial use after import when the trade allowed under CITES is only for a noncommercial purpose. The provision would apply to Appendix-II specimens that are subject to an annotation that allows noncommercial trade of sport-hunted trophies, such as the African elephant populations of Botswana, Namibia, South Africa, and Zimbabwe. Under the regulations proposed here, these types of trophies may be imported for personal use only and may not be sold or otherwise transferred for economic gain, including for tax benefits, after import into the United States. From 2001 to 2003, there were between 265 and 300 African elephant trophies and between 420 and 450 leopard trophies imported into the United States annually.

We propose to implement changes in requirements for trade in sturgeon caviar agreed at CoP12 and CoP13. We will require that all caviar be labeled in accordance with Resolution Conf. 12.7 (Rev. CoP13) and any re-exports of caviar take place within 18 months from the date of issuance of the original export permit. We believe these procedures are consistent with current industry practices and will not cause any additional burden to applicants.

The publication of the proposed revisions would assist U.S. businesses in complying with CITES requirements when engaging in international wildlife trade. Many of the benefits associated with the proposed rule are due to clarified regulations. Benefits include (1) Streamlining procedures for traveling exhibitions, (2) establishing application procedures for registration of operations breeding Appendix-I wildlife species for commercial purposes, (3) issuing a bred-in-captivity certificate that eliminates the need to obtain an import permit, (4) using standardized coral nomenclature to simplify procedures and therefore provide relief to entities that trade in coral internationally, (5) informing the public about proper CITES documents and procedures for international travel with personal live wildlife (*i.e.*, pets), (6) streamlining procedures to issue permits for trade that would have a negligible impact or no impact on the conservation of the permitted species and that is repetitive in nature, (7) simplifying procedures for shipment of sample collections under an ATA carnet, (8) for certain wildlife hybrids, issuing or accepting a letter that could be used repeatedly, in place of requiring a single-use permit, and (9) exempting urine, feces, and synthetically derived DNA from CITES requirements. These benefits are presented qualitatively below.

We expect the proposed regulations to provide relief in streamlining the CITES document procedures for traveling exhibitions. At CoP 8, the Parties agreed to issue CITES documents for live pre-Convention and bred-in-captivity animals that travel internationally as part of an exhibition. The document is to be treated like a passport, allowing the exhibitor to use the same CITES document to cross multiple borders, rather than having to obtain a new document for each border crossing. This CITES document is valid for three years, rather than six months like a standard export permit. At CoP 12, the Parties agreed to extend these provisions to all traveling exhibitions, not just traveling live-animal exhibitions. We propose to incorporate provisions for such traveling exhibitions into these regulations and to define the term ''traveling exhibition'' to include live animals and plants and dead items (e.g., herbarium specimens and museum specimens). We estimate that 50 permittees would be affected by this procedure, although we do not categorize permittees as traveling exhibitors in our records, and, therefore, are not able to quantify the precise effect of this relief.

We also propose to implement Resolution Conf. 12.10 (Rev. CoP13) and establish application procedures for an operation breeding Appendix-I wildlife species for commercial purposes to register their facility for each Appendix-I species. Specimens that originate from registered facilities may be granted export permits or re-export certificates without the issuance of an import permit. This provides some economic relief by allowing specimens from registered facilities to be imported for commercial purposes, trade which is otherwise prohibited by the Treaty for Appendix-I specimens. The registration fee in 50 CFR part 13 is set at $100. To date, the United States has registered four commercial Appendix-I breeding operations. Since 2000, two facilities have exported a total of 5 shipments per year, on average. We anticipate that about 15–20 operations would seek to be registered annually.

We are proposing to implement the definition of ''bred for noncommercial purposes'' in Resolution Conf. 12.10 (Rev. CoP13) for Appendix-I wildlife. Facilities that are breeding for noncommercial purposes must participate in a cooperative conservation program with one or more of the range countries for that species. Qualifying applicants are issued a bred-in-captivity certificate that eliminates the need to obtain an import permit. The number of facilities exporting Appendix-I wildlife is relatively small. In 2002, we issued about 100 CITES documents to export Appendix-I specimens.

We propose to exempt coral sand and coral fragments from CITES requirements, because the Parties have recognized the difficulty in identifying these coral specimens. The Parties also agreed to the use of higher taxon names (broader classification) for coral rock and live and dead coral under certain conditions. We propose to accept a CITES document that uses a higher taxon name for coral when the CoP has agreed to its use. A current list of acceptable higher taxon names for coral is available on the CITES Web site (*http://www.cites.org*) or from us. We anticipate that the use of this standardized nomenclature and the exemption of coral sand and coral fragments from CITES requirements would simplify procedures and therefore provide relief to entities that trade in coral internationally. Because we are uncertain how much of the trade would be affected by these changes, we are unable to quantify their impact.

Resolution Conf. 10.20 (''Frequent cross-border movements of personally owned live animals'') provides for the issuance of certificates for personal live wildlife that would be valid for a period of three years and allow for multiple imports, exports, and re-exports of the covered specimens. Current U.S. regulations do not inform the public of this. The proposed rule advises travelers that they must have a CITES document in order to travel with their CITES-listed pets, and it provides procedures for the issuance of these CITES documents.

Individuals importing live CITES wildlife as pets would be required under this proposed rule to obtain a CITES document prior to arriving in the United States with their pets. Since most Parties require CITES documents for international trade of all live specimens, this requirement would ensure that pet owners are not inadvertently violating the Lacey Act by exporting a CITES species without having obtained the required CITES permits. Although we can issue and accept retrospective documents under limited circumstances for activities that have already occurred, the practice is discouraged. On average, we issue about 20 retrospective documents for personal shipments, including live wildlife, annually. These revised regulations would not impose an additional paperwork or financial burden for pet owners, but may actually save time and money by clearly informing travelers of CITES requirements.

This proposed rule would provide relief to permit applicants by streamlining procedures to issue permits for trade that would have a negligible impact or no impact on the conservation of the permitted species and that is repetitive in nature (*i.e.*, the same type of specimens or the same actual specimens are exported shipment after shipment). Examples include biomedical companies shipping biological samples derived from cell lines they maintain and production facilities exporting certain native Appendix-II (and potentially Appendix-III) species. In the past, in an effort to facilitate the timely movement of such specimens, we have issued ''multiple-use'' export documents that could be photocopied for use with multiple shipments. However, many countries no longer accept photocopied documents. Thus, we propose to implement streamlined procedures adopted at CoP12 and issue partially completed documents under specific circumstances. The permittee would be authorized to complete specifically identified boxes on the document and would be required to sign the document to certify that the information entered was true and correct. For U.S. documents, an applicant would submit the appropriate application form for the proposed activity and show that the use of this type of document is beneficial to both the applicant and to the Service. We could issue multiple partially completed documents when we find that the issuance criteria for the proposed activity and the issuance criteria for a partially completed document are met. In 2002, we issued about 350 ''multiple-use'' documents. We estimate that applicants would receive relief under this proposed rule for approximately 1,000 shipments a year.

This proposed rule would provide relief to applicants who travel internationally with collections of display samples, such as sets of shoes or reptile skin samples. At CoP13, the Parties agreed to allow the in-transit shipment of such collections under specific conditions. We propose to issue a CITES document that would allow these sample collections to move from one country to another before returning to the originating country, rather than requiring the issuance of a re-export certificate from each country visited. Such a CITES document must be accompanied by a valid ATA carnet. An ATA carnet is an international customs document that allows the temporary introduction of goods destined for fairs, shows, exhibitions, and other events. We estimate that approximately 50 applicants would benefit from this simplified procedure.

Certain wildlife hybrids may be excluded from CITES trade requirements under an interpretive resolution. Under the proposed rule, we would accept or issue a letter for a qualifying hybrid, in place of a permit. Unlike a permit, the letter could be used indefinitely for travel with the hybrid animal. We generally receive fewer than 10 inquiries concerning excluded hybrids annually.

We propose that urine, feces, and synthetically derived DNA of CITES species be exempt from CITES requirements under certain circumstances. We consider samples of urine and feces to be wildlife byproducts, rather than parts, products, or derivatives and therefore do not require CITES permits for the international movement of these specimens unless a permit is required by the other country involved in the trade. This exemption applies only to synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. Because we do not maintain records on the trade in these specimens we are unable to estimate the impact of this exemption.

b. This proposed rule will not create inconsistencies with other agencies' actions. As the lead agency for implementing CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. OMB has determined that this proposed rule raises novel legal or policy issues. As a Party to CITES, the United States is committed to fully and effectively implementing the Convention. This proposed rule clarifies the requirements for the import, export, and re-export of CITES specimens and informs individuals and businesses of the current requirements.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a ''small business'' as one with annual revenue or employment that meets or is below an established size standard. To assess the effects of the rule on small entities, we focus on industries that may have businesses that import, export, or re-export CITES specimens. Many of these businesses can be placed in the following categories: Zoos and Botanical Gardens with an SBA size standard of $6.0 million in average annual receipts; Merchant wholesalers, nondurable goods, with an SBA size standard of 100 employees; Leather and allied product manufacturers, with an SBA size standard of 500 employees; and Clothing and Clothing Accessories Stores, with an SBA size standard ranging from $6.0 million to $7.5 million in average annual receipts. The U.S. Economic Census does not capture the detail necessary to determine the

number of small businesses that are engaged in international commerce in CITES species. However, we expect that the overwhelming majority of the entities involved with this type of commerce would be considered small as defined by the SBA. The declared value for U.S. trade in CITES wildlife (not including plants) was $345 million in 2002 and $394 million in 2003.

These proposed new regulations would create no substantial fee or paperwork changes in the permitting process. Any increase in costs due to information collections is expected to be minimal. Response time for new information collections would vary from 6 minutes to 30 minutes per response and new application fees range from free to $100. The proposed regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

This proposed rule also benefits these businesses by providing updated and more clearly written regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of the Convention, which has been in effect in the United States since 1975.

Therefore, we have determined that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act: This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. As discussed above, this proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. This proposed rule provides the importing and exporting community within the United States updated and more clearly written regulations that implement CITES in the United States. This proposed rule would not have a negative effect on this part of the economy.

This proposed rule would affect all importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements would be evenly spread among all businesses, whether small or large. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This proposed rule would clarify and update the regulations that implement CITES and, as such, would provide benefits to all permit applicants in terms of time savings. However, this proposed rule may result in a small increase in the number of applications and processing fees for circuses, pet owners trading in CITES animal species, Appendix–I commercial breeding operations, and entities currently exporting under multiple-use permits. This rule also proposes to establish processing fees for the following application types: Introduction from the sea ($100), and registration of Appendix–I commercial breeding operations ($100). We anticipate fewer than 30 applicants would be affected annually by these new proposed fees.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule would enable U.S. importers and exporters of CITES species to better understand and comply with the regulations covering international trade in CITES wildlife and plants. Without these proposed revisions to the regulations, the U.S. importing and exporting community may not be able to compete effectively with foreign-based companies in the international trade of CITES specimens. This proposed rule would assist U.S. businesses in ensuring that they are meeting all current CITES requirements thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this proposed rule has no effect on small governments' responsibilities. This rule affects States only as described below, concerning export programs for certain CITES native species.

Some rural communities rely on the added income produced by harvesting and selling certain CITES species that occur in the United States, such as the American alligator, American ginseng, bobcat, river otter, Canada lynx, brown bear, and gray wolf. The majority of consumer products made from these species are processed and manufactured overseas. During 2001–2003, annual exports of animal skins under the CITES export programs ranged from approximately $28 to 43 million. Annual exports of American ginseng during the same timeframe ranged from approximately $41 to 111 million. We are not proposing to change the existing regulations for export from these programs (although we may eliminate the need for export tags on certain native furbearers) and, therefore, do not anticipate any change in economic effects or current activities.

States have the right and responsibility to manage their wildlife and plants. Many States have monitored the harvest of CITES species since before the Convention came into effect. We have worked with States and Indian Tribes to use the information they collect to make CITES findings on a State or tribal basis where export program approval is requested. This allows us to make findings for all specimens of a particular species from a State or Tribe rather than requiring each individual applicant to supply the information we need to make legal acquisition and non-detriment findings. We supply States and Tribes that have approved programs for the export of skins with CITES export tags at no charge. These tags are placed on each skin under State-or Tribe-monitored conditions or regulations. The presence of a tag on a skin indicates that the skin was taken from an approved program and that the necessary findings have been made. By making programmatic findings, we reduce the amount of paperwork required considerably, and, thus, allow exporters of these species to benefit from streamlined export procedures. Export from a State or from tribal lands where there is not an approved program is also allowed. However, where there is no approved program, each applicant must complete the standard application for export (rather than the streamlined application for export from approved programs) and must provide all information necessary to determine that the specimens were

legally acquired and that their export would not be detrimental to the species.

In the proposed revisions, we provide the criteria we use in making decisions to approve a program. However, these proposed criteria are consistent with those that we currently employ in making such findings and program approval would continue to function as it does now. The proposed revisions provide the public with information on how the Service makes findings regarding State and tribal programs.

The proposed changes to the CITES regulations would assist those who rely on income from the export of certain native CITES species by allowing them to remain competitive when conducting business in international markets. This proposed rule provides the importing and exporting community a better opportunity for obtaining economic gain from international business in CITES specimens.

b. This proposed rule will not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule is not considered to have takings implications because it does not further restrict the import, export, or re-export of CITES specimens. Rather, the proposed rule updates the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and exporting community in conducting international trade in CITES specimens.

Federalism: These proposed revisions to Part 23 do not contain provisions that have Federalism implications significant enough to warrant preparation of a Federalism Assessment under Executive Order 13132.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize potential disagreements, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act: This proposed rule contains information collections for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We 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 information collections associated with this proposed rule will be used to evaluate applications for CITES documents and registrations. We will use the information to make decisions on the issuance, suspension, revocation, or denial of CITES documents and registrations.

The majority of the information collection associated with this proposed rule has been approved under OMB control number 1018–0093, which expires June 30, 2007. Forms approved under 1018–0093 include 3–200–19, 3–200–20, 3–200–23 through 3–200–37, 3–200–39, 3–200–43, 3–200–46 through 3–200–48, 3–200–52, and 3–200–53, 3–200–58, 3–200–64 through 3–200–66, and 3–200–73. Form 3–200–61 was approved under OMB control number 1018–0130. OMB approvals are valid for three years.

We are also requesting new information collections in conjunction with this proposed rule. We have developed new application forms for single-use permits under a master file or an annual program file and registration of production facilities for export of certain native species. The new information collections, including forms 3–200–74 and 3–200–75, will be submitted to OMB for approval at the same time this proposed rule is published. The new information collections and the estimated reporting burdens are indicated in the following table.

NEW INFORMATION COLLECTIONS ASSOCIATED WITH THE PROPOSED RULE

Form No.	Activity	Total number of respondents	Total number of responses	Estimated completion time (hours)	Total annual burden hours	Value of burden hours (dollars)	Application processing fee (dollars)	Total annual non-hour cost burden (dollars)	Regulation
3–200–74	Single-Use Permits Under a Master File or an Annual Program File.	350	1,000	0.1	100	$2,500	*$5	$30,000	50 CFR 23.51
3–200–75	Registration of a Production Facility for Export of Native CITES Species.	25	25	0.5	12.5	313	*50	1,250	50 CFR 23.36, 23.20, 13.11
Totals		375	1,025		112.5	2,813		31,250	

*These fees have been approved (see 70 FR 18311, April 11, 2005).

Under the proposed rule we would accept or issue a letter, in place of a permit, for international movement of certain wildlife hybrids. Unlike a permit, the letter could be used repeatedly for travel with the qualifying hybrid animal, thus reducing fees and paperwork. An individual may apply for an excluded hybrid letter by completing our standard export permit application. One example of trade in hybrids that might be eligible for exclusion from CITES is certain domestic ''Bengal cats'' (a cross between a domestic cat and a CITES-listed cat). We generally receive fewer than 10 inquiries concerning excluded hybrids annually.

We are also proposing to make changes to the requirements covering trade in sturgeon caviar (which includes paddlefish caviar). While we are proposing a number of modifications to 50 CFR part 23 that would specifically cover caviar trade, the majority of these requirements are already implemented by other CITES Parties that are either exporting caviar to the United States, or are receiving imports of caviar from the United States. Therefore, our proposed codification of these existing requirements would not impose a new burden on traders. We are proposing to require the labeling of containers of caviar being imported, exported, or re-exported to or from the United States. Resolution Conf. 12.7 (Rev. CoP13) recommends guidelines for a universal

labeling system in order to assist Parties in identifying legal caviar in trade. Sturgeon caviar may be traded internationally only if non-reusable labels containing specific information are affixed to primary and secondary containers. In 2002, we issued approximately 150 CITES documents to export and re-export caviar from the United States.

CITES Resolution Conf. 12.3 (Rev. CoP13) also requires each live animal in a traveling exhibition (such as a circus) that is pre-Convention or bred-in-captivity to be covered by a CITES document specific to that specimen. Currently, circuses are allowed to have one document that covers several animals. Under these proposed regulations, when a document covering multiple pre-Convention or bred-in-captivity specimens expires, the permittee would need to obtain one document for each specimen. As a result, this proposed rule may result in increased permit application processing fees ($100 per application) for a small number of importers and exporters. This requirement would be phased in as current documents expire. We estimate that approximately 40 circuses import and export CITES wildlife to and from the United States on a regular basis. If exhibitors do not obtain individual documents for each specimen, they may encounter difficulties at border crossings. During the comment period on the 2000 proposal, one circus stated that they would not wait for their documents to expire, but would obtain the new documents as soon as possible since the new type of documents should expedite border crossings.

The system for providing multiple single-use CITES documents, in lieu of a single multiple-use document, will result in increased permit fees ($5 per document) for those entities that were utilizing photocopied multiple-use CITES documents. We are eliminating multiple-use documents because many CITES Parties will no longer accept photocopied documents. We estimate 350 exporters will be impacted by this change.

We estimate the public burden for all the information collections associated with this proposed rule, including those already approved under OMB control number 1018–0093 and 1018–0130, will vary from 6 minutes to 40 hours per response, with the vast majority requiring 1 hour per response. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms and reports.

We invite comments on this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of our management functions involving CITES, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

National Environmental Policy Act (NEPA): The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.9.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

Energy Supply, Distribution or Use: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule proposes to revise the current regulations in 50 CFR part 23 that implement CITES. The proposed regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. Although this proposed rule is considered a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Clarity of this regulation: Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements of the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 23.1 What are the purposes of these regulations and CITES?) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to *Exsec@ios.doi.gov.*

Public Comments Solicited

We invite interested organizations and the public to comment on this proposed rule. It generally reflects the way we implement CITES under the current resolutions. We have drafted the proposal as part of our ongoing permits reform effort to simplify procedures, use risk assessment to reduce paperwork while still ensuring effective species conservation, and help people understand how to conduct international trade in CITES species. We are seeking comments, in particular, on whether the provisions of the proposed rule allow the affected public to effectively comply with CITES.

When providing comments, to the extent possible, reference the section of the proposed regulations on which you are commenting and give the category of your comments. Select one of the following categories: (1) International organization; (2) government; (3) nongovernmental conservation organization; (4) humane or animal welfare organization; (5) wildlife/pet business; (6) other business; or (7) private citizen. You may send comments via e-mail to: *part23@fws.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Also, please reference in your e-mail message the following information: ''RIN 1018-AD87''; your name and mailing address; and the category of your comments.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their name and home address, which we will honor to the extent allowable by law. In some

circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name and address or e-mail address, you must state this request prominently at the beginning of your comments. We will not, however, consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received will be available for public inspection by appointment, from 7:45 a.m. to 4:15 p.m., at the Division of Management Authority (see **ADDRESSES** section).

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Forest and forest products, Imports, Incorporation by reference, Marine mammals, Plants, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1384, 1401–1407; 16 U.S.C. 742a–742j–l; 16 U.S.C. 3371–3378.

2. In § 10.12, the definition of *United States* is revised to read as follows:

§ 10.12 Definitions.

* * * * *

United States means the several States of the United States of America, District of Columbia, Commonwealth of Puerto Rico, American Samoa, U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island, or any other territory or possession under the jurisdiction of the United States.

* * * * *

PART 13—[AMENDED]

3. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374; 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

4. Section 13.1 is revised to read as follows:

§ 13.1 General.

(a) A person must obtain a valid permit before commencing an activity for which a permit is required by this subchapter, except as provided for retrospective permits in § 23.53 of this subchapter for certain CITES shipments under very specific situations.

(b) A person must apply for such a permit under the general permit procedures of this part and any other regulations in this subchapter that apply to the proposed activity.

(1) The requirements of all applicable parts of this subchapter must be met.

(2) A person may submit one application that includes the information required in each part of this subchapter, and a single permit will be issued if appropriate.

5. Section 13.11(d) is amended, as set forth below, by:

a. Revising the first two sentences in paragraph (d)(1); and

b. Adding to the table in paragraph (d)(4) the following four entries in the section ''Endangered Species Act/CITES/Lacey Act'' immediately before the last four entries in that section so that all entries that begin with the word ''CITES'' are listed together:

§ 13.11 Application procedures.

* * * * *

(d) *Fees.* (1) Unless otherwise exempted under this paragraph (d), you must pay the required permit processing fee at the time that you apply for issuance or amendment of a permit. You must pay in U.S. dollars. If you submit a check or money order, it must be made payable to the ''U.S. Fish and Wildlife Service.''

* * * * *

(4) *User fees.* * * *

Type of permit	Citation	Fee	Amendment fee
* * * *	*	*	*
Endangered Species Act/CITES/Lacey Act			
* * * *	*	*	*
CITES Introduction from the Sea	50 CFR 23	100	50
CITES Participation in the Plant Rescue Center Program	50 CFR 23	(1)	(1)
CITES Registration of Appendix-I Commercial Breeding Operations	50 CFR 23	100	
CITES Request for Approval of an Export program for a State or Tribe (American ginseng, Certain furbearers, and American Alligator)	50 CFR 23	(1)	(1)
* * * *	*	*	*

* * * * *

6. Section 13.12(a)(1) is revised to read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(1) Applicant's full name and address (street address, city, county, state, and zip code; and mailing address if different from street address); home and work telephone numbers; and, if available, a fax number and e-mail address, and:

(i) If the applicant resides or is located outside the United States, an address in the United States, and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and

(ii) If the applicant is an individual, the date of birth, social security number, if available, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

(iii) If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the type of business, corporation, agency, or institution; and the name and title of the person responsible for the permit (such as president, principal officer, or director);

* * * * *

7. Section 13.22(c) is revised to read as follows:

§ 13.22 Renewal of permits.

* * * * *

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit may continue the activities authorized by the expired permit until the Service acts on the application for renewal if all of the following conditions are met:

(1) The permit is currently in force and not suspended or revoked;

(2) The person has complied with this section; and

(3) The permit is not a CITES document that was issued under part 23 of this subchapter (because the CITES document is void upon expiration).

* * * * *

8. Section 13.46 is amended by adding a sentence at the end of the section to read as follows:

§ 13.46 Maintenance of records.

* * * Permittees who reside or are located in the United States and permittees conducting commercial activities in the United States who reside or are located outside the United States must maintain records at a location in the United States where the records are available for inspection.

PART 17—[AMENDED]

9. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.8 [Redesignated]

10. Part 17 is amended by redesignating § 17.8 as § 17.9.

11. New § 17.8 is added to read as follows:

§ 17.8 Import exemption for threatened, CITES Appendix-II wildlife

(a) Except as provided in a special rule in §§ 17.40 through 17.48 or in paragraph (b) of this section, all provisions of §§ 17.31 and 17.32 apply to any specimen of a threatened species of wildlife that is listed in Appendix II of the Convention.

(b) *Import.* Except as provided in a special rule in §§ 17.40 through 17.48, any live or dead specimen of a fish and wildlife species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided all of the following conditions are met:

(1) The specimen was not acquired in foreign commerce or imported in the course of a commercial activity;

(2) The species is listed in Appendix II of the Convention.

(3) The specimen is imported and subsequently used in accordance with the requirements of part 23 of this subchapter, except as provided in paragraph (b)(4) of this section.

(4) Personal and household effects (see § 23.5) must be accompanied by a CITES document.

(5) At the time of import, the importer must provide to the FWS documentation that shows the specimen was not acquired in foreign commerce in the course of a commercial activity.

(6) All applicable requirements of part 14 of this subchapter are satisfied.

12. In § 17.42, paragraphs (a)(1), (a)(2)(ii)(A), (a)(2)(ii)(B), and (c) are revised to read as follows, paragraphs (a)(3) and (a)(4) are added, and paragraph (g) is removed and reserved:

§ 17.42 Special rules—reptiles.

(a) American alligator (*Alligator mississippiensis*)—(1) *Definitions.* For purposes of this paragraph (a) the following definitions apply:

(i) *American alligator* means any specimen of the species *Alligator mississippiensis*, whether alive or dead, including any skin, part, product, egg, or offspring thereof held in captivity or from the wild.

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in § 23.70(b) of this subchapter apply to this paragraph (a).

(2) * * *

(ii) * * *

(A) Any skin of an American alligator may be sold or otherwise transferred only if the State or Tribe of taking requires skins to be tagged by State or tribal officials or under State or tribal supervision with a Service-approved tag in accordance with the requirements in part 23 of this subchapter; and

(B) Any American alligator specimen may be sold or otherwise transferred only in accordance with the laws and regulations of the State or Tribe in which the taking occurs and the State or Tribe in which the sale or transfer occurs.

(3) *Import and export.* Any person may import or export an American alligator specimen provided that it is in accordance with part 23 of this subchapter.

(4) *Recordkeeping.* (i) Any person not holding an import/export license issued by the Service under § 14.91 and who imports, exports, or obtains permits under part 23 of this subchapter for the import or export of American alligator shall keep such records as are otherwise required to be maintained by all import/export licensees under § 14.93(d). Such records shall be maintained as in the normal course of business, reproducible in the English language, and retained for 5 years from the date of each transaction.

(ii) Subject to applicable limitations of law, duly authorized officers at all reasonable times shall, upon notice, be afforded access to examine such records required to be kept under paragraph (a)(4)(i) of this section, and an opportunity to copy such records.

* * * * *

(c) *Threatened crocodilians*—(1) *What are the definitions of terms used in this paragraph (c)?* (i) *Threatened crocodilian* means any live or dead specimen of the following species: yacare caiman (*Caiman yacare*), common caiman (*caiman crocodilus crocodilus*), brown caiman (*Caiman crocodilus fuscus,* including *caiman crocodilus chiapasius*), saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile), and Nile crocodile (*Crocodylus niloticus*).

(ii) The definitions of *crocodilian skins* and *crocodilian parts* in § 23.70(b) and *re-export* in § 23.5 of this subchapter apply to this paragraph (c).

(2) *What activities involving threatened crocodilians are prohibited by this rule?*

(i) All provisions of §§ 17.31 and 17.32 apply to live specimens, including viable eggs, of all threatened crocodilians and to any specimen of the Appendix-I Nile crocodile.

(ii) Except as provided in paragraph (c)(2)(i) of this section, the following prohibitions apply to threatened crocodilians.

(A) *Import, export, and re-export.* Except as provided in paragraph (c)(3) of this section, it is unlawful to import, export, or re-export, or attempt to import, export, or re-export without valid permits as required under parts 17 and 23 of this subchapter any threatened crocodilians, including their skins, parts, and products.

(B) *Commercial activity.* Except as provided in paragraph (c)(3) of this section, it is unlawful, in the course of a commercial activity, to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce any threatened crocodilians, including their skins, parts, and products.

(C) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (c)(2)(i) and (ii)(A) and (B) of this section.

(3) *What activities involving threatened crocodilians are allowed by this rule?* Except as provided in (c)(2)(i), you may import, export, or re-export, or sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity, threatened crocodilian skins, parts, and products without a threatened species permit otherwise required under § 17.32 provided the requirements of parts 13, 14, and 23 of this subchapter and the requirements of paragraphs (c)(3) and (4) of this section have been met.

(i) *Skins and parts.* Except as provided in (c)(3)(ii) of this section, the import, export, or re-export of threatened crocodilian skins and crocodilian parts is allowed provided the following conditions are met:

(A) Each crocodilian skin and crocodilian part imported, exported, or re-exported must be tagged or labeled in accordance with § 23.70 of this subchapter.

(B) Any countries re-exporting crocodilian skins or parts must have implemented an administrative system for the effective matching of imports and re-exports.

(C) If a shipment contains more than 25 percent replacement tags, the U.S. Management Authority will consult with the Management Authority of the re-exporting country before clearing the shipment. Such shipments may be seized if we determine that the requirements of the Convention have not been met.

(D) The country of origin and any intermediary country(s) must be effectively implementing the Convention. If we receive persuasive information from the CITES Secretariat or other reliable sources that a specific country is not effectively implementing the Convention, we will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

(ii) *Meat, skulls, scientific specimens, products, and noncommercial personal or household effects.* The tagging requirements in paragraph (c)(3)(i) of this section for skins and parts do not apply to the import, export, or re-export of threatened crocodilian meat, skulls, scientific specimens, or products or to the noncommercial import, export, or re-export of personal effects in accompanying baggage or household effects.

(4) *When and how will the Service inform the public of additional restrictions in trade of threatened crocodilians?* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue an information bulletin (posted on our websites, *http://www.fws.gov/le* and *http://www.fws.gov/international*) announcing additional restrictions in trade of specimens of threatened crocodilians if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as not having designated Management and Scientific Authorities.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked not to accept shipments of specimens of any CITES species from the country in question or of any crocodilian species listed in the CITES Appendices.

(iii) We determine, based on information from the CITES Secretariat or other reliable sources, that the country is not effectively implementing the provisions of the Convention.

(5) *Reporting requirements for yacare caiman range countries.* (i) *Biannual reports.* Range countries (Argentina, Bolivia, Brazil, and Paraguay) wishing to export specimens of yacare caiman to the United States for commercial purposes must provide a biannual report containing the most recent information available on the status of the species. The first submission of a status report will be required as of December 31, 2001, and every two years thereafter on the anniversary of that date. For each range country, all of the following information must be included in the report.

(A) Recent distribution and population data, and a description of the methodology used to obtain such estimates.

(B) Description of research projects currently being conducted related to the biology of the species in the wild, particularly reproductive biology (for example, age or size when animals become sexually mature, number of clutches per season, number of eggs per clutch, survival of eggs, survival of hatchlings).

(C) Description of laws and programs regulating harvest, including approximate acreage of land set aside as natural reserves or national parks that provide protected habitat for yacare caiman.

(D) Description of current sustainable harvest programs, including ranching (captive-rearing of specimens collected from the wild as eggs or juveniles) and farming (captive-breeding) programs.

(E) Current harvest quotas for wild populations.

(F) Export data for the last two years. Information should be organized according to the source of specimens such as wild-caught, captive-reared, or captive-bred.

(ii) *Review and restrictions.* The U.S. Scientific Authority will conduct a review every 2 years, using information in the biannual reports and other available information, to determine whether range country management programs are effectively achieving conservation benefits for the yacare caiman. Based on the best available information, we may restrict trade from a range country if we determine that the conservation or management status of threatened yacare caiman populations has changed, such that continued recovery of the population in that country may be compromised. Trade restrictions, as addressed in paragraph (c)(4) of this section, may be implemented based on one or more of the following factors:

(A) Failure to submit the reports described above, or failure to respond to requests for additional information.

(B) A change in range country laws or regulations that lessens protection for yacare caiman.

(C) A change in range country management programs that lessens protection for the species.

(D) A documented decline in wild population numbers.

(E) A documented increase in poaching.

(F) A documented decline in habitat quality or quantity.

(G) Other natural or man-made factors affecting the species' recovery.

* * * * *

13. Part 23 is revised to read as follows:

PART 23—CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

Subpart A—Introduction

Sec.
23.1 What are the purposes of these regulations and CITES?
23.2 How do I decide if these regulations apply to my shipment or me?
23.3 What other wildlife and plant regulations may apply?
23.4 What are Appendices I, II, and III?
23.5 How are the terms used in these regulations defined?
23.6 What are the roles of the Management and Scientific Authorities?
23.7 What office do I contact for CITES information?
23.8 What are the information collection requirements?

Subpart B—Prohibitions, Exemptions, and Requirements

23.13 What is prohibited?
23.14 [Reserved]
23.15 How may I travel internationally with my personal or household effects, including tourist souvenirs?
23.16 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?
23.17 What are the requirements for CITES specimens traded internationally by diplomatic, consular, military, and other persons exempt from customs duties or inspections?
23.18 What CITES documents are required to export Appendix-I wildlife?
23.19 What CITES documents are required to export Appendix-I plants?
23.20 What CITES documents are required for international trade?
23.21 What happens if a country enters a reservation for a species?
23.22 What are the requirements for in-transit shipments?
23.23 What information is required on U.S. and foreign CITES documents?
23.24 What code is used to show the source of the specimen?
23.25 What additional information is required on a non-Party CITES document?
23.26 When is a U.S. or foreign CITES document valid?
23.27 What CITES documents do I present at the port?

Subpart C—Application Procedures, Criteria, and Conditions

23.32 How do I apply for a U.S. CITES document?
23.33 How is the decision made to issue or deny a request for a U.S. CITES document?
23.34 What kinds of records may I use to show the origin of a specimen when I apply for a U.S. CITES document?
23.35 What are the requirements for an import permit?
23.36 What are the requirements for an export permit?
23.37 What are the requirements for a re-export certificate?
23.38 What are the requirements for a certificate of origin?
23.39 What are the requirements for an introduction-from-the-sea certificate?
23.40 What are the requirements for a certificate for artificially propagated plants?
23.41 What are the requirements for a bred-in-captivity certificate?
23.42 What are the requirements for a plant hybrid?
23.43 What are the requirements for a wildlife hybrid?
23.44 What are the requirements to travel internationally with my personally owned live wildlife?
23.45 What are the requirements for a pre-Convention specimen?
23.46 What are the requirements for registering an Appendix-I commercial breeding operation and commercially exporting specimens?
23.47 What are the requirements for export of an Appendix-I plant artificially propagated for commercial purposes?
23.48 What are the requirements for a registered scientific institution?
23.49 What are the requirements for an exhibition traveling internationally?
23.50 What are the requirements for a sample collection covered by an ATA carnet?
23.51 What are the requirements for issuing a partially completed CITES document?
23.52 What are the requirements for replacing a lost, damaged, stolen, or accidentally destroyed CITES document?
23.53 What are the requirements for obtaining a retrospective CITES document?
23.54 How long is a U.S. or foreign CITES document valid?
23.55 How may I use a CITES specimen after import into the United States?
23.56 What U.S. CITES document conditions do I need to follow?

Subpart D—Factors Considered in Making Certain Findings

23.60 What factors are considered in making a legal acquisition finding?
23.61 What factors are considered in making a non-detriment finding?
23.62 What factors are considered in making a finding of not for primarily commercial purposes?
23.63 What factors are considered in making a finding that an animal is bred-in-captivity?
23.64 What factors are considered in making a finding that a plant is artificially propagated?
23.65 What factors are considered in making a finding that an applicant is suitably equipped to house and care for a live specimen?

Subpart E—International Trade in Certain Specimens

23.68 How can I trade internationally in roots of American ginseng?
23.69 How can I trade internationally in fur skins and fur skin products of bobcat, river otter, Canada lynx, gray wolf, and brown bear?
23.70 How can I trade internationally in American alligator and other crocodilian skins, parts, products, or derivatives?
23.71 How can I trade internationally in sturgeon caviar?
23.72 How can I trade internationally in plants?
23.73 How can I trade internationally in timber?
23.74 How can I trade internationally in personal sport-hunted trophies?

Subpart F—Disposal of Confiscated Wildlife and Plants

23.78 What happens to confiscated wildlife and plants?
23.79 How may I participate in the Plant Rescue Center Program?

Subpart G—CITES Administration

23.84 What are the roles of the Secretariat and the committees?
23.85 What is a Meeting of the Conference of the Parties (CoP)?
23.86 How can I obtain information on a CoP?
23.87 How does the United States develop documents and negotiating positions for a CoP?
23.88 What are the resolutions and decisions of the CoP?

Subpart H—Lists of Species

23.89 What are the criteria for listing species in Appendix I or II?
23.90 What are the criteria for listing species in Appendix III?
23.91 How do I find out if a species is listed?
23.92 Are any wildlife or plants, and their parts, products, or derivatives, exempt?

Authority: 27 U.S.T. 1087; 16 U.S.C. 1531 *et seq.*

Subpart A—Introduction

§ 23.1 What are the purposes of these regulations and CITES?

(a) *Treaty.* The regulations in this part implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as CITES, the Convention, the Treaty, or the Washington Convention, TIAS (Treaties and Other International Acts Series) 8249.

(b) *Purpose.* The aim of CITES is to regulate international trade in wildlife and plants, including parts, products, and derivatives, to ensure it is legal and does not threaten the survival of species in the wild. Parties, recognize that:

(1) Wildlife and plants are an irreplaceable part of the natural systems

of the earth and must be protected for this and future generations.

(2) The value of wildlife and plants is ever-growing from the viewpoints of aesthetics, science, culture, recreation, and economics.

(3) Although countries should be the best protectors of their own wildlife and plants, international cooperation is essential to protect wildlife and plant species from over-exploitation through international trade.

(4) It is urgent that countries take appropriate measures to prevent illegal trade and ensure that any use of wildlife and plants is sustainable.

(c) *National legislation.* We, the U.S. Fish and Wildlife Service (FWS), implement CITES through the Endangered Species Act (ESA).

§ 23.2 How do I decide if these regulations apply to my shipment or me?

Answer the following questions to decide if the regulations in this part apply to your proposed activity:

Question on proposed activity	Answer and action
(a) Is the wildlife or plant species (including parts, products, derivatives, whether wild- collected, or born or propagated in a controlled environment) Listed in Appendix I, II, or III of CITES (see § 23.91)?	(1) **YES.** Continue to paragraph (b) of this section. (2) **NO.** The regulations in this part do not apply.
(b) Is the wildlife or plant specimen exempted from CITES (see § 23.92)?	(1) **YES.** The regulations in this part do not apply. (2) **NO.** Continue to paragraph (c) of this section.
(c) Do you want to import, export, re-export, engage in international trade, or introduce from the sea?	(1) **YES.** The regulations in this part apply. (2) **NO.** Continue to paragraph (d) of this section.
(d) Was the intrastate or interstate commerce unlawfully acquired, illegally traded, or otherwise subject to conditions set out on a CITES document that authorized import?	(1) **YES.** The regulations in this part apply. See § 23.13(c) and (d) and sections 9(c)(1) and 11(a) and possess or want to(b) of the ESA (16 U.S.C. 1538(c)(1) and 1540(a) and enter into (b)). (2) **NO.** The regulations in this part do not apply.

§ 23.3 What other wildlife and plant regulations may apply?

(a) You may need to comply with other regulations in this subchapter that require a permit or have additional restrictions. Many CITES species are also covered by one or more parts of this subchapter or title and have additional requirements:

(1) Part 15 (exotic birds).

(2) Part 16 (injurious wildlife).

(3) Parts 17 of this subchapter and 222, 223, and 224 of this title (endangered and threatened species).

(4) Parts 18 of this subchapter and 216 of this title (marine mammals).

(5) Part 20 (migratory bird hunting).

(6) Part 21 (migratory birds).

(7) Part 22 (bald and golden eagles).

(b) If you are applying for a permit, you must comply with the general permit procedures in part 13 of this subchapter. Definitions and a list of birds protected under the Migratory Bird Treaty Act can be found in part 10 of this subchapter.

(c) If you are importing (including introduction from the sea), exporting, or re-exporting wildlife or plants, you must comply with the regulations in part 14 of this subchapter for wildlife or part 24 of this subchapter for plants. Activities with plants are also regulated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and Department of Homeland Security, U.S. Customs and Border Protection (CBP), in 7 CFR parts 319, 355, and 356.

(d) You may also need to comply with other Federal, State, tribal, or local requirements.

§ 23.4 What are Appendices I, II, and III?

Species are listed by the Parties in one of three Appendices (see subpart H of this part), each of which provides a different level of protection and is subject to different requirements. Parties regulate trade in specimens of Appendix-I, -II, and -III species and their parts, products, and derivatives through a system of permits and certificates (CITES documents). Such documents enable Parties to monitor the effects of the volume and type of trade to ensure trade is legal and not detrimental to the survival of the species.

(a) *Appendix I* includes species threatened with extinction that are or may be affected by trade. Trade in Appendix-I specimens may take place only in exceptional circumstances.

(b) *Appendix II* includes species that are not presently threatened with extinction, but may become so if their trade is not regulated. It also includes species that need to be regulated so that trade in certain other Appendix-I or -II species may be effectively controlled; these species are most commonly listed due to their similarity of appearance to other related CITES species.

(c) *Appendix III* includes species listed unilaterally by a range country to obtain international cooperation in controlling trade.

§ 23.5 How are the terms used in these regulations defined?

In addition to the definitions contained in part 10 of this subchapter, and unless the context otherwise requires, in this part:

Affected by trade means that either a species is known to be in trade and the trade has or may have a detrimental impact on the status of the species, or a species is suspected to be in trade or there is demonstrable potential international demand for the species that may be detrimental to the survival of the species in the wild.

Annotation means an official footnote to the listing of a species in the CITES Appendices. A reference annotation provides information that further explains the listing (such as ''p.e.'' for possibly extinct). A substantive annotation is an integral part of a species listing. It designates whether the listing includes or excludes a geographically separate population, subspecies, species, group of species, or higher taxon, and the types of specimens, such as certain parts, products, or derivatives that can be traded. A substantive annotation may designate export quotas adopted by the CoP. For species transferred from Appendix I to II subject to an annotation relating to specified types of specimens, other types of specimens that are not specifically included in the annotation are considered Appendix-I specimens.

Appropriate and acceptable destination, when used in an Appendix-II listing annotation for the export of, or international trade in, live animals, means that the Management Authority of the importing country has certified, based on advice from the Scientific Authority of that country, that the proposed recipient is suitably equipped to house and care for the animal (see criteria in § 23.65). Such certification

must be provided before a CITES document is issued by the Management Authority of the exporting or re-exporting country.

Artificially propagated means a cultivated plant that meets the criteria in § 23.64.

Bred for commercial purposes means any specimen of an Appendix-I wildlife species bred-in-captivity for commercial purposes.

Bred for noncommercial purposes means any specimen of an Appendix-I wildlife species bred-in-captivity for noncommercial purposes, where each donation, exchange, or loan is conducted between facilities that are involved in a cooperative conservation program.

Bred-in-captivity means wildlife that is captive-bred and meets the criteria in § 23.63.

Captive-bred means wildlife that is the offspring (first (F1) or subsequent generations) of parents that either mated or otherwise transferred egg and sperm under controlled conditions if reproduction is sexual, or of a parent that was maintained under controlled conditions when development of the offspring began if reproduction is asexual; but does not meet the criteria for bred-in-captivity (see § 23.63).

Certificate means a CITES document or CITES exemption document that identifies on its face the type of certificate it is, including re-export certificate, introduction-from-the-sea certificate, and certificate of origin.

CITES document or CITES exemption document means any certificate, permit, or other document issued by a Management Authority of a Party or a competent authority of a non-Party whose name and address is on file with the Secretariat to authorize the international movement of CITES specimens.

Commercial means related to an activity, including actual or intended import, export, re-export, sale, offer for sale, purchase, transfer, donation, exchange, or provision of a service, that is reasonably likely to result in economic use, gain, or benefit, including, but not limited to, profit (whether in cash or in kind), or tax benefits.

Conference of the Parties (CoP) means either the Parties to CITES collectively as a group, or the meeting of the Parties to consider amendments to the Appendices and resolutions, and other administrative issues, to improve the implementation of CITES.

Cooperative conservation program means a program in which facilities produce Appendix-I specimens bred for noncommercial purposes and participate in or support a recovery activity for that species in one or more of the species' range countries.

Coral (dead) means pieces of coral in which the skeletons of the individual polyps are still intact, but which contain no living coral tissue.

Coral fragments, including coral gravel and coral rubble, means loose pieces of broken finger-like coral between 2 and 30 mm in diameter that contain no living coral tissue (see § 23.92 for exemptions).

Coral (live) means pieces of coral that are alive.

Coral rock means hard consolidated material, greater than 30 mm in diameter that consists of pieces of coral and possibly also cemented sand, coralline algae, or other sedimentary rocks that contain no living coral tissue. Coral rock includes *live rock* and *substrate,* which are terms for pieces of coral rock to which are attached live specimens of other invertebrate species or coralline algae that are not listed in the CITES Appendices.

Coral sand means material that consists entirely, or in part, of finely crushed coral no larger than 2 mm in diameter and that contains no living coral tissue (see § 23.92 for exemptions).

Country of origin means the country where the wildlife or plant was taken from the wild or was born or propagated in a controlled environment, except in the case of a plant specimen that qualified for an exemption under the provisions of CITES, the country of origin is the country in which the specimen ceased to qualify for the exemption.

Cultivar means a horticulturally derived plant variety that has been selected for specific morphological, physiological, or other characteristics, such as color, a large flower, or disease resistance.

Cultivated means a plant grown or tended by humans for human use. A cultivated plant can be treated as artificially propagated under CITES only if it meets the criteria in § 23.64.

Export means to send, ship, or carry a specimen out of a country (for export from the United States, see part 14 of this subchapter).

Flasked means plant material obtained *in vitro,* in solid or liquid media, transported in sterile containers.

Household effect means a dead wildlife or plant specimen that is part of a household move and meets the criteria in § 23.15.

Hybrid means any wildlife or plant that results from a cross of genetic material between two separate taxa when one or both are listed in Appendix I, II, or III. See § 23.42 for plant hybrids and § 23.43 for wildlife hybrids.

Import means to bring, ship, or carry a specimen into a country (for import into the United States, see part 14 of this subchapter).

International trade means the import, introduction from the sea, export, or re-export across jurisdictional or international boundaries for any purpose whether commercial or noncommercial.

In-transit shipment means the transshipment of any wildlife or plant through an intermediary country when the specimen remains under customs control and either the shipment meets the requirements of § 23.22 or the sample collection covered by an ATA carnet meets the requirements of § 23.50.

Introduction from the sea means transportation into a country of specimens of any species that were taken in the marine environment not under the jurisdiction of any country.

Live rock see the definition for coral rock.

Management Authority means a governmental agency officially designated by, and under the supervision of, either a Party to implement CITES, or a non-Party to serve in the role of a Management Authority, including the issuance of CITES documents on behalf of that country.

Noncommercial means related to an activity that is not commercial. Noncommercial includes, but is not limited to, personal use.

Non-Party means a country that has not deposited an instrument of ratification, acceptance, approval, or accession to CITES with the Depositary Government (Switzerland), or a country that was a Party but subsequently notified the Depositary Government of its denunciation of CITES and the denunciation is in effect.

Offspring of first generation (F1) means a wildlife specimen produced in a controlled environment from parents at least one of which was conceived in or taken from the wild.

Offspring of second generation (F2) or subsequent generations means a wildlife specimen produced in a controlled environment from parents that were also produced in a controlled environment.

Parental stock means the original breeding or propagating specimens that produced the subsequent generations of captive specimens.

Party means a country that has given its consent to be bound by the provisions of CITES by depositing an instrument of ratification, acceptance, approval, or accession with the

Depositary Government (Switzerland), and for which such consent is in effect.

Permit means a CITES document that identifies on its face import permit or export permit.

Personal effect means a dead wildlife or plant specimen, including a tourist souvenir, that is worn as clothing or accessories or is contained in accompanying baggage and meets the criteria in § 23.15.

Personal use means use that is not commercial and is for an individual's own consumption or enjoyment.

Precautionary measures means the actions taken that will be in the best interest of the conservation of the species when there is uncertainty about the status of a species or the impact of trade on the conservation of a species.

Pre-Convention means a specimen that was acquired (removed from the wild or born or propagated in a controlled environment) before the date the provisions of the Convention first applied to the species and that meets the criteria in § 23.45, and any product (including a manufactured item) or derivative made from such specimen.

Primarily commercial purposes means an activity whose noncommercial aspects do not clearly predominate (see § 23.62).

Propagule means a structure, such as a cutting, seed, or spore, that is capable of propagating a plant.

Readily recognizable means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or this part.

Re-export means to send, ship, or carry out of a country any specimen previously imported into that country, whether or not the specimen has been altered since import.

Reservation means the action taken by a Party to inform the Secretariat that it is not bound by the effect of a specific listing (see § 23.21).

Scientific Authority means a governmental or independent scientific institution or entity officially designated by either a Party to implement CITES, or a non-Party to serve the role of a Scientific Authority, including making scientific findings.

Secretariat means the entity designated by the Treaty to perform certain administrative functions (see § 23.84).

Shipment means any CITES specimen in international trade whether for commercial or noncommercial use, including any personal item.

Species means any species, subspecies, hybrid, variety, cultivar, color or morphological variant, or geographically separate population of that species.

Specimen means any wildlife or plant, whether live or dead. This term includes any readily recognizable part, product, or derivative unless otherwise annotated in the Appendices.

Sustainable use means the use of a species in a manner and at a level that maintains wild populations at biologically viable levels for the long term. Such use involves a determination of the productive capacity of the species and its ecosystem to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself, and perform its role or function in its ecosystem.

Trade means the same as international trade.

Transit see the definition for *in-transit shipment.*

Traveling exhibition means an entity that displays live or dead wildlife or plants for entertainment, educational, cultural, or other purposes where the entity is temporarily moving internationally.

§ 23.6 What are the roles of the Management and Scientific Authorities?

Under Article IX of the Treaty, each Party must designate a Management and Scientific Authority to implement CITES for that country. If a non-Party wants to trade with a Party, it must also designate such Authorities. The names and addresses of these offices must be sent to the Secretariat to be included in the Directory. In the United States, different offices within the FWS have been designated the Scientific Authority and Management Authority, which for purposes of this section includes FWS Law Enforcement. When offices share activities, the Management Authority is responsible for dealing primarily with management and regulatory issues and the Scientific Authority is responsible for dealing primarily with scientific issues. The offices do the following:

Roles	U.S. Scientific Authority	U.S. Management Authority
(a) Provide scientific advice and recommendations, including advice on biological findings for applications for certain CITES documents, registrations, and export program approvals. Evaluate the conservation status of species to determine if a species listing or change in a listing is warranted. Interpret listings and review nomenclatural issues.	x	
(b) Review applications for CITES documents and issue or deny them based on findings required by CITES.		x
(c) Communicate with the Secretariat and other countries on scientific, administrative, and enforcement issues.	x	x
(d) Ensure that export of Appendix-II specimens is at a level that maintains a species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which it might become eligible for inclusion in Appendix I.	x	
(e) Monitor trade in all CITES species and produce annual reports on CITES trade.		x
(f) Collect the cancelled foreign export permit or re-export certificate and any corresponding import permit presented for import of any CITES specimen. Collect a copy of the validated U.S. export permit or re- export certificate presented for export or re-export of any CITES specimen.		x
(g) Produce biennial reports on legislative, regulatory, and administrative measures taken by the United States to enforce the provisions of CITES.		x
(h) Coordinate with State and tribal governments and other Federal agencies on CITES issues, such as the status of native species, development of policies, negotiating positions, and law enforcement activities.	x	x

Roles	U.S. Scientific Authority	U.S. Management Authority
(i) Communicate with the scientific community, the public, and media about CITES issues. Conduct public meetings and publish notices to gather input from the public on the administration of CITES and the conservation and trade status of domestic and foreign species traded internationally.	x	x
(j) Represent the United States at the meetings of the CoP, on committees (see subpart G of this part), and on CITES working groups. Consult with other countries on CITES issues and the conservation status of species. Prepare discussion papers and proposals for new or amended resolutions and species listings for consideration at the CoP.	x	x
(k) Provide assistance to APHIS and CBP for the enforcement of CITES. Cooperate with enforcement officials to facilitate the exchange of information between enforcement bodies and for training purposes.	x	x
(l) Provide financial and technical assistance to other governmental agencies and CITES officials of other countries.	x	x

§ 23.7 What office do I contact for CITES information?

Contact the following offices to receive information about CITES:

Type of information	Office to contact
(a) *CITES administrative and management issues:* (1) CITES documents, including application forms and procedures; list of registered scientific institutions and bred-in-captivity operations; and reservations (2) Information on the CoP (3) List of CITES species (4) Names and addresses of other countries' Management and Scientific Authority offices (5) Notifications, resolutions, and decisions (6) Standing Committee documents and issues (7) State and tribal export programs	U.S. Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, Toll Free: (800) 358–2104/permit questions, Tel: (703) 358–2095/other questions, Fax: (703) 358–2281/permits, Fax: (703) 358–2298/other issues, E-mail: *managementauthority@fws.gov,* Web site: *http://www.fws.gov/international* and *http://www.fws.gov/permits.*
(b) *Scientific issues:* (1) Animals and Plants Committees documents and issues (2) Findings of non-detriment and suitability of facilities, and other scientific findings (3) Listing of species in the Appendices and relevant resolutions (4) Names and addresses of other countries' Scientific Authority offices and scientists involved with CITES-related issues (5) Nomenclatural issues	U.S. Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203, Tel: (703) 358–1708, Fax: (703) 358–2276, E-mail: *scientificauthority@fws.gov,* Web site: *http://www.fws.gov/international.*
(c) *Wildlife clearance procedures:* (1) CITES replacement tags (2) Information about wildlife port office locations (3) Information bulletins (4) Inspection and clearance of wildlife shipments involving import, introduction from the sea, export, and re-export, and filing a Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177) (5) Validation, certification, or cancellation of CITES wildlife documents	Law Enforcement, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop LE–3000, Arlington, Virginia 22203, Tel: (703) 358–1949, Fax: (703) 358–2271, Web site: *http://www.fws.gov/le.*
(d) *APHIS plant clearance procedures:* (1) Information about plant port office locations (2) Inspection and clearance of plant shipments involving: (i) Import and introduction from the sea of living plants (ii) Export and re-export of living and nonliving plants (3) Validation or cancellation of CITES plant documents for the type of shipments listed in paragraph (d) of this section	U.S. Department of Agriculture APHIS/PPQ, 4700 River Road, Riverdale, Maryland 20737–1236, Toll Free: (877) 770–5990/permit questions, Tel: (301) 734–5312/other CITES issues, Fax: (301) 734–5786/permit questions, Fax: (301) 734–4300/other CITES issues, Web site: *http://www.aphis.usda.gov/ppq.*
(e) *CBP plant clearance procedures:* (1) Inspection and clearance of plant shipments involving: (i) Import and introduction from the sea of nonliving plants (ii) Import of living plants from Canada at designated border ports (7 CFR 319.37–14(b) and 50 CFR 24.12(d)) (2) Cancellation of CITES plant documents for the type of shipments listed in paragraph (e)(1) of this section	Department of Homeland Security, U.S. Customs and Border Protection, Office of Field Operations, Agricultural Inspection Policy and Planning, 1300 Pennsylvania Avenue, NW., Room 5.4 C, Washington, DC 20229, Tel: (202) 344–3298, Fax: (202) 344–1442.

Type of information	Office to contact
(f) *General information on CITES:* (1) CITES export quota information (2) *CITES Guidelines for Transport* (3) Information about the Secretariat (4) Names and addresses of other countries' Management and Scientific Authority offices (5) Official documents, including resolutions, decisions, notification, CoP documents, and committee documents (6) Official list of CITES species and species database (7) Text of the Convention	CITES Secretariat, Web site: *http://www.cites.org.*

§ 23.8 What are the information collection requirements?

(a) The Office of Management and Budget approved the information collection requirements for application forms 3–200–19, 3–200–20, 3–200–23 through 3–200–37, 3–200–39, 3–200–43, 3–200–46 through 3–200–48, 3–200–52, 3–200–53, 3–200–58, 3–200–61, 3–200–64 through 3–200–66, and 3–200–73 through 3–200–75 contained in this part under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Numbers 1018–0093, 1018–0130, and 1018–xxxx.

(b) When using a form, we cannot collect or sponsor the collection of information, and you are not required to provide information, unless the form displays a currently valid OMB control number.

(c) We collect this information to evaluate applications and make decisions under this part on whether to issue, suspend, revoke, amend, or deny a request for a CITES document or registration.

(d) We also collect information from States and Tribes seeking CITES export program approval and annual reports from States and Tribes with approved programs. This information allows us to streamline the permitting process for species taken under approved programs. We collect information from entities seeking to participate in the Plant Rescue Center program and reports from Plant Rescue Centers regarding status of confiscated plant shipments. The Office of Management and Budget has approved these information collections.

(e) You must respond to our request for information to receive or retain a CITES document, registration, or program approval.

(f) We estimate the public reporting burden for the collection of information under this part to vary from 6 minutes to 40 hours per response, with the majority requiring 1 hour or less to complete. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms and reports.

(g) You may direct comments concerning the accuracy of the burden estimate and any suggestions for reducing the burden to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Subpart B—Prohibitions, Exemptions, and Requirements

§ 23.13 What is prohibited?

Except as provided in § 23.92, it is unlawful for any person subject to the jurisdiction of the United States to conduct any of the following activities unless they meet the requirements of this part:

(a) Import, export, re-export, or engage in international trade with any specimen of a species listed in Appendix I, II, or III of CITES.

(b) Introduce from the sea any specimen of a species listed in Appendix I or II of CITES.

(c) Possess any specimen of a species listed in Appendix I, II, or III of CITES imported, exported, re-exported, introduced from the sea, or traded contrary to the provisions of CITES, the ESA, or this part.

(d) Attempt to commit, solicit another to commit, or cause to be committed any of the activities described in paragraphs (a) through (c) of this section.

§ 23.14 [Reserved]

§ 23.15 How may I travel internationally with my personal or household effects, including tourist souvenirs?

(a) *Purpose.* Article VII(3) of the Treaty recognizes a limited exemption for the international movement of personal and household effects.

(b) *Stricter national measures.* The exemption for personal and household effects does not apply if a country prohibits or restricts the import, export, or re-export of the item.

(1) You or your shipment must be accompanied by any document required by a country under its stricter national measures.

(2) In the United States, you must obtain any permission needed under other regulations in this subchapter (see § 23.3).

(c) *Required CITES documents.* You must obtain a CITES document for personal or household effects and meet the requirements of this part if one of the following applies:

(1) The Management Authority of the importing, exporting, or re-exporting country requires a CITES document.

(2) You or your shipment does not meet all of the conditions for an exemption as provided in paragraphs (d) through (f) of this section.

(3) The personal or household effect for the following species exceeds the quantity indicated in paragraphs (c)(3)(i) through (vi) in the table below:

Major group	Species (Appendix II only)	Type of specimen	Quantity[1]
Fishes	(i) Acipenseriformes (sturgeon, including paddlefish)	Sturgeon caviar (see § 23.71)	250 gm
	(ii) *Hippocampus* spp. (seahorses)	Dead specimens, parts, products (including manufactured items), and derivatives	4
Reptiles	(iii) Crocodylia (alligators, caimans, crocodiles, gavial)	Dead specimens, parts, products (including manufactured items), and derivatives	4

Major group	Species (Appendix II only)	Type of specimen	Quantity[1]
Molluscs	(iv) *Strombus gigas* (queen conch)	Shells	3
	(v) Tridacnidae (giant clams)	Shells, each of which may be one intact shell or two total not matching halves	3 shells, exceeding 3 kg
Plants	(vi) Cactaceae (cacti)	Rainsticks	3

[1] To import, export, or re-export more than the quantity listed in the table, you must have a valid CITES document for the entire quantity.

(d) *Personal effects.* You do not need a CITES document to import, export, or re-export any legally acquired specimen of a CITES species to or from the United States if all of the following conditions are met:

(1) No live wildlife or plant (including eggs or non-exempt seeds) is included.

(2) No specimen from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (f) of this section.

(3) The specimen and quantity of specimens are reasonably necessary or appropriate for the nature of your trip or stay and, if the species is one listed in paragraph (c)(3) of this section, the quantity does not exceed the quantity given in the table.

(4) You own and possess the specimen for personal use, including any specimen intended as a personal gift.

(5) You are either wearing the specimen as clothing or an accessory or taking it as part of your personal baggage, which is being carried by you or checked as baggage on the same plane, boat, vehicle, or train as you.

(6) The specimen was not mailed or shipped separately.

(e) *Household effects.* You do not need a CITES document to import, export, or re-export any legally acquired specimen of a CITES species that is part of a shipment of your household effects when moving your residence to or from the United States, if all of the following conditions are met:

(1) The provisions of paragraphs (d)(1) through (3) of this section are met.

(2) You own the specimen and are moving it for personal use.

(3) You import or export your household effects within 1 year of changing your residence from one country to another.

(4) The shipment, or shipments if you cannot move all of your household effects at one time, contains only specimens purchased, inherited, or otherwise acquired before you changed your residence.

(f) *African elephant worked ivory.* You may export or re-export from the United States worked African elephant (*Loxodonta africana*) ivory and then re-import it without a CITES document if all of the following conditions are met:

(1) The worked ivory is a personal or household effect that meets the requirements of paragraphs (c) through (e) of this section and you are a U.S. resident who owned the worked ivory before leaving the United States and intend to bring the item back to the United States.

(2) The ivory is pre-Convention (see § 23.45) (the African elephant was first listed in CITES on February 26, 1976).

(3) You may not sell or transfer the ivory while outside the United States.

(4) The ivory is substantially worked and is not raw. *Raw ivory* means an African elephant tusk, and any piece of tusk, the surface of which, polished or unpolished, is unaltered or minimally carved, including ivory mounted on a stand or part of a trophy.

(5) When you return, you are able to provide records, receipts, or other documents to show that the ivory is pre-Convention and that you owned and registered it before you left the United States. To register such an item you must obtain one of the following documents:

(i) U.S. CITES pre-Convention certificate.

(ii) FWS Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177).

(iii) Custom and Border Protection Certificate of Registration for Personal Effects Taken Abroad (Form 4457).

§ 23.16 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?

(a) *CITES documents.* We do not require CITES documents to trade in urine, feces, or synthetically derived DNA.

(1) You must obtain any collection permit and CITES document required by the foreign country.

(2) If the foreign country requires you to have a U.S. CITES document for these kinds of samples, you must apply for a CITES document and meet the requirements of this part.

(b) *Urine and feces.* Except as provided in paragraph (a) of this section, we consider urine and feces to be wildlife byproducts, rather than parts, products, or derivatives, and exempt them from the requirements of CITES and this part.

(c) *DNA.* We differentiate between DNA directly extracted from blood and tissue and DNA synthetically derived as follows:

(1) A DNA sample directly derived from wildlife or plant tissue is regulated by CITES and this part.

(2) A DNA sample synthetically derived that does not contain any part of the original template is exempt from the requirements of CITES and this part.

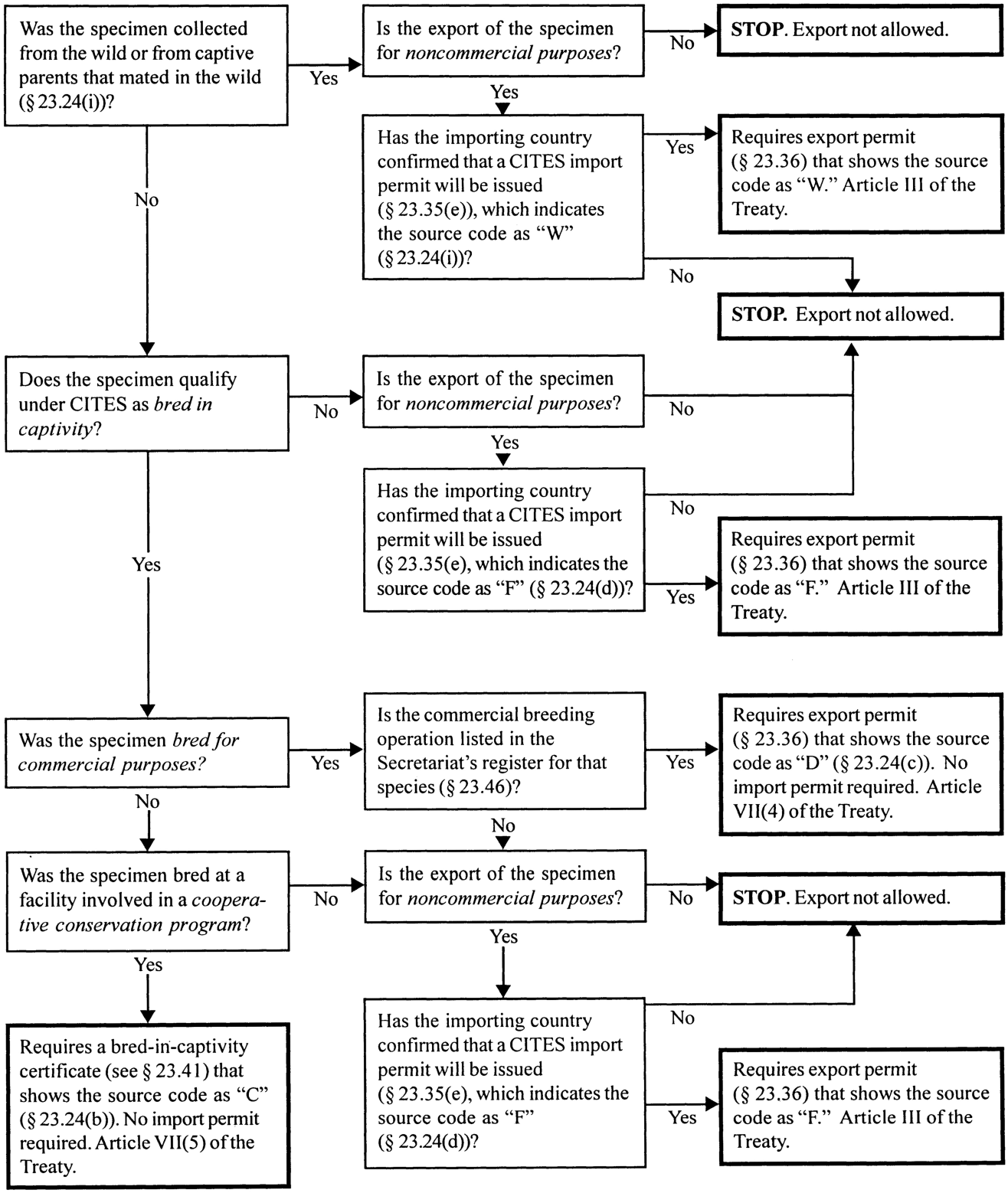
§ 23.17 What are the requirements for CITES specimens traded internationally by diplomatic, consular, military, and other persons exempt from customs duties or inspections?

A specimen of a CITES species imported, introduced from the sea, exported, or re-exported by a person receiving duty-free or inspection exemption privileges under customs laws must meet the requirements of CITES and the regulations in this part.

§ 23.18 What CITES documents are required to export Appendix-I wildlife?

Answer the questions in the following decision tree to find the section in this part that applies to the type of CITES document you need to export Appendix-I wildlife. See § 23.20(d) for CITES exemption documents or § 23.92 for specimens that are exempt from the requirements of CITES and do not need CITES documents.

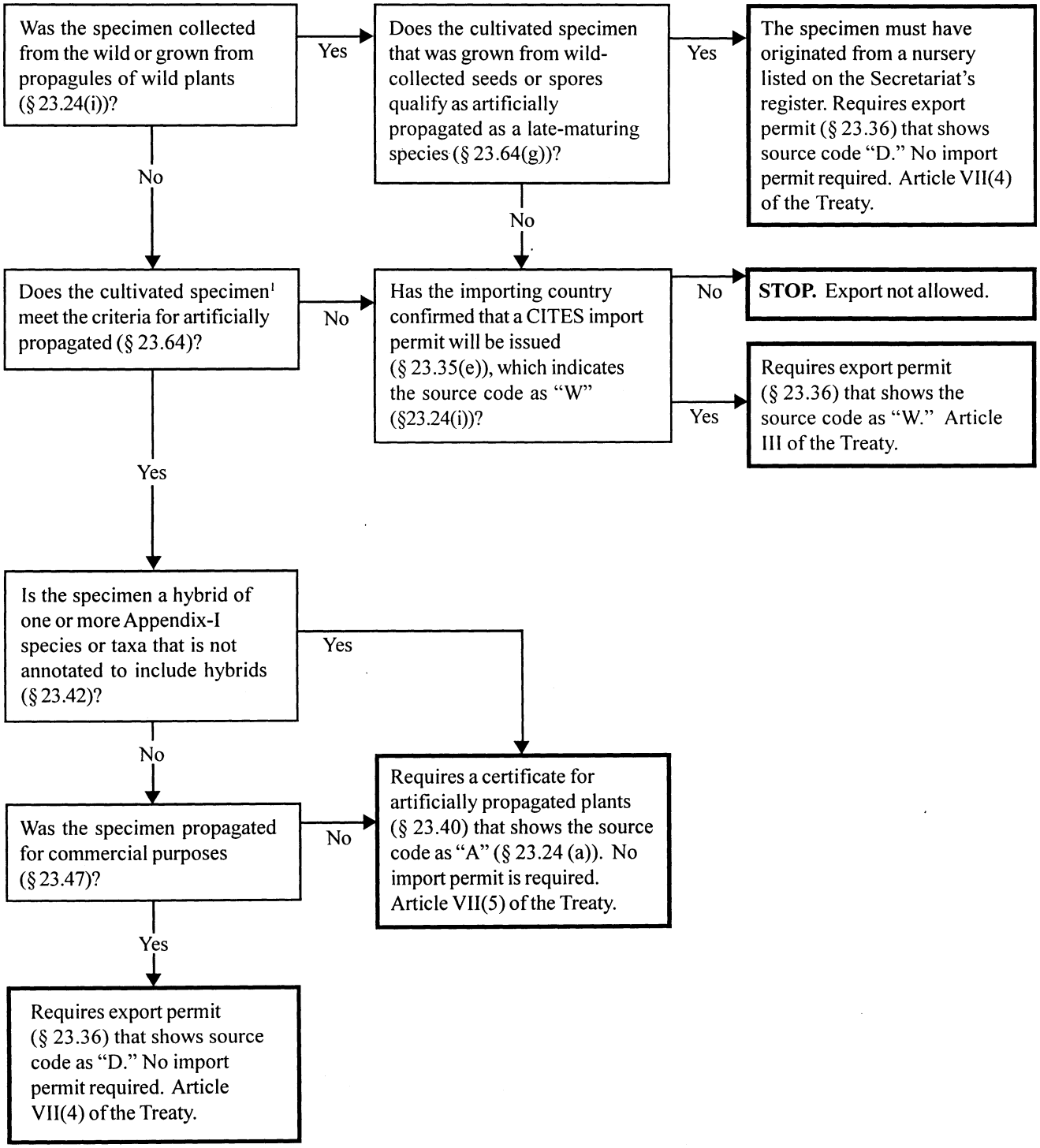
Decision Tree for Export of Appendix-I Wildlife



§ 23.19 What CITES documents are required to export Appendix-I plants?

Answer the questions in the following decision tree to find the section in this part that applies to the type of CITES document you need to export Appendix-I plants. See § 23.20(d) for CITES exemption documents or § 23.92 for specimens that are exempt from the requirements of CITES and do not need CITES documents.

Decision Tree for Export of Appendix-I Plants



[1] Cultivated specimens (see §23.5) that do not meet the criteria as artificially propagated are treated as wild.

§ 23.20 What CITES documents are required for international trade?

(a) Purpose. Articles III, IV, and V of the Treaty give the types of standard CITES documents that must accompany an Appendix-I, -II, or -III specimen in international trade. Articles VII and XIV recognize some exemptions and provide that a CITES document must accompany most exempt specimens.

(b) *Stricter national measures.* Before importing, introducing from the sea,

exporting, or re-exporting a specimen, check with the Management Authorities of all countries concerned to obtain any documentation required under stricter national measures.

(c) *CITES documents.* Except as provided in the regulations in this part, you must have a valid CITES document to engage in international trade in any CITES specimen.

(d) *CITES exemption documents.* The following table lists the CITES exemption document that you must obtain before conducting a proposed activity with an exempt specimen (other than specimens exempted under § 23.92). If one of the exemptions does not apply to the specimen, you must obtain a CITES document as provided in paragraph (e) of this section. The first column in the following table alphabetically lists the type of specimen or activity that may qualify for a CITES exemption document. The last column indicates the section of this part that contains information on the application procedures, provisions, criteria, and conditions specific to each CITES exemption document, as follows:

Type of specimen or activity	Appendix	CITES exemption document	Section
(1) Artificially propagated plant (see paragraph (d)(4) of this section for an Appendix-I plant propagated for commercial purposes)	I, II, or III	CITES document with source code "A" [1]	23.40
(2) Artificially propagated plant from a country that has provided copies of the certificates, stamps, and seals to the Secretariat	II or II	Phytosanitary certificate with CITES statement [1]	23.23(f)
(3) Bred-in-captivity wildlife (see paragraph (d)(5) of this section for Appendix—I wildlife bred for commercial purposes)	I, II, or III	CITES document with source code "C" [1]	23.41
(4) Commercially propagated Appendix-I plant	I	CITES document with source code "D"[1]	23.47
(5) Commercially bred Appendix-I wildlife from a breeding operation registered with the CITES Secretariat	I	CITES document with source code "D" [1]	23.46
(6) Export of certain marine specimens protected under a pre-existing treaty, convention, or international agreement for that species	II	CITES document indicating that the specimen was taken in accordance with provisions of the applicable treaty, convention, or international agreement	23.36(e) 23.39(e)
(7) Hybrid of plants	I, II, or III	CITES document	23.42
(8) Hybrid of wildlife	I, II, or III	CITES document or certification letter from a Management Authority [1]	23.43
(9) In-transit shipment (see paragraph (d)(13) of this section for sample collections covered by an ATA carnet)	I, II, or III	CITES document designating importer and country of final destination	23.22
(10) Introduction from the sea under a pre-existing treaty, convention, or international agreement for that species	II	Document required by applicable treaty, convention, or international agreement, if appropriate	23.39(d)
(11) Noncommercial loan, donation, or exchange of specimens between scientific institutions registered with the CITES Secretariat	I, II, or III	A label indicating CITES and the registration codes of both institutions and, in the United States, a CITES certificate of scientific exchange that registers the institution [3]	23.48
(12) Personally owned live wildlife for multiple cross-border movement	I, II, or III	CITES certificate of ownership [2]	23.44
(13) Pre-Convention specimen	I, II, or III	CITES document indicating pre-Convention status [1]	23.45
(14) Sample collection covered by an ATA carnet	I [4] , II, or III	CITES document indicating sample collection [2]	23.50
(15) Traveling exhibition	I, II, or III	CITES document indicating pre-Convention, bred-in-captivity, or artificially propagated status [2]	23.49

[1] Issued by the Management Authority in the exporting or re-exporting country.
[2] Issued by the Management Authority in the owner's country of usual residence.
[3] Registration codes assigned by the Management Authorities in both exporting and importing countries.
[4] Appendix-I species bred-in-captivity or artificially propagated for commercial purposes (see §§ 23.46 and 23.47).

(e) *Import permits, export permits, re-export certificates, and certificates of origin.* Unless one of the exemptions under paragraph (d) of this section or § 23.92 applies, you must obtain the following CITES documents before conducting the proposed activity:

Appendix	Type of CITES document(s) required
I	Import permit (§ 23.35) and export permit (§ 23.36) or re-export certificate (§ 23.37).
II	Export permit (§ 23.36) or re-export certificate (§23.37).
III	Export permit if the specimen originated in a country that listed the species; certificate of origin (§ 23.38) if the specimen originated in a country other than the listing country, unless the listing annotation indicates otherwise; or re-export certificate for all re-exports (§ 23.37).

(f) *Introduction-from-the-sea documents.* For introduction from the sea of Appendix-I or Appendix-II specimens, you must obtain an introduction-from-the-sea certificate before conducting the proposed activity, unless the exemption in paragraph (d)(10) of this section applies (see § 23.39). The export of a specimen that was previously introduced from the sea will be treated as an export (see § 23.36 for export or § 23.36(e) and § 23.39(e) for export of exempt specimens). Although an Appendix-III specimen taken from the marine environment not under the jurisdiction of any country does not require a CITES document to be introduced from the sea, the subsequent international trade of the specimen would be considered an export.

§ 23.21 What happens if a country enters a reservation for a species?

(a) *Purpose.* CITES is not subject to general reservations. Articles XV, XVI, and XXIII of the Treaty allow a Party to enter a specific reservation on a species listed in Appendix I, II, or III, or on parts, products, or derivatives of a species listed in Appendix III.

(b) *General provision.* A Party can enter a reservation in one of the following ways:

(1) A Party must provide written notification to the Depositary Government (Switzerland) on a specific new or amended listing in the Appendices within 90 days after the CoP that adopted the listing, or at any time for Appendix-III species.

(2) A country must provide written notification on a specific species listing when the country ratifies, accepts, approves, or accedes to CITES.

(c) *Requesting the United States take a reservation.* You may submit information relevant to the issue of whether the United States should take a reservation on a species listing to the U.S. Management Authority. The request must be submitted within 30 calendar days after the last day of the CoP where a new or amended listing of a species in Appendix I or II occurs, or at any time for a species (or its parts, products, or derivatives) listed in Appendix III.

(d) *Required CITES documents.* Except as provided in paragraph (d)(2) of this section, Parties treat a reserving Party as if it were a non-Party for trade in the species concerned (including parts, products, and derivatives, as appropriate). The following table indicates when CITES documents must accompany a shipment and which Appendix should appear on the face of the document:

If	Then
(1) The shipment is between a Party and a reserving Party, or the shipment is from a non-Party to a reserving party and is in transit through a Party	The shipment must be accompanied by a valid CITES document(s) (see § 23.26) that indicates the CITES Appendix in which the species is listed.
(2) The shipment is from a reserving Party to another reserving Party [1] or non-Party and is in transit through a Party	The shipment must be accompanied by a valid CITES document (see § 23.26) that indicates the CITES Appendix in which the species is listed.[2]
(3) The shipment is between a reserving Party and another reserving Party [1] or non-Party and is not in transit through a Party	No CITES document is required.[2]

[1] Both reserving Parties must have a reservation for the same species, and if the species is listed in Appendix III, a reservation for the same parts, products, and derivatives.

[2] CITES recommends that reserving Parties treat Appendix–I species as if listed in Appendix II and issue CITES documents based on Appendix–II permit criteria (see § 23.36). However, the CITES document must show the specimen as listed in Appendix I. If the United States entered a reservation, such a CITES document would be required.

(e) *Reservations taken by countries.* You may consult the CITES Web site or contact us for a list of countries that have taken reservations and the species involved.

§ 23.22 What are the requirements for in-transit shipments?

(a) *Purpose.* Article VII(1) of the Treaty allows for a shipment to transit an intermediary country that is a Party before reaching its final destination without the need for the intermediary Party to issue CITES documents. To control any illegal trade, Parties are to inspect, to the extent possible under their national legislation, specimens in transit through their territory to verify the presence of valid documentation. See § 23.50 for in-transit shipment of sample collections covered by an ATA carnet.

(b) *Document requirements.* An in-transit shipment does not require a CITES document from an intermediary country, but must be accompanied by all of the following documents:

(1) Unless the specimen qualifies for an exemption under § 23.92, a valid original CITES document, or a copy of the valid original CITES document, that designates the name of the importer in the country of final destination and is issued by the Management Authority of the exporting or re-exporting country. A copy of a CITES document is subject to verification.

(2) For shipment of an Appendix–I specimen, a copy of a valid import permit that designates the name of the importer in the country of final destination, unless the CITES document in paragraph (b)(1) of this section is a CITES exemption document (see § 23.20(d)).

(3) Transportation and routing documents that show the shipment has been consigned to the same importer and country of final destination as designated on the CITES document.

(c) *Shipment requirements.* An in-transit shipment, including an on-board store, must meet the following:

(1) When in an intermediary country, an in-transit shipment must stay only for the time needed to immediately transfer the specimen to the mode of transport used to continue to the final destination and remain under customs control. Other than during immediate transfer, the specimen may not be stored in a duty-free, bonded, or other kind of warehouse or a free trade zone.

(2) At any time during transit, an in-transit shipment must not be sold, manipulated, or split unless authorized by the Management Authority of the intermediary country.

(d) *Reserving Party or non-Party.* All the requirements of this section apply to shipments to or from a reserving Party or non-Party that are being transhipped through a Party. The CITES document must treat the specimen as listed in the Appendix as provided in § 23.21(d).

(e) *Specimen protected by other regulations.* Shipment of a specimen that is also listed as a migratory bird (part 10 of this subchapter), injurious wildlife (part 16 of this subchapter), endangered or threatened species (parts 17 of this subchapter and 222–224 of this title), marine mammal (parts 18 of this subchapter and 216 of this title), or bald or golden eagle (part 22 of this subchapter), and is moving through the United States is considered an import, and cannot be treated as an in-transit shipment (see § 23.3).

§ 23.23 What information is required on U.S. and foreign CITES documents?

(a) *Purpose.* Article VI of the Treaty provides standard information that must be on a permit and certificate issued under Articles III, IV, and V. To identify a false or invalid document, any CITES document, including a CITES exemption document issued under Article VII, must contain standardized information to allow a Party to verify that the specimen being shipped is the one listed on the document and that the trade is consistent with the provisions of the Treaty.

(b) *CITES form.* A CITES document issued by a Party must be on a form printed in one or more of the three working languages of CITES (English, Spanish, or French). A CITES document from a non-Party may be in the form of a permit or certificate, letter, or any other form that clearly indicates the nature of the document and includes the information in paragraphs (c) through (e) of this section and the additional information in § 23.25.

(c) *Required information.* Except for a phytosanitary certificate used as a CITES certificate for artificially propagated plants in paragraph (f) of this section or an excluded wildlife hybrid letter in § 23.43, a CITES document issued by a Party or non-Party must contain the information set out in this paragraph (listed alphabetically). Specific types of CITES documents must also contain the additional information identified in paragraph (e) of this section. A CITES document is valid only when it contains the following information:

Required information	Description
(1) Appendix	The CITES Appendix in which the species, subspecies, or population is listed (see § 23.21 when a Party has taken a reservation on a listing).
(2) Applicant's signature	The applicant's signature if the CITES document includes a place for it.
(3) Bill of lading, air waybill, or flight number	As applicable for export or re-export: (i) By ocean or air cargo, the bill of lading or waybill number, or (ii) in accompanying baggage, the flight number, as recorded on the CITES document by the inspecting official at the port, if known at the time of validation or certification.
(4) Dates	Date of issue and date of expiration (''valid until'' date on the standardized CITES form), which is midnight of the date on the CITES document. See § 23.54 for the length of validity for different types of CITES documents.
(5) Description of the specimen	A complete description of the specimen, including whether live or the type of goods. The sex and age of a live specimen should be recorded, if possible. Such information must be in English, Spanish, or French on a CITES document from a Party. If a code is used to indicate the type of specimen, it must agree with the *Guidelines for preparation and submission of CITES annual reports* available from the CITES website or us.
(6) Document number	A unique control number. We use a unique 12-character number. The first two characters are the last two digits of the year of issuance, the next two are the two-letter ISO country code, followed by a six-digit serial number, and two digits or letters used for national informational purposes.
(7) Humane transport of live wildlife	If the CITES document authorizes the export or re-eexport of live wildlife, a statement that the document is valid only if the transport conditions comply with the *CITES Guidelines for Transport* (available from the CITES website), or, in the case of air transport of wildlife, with the *International Air Transport Association Live Animals Regulations.* The shipment must comply with the requirements of the Live Animals Regulations (LAR), 32nd edition, October 1, 2005, by the International Air Transport Association (IATA), Reference Number: 9105–32, ISBN 92–9195–560–4.[1]
(8) Identification of the specimen	Any unique identification number or mark (such as a tag, band, ring, microchip, label, or serial number), including any mark required under these regulations or a CITES listing annotation. For a microchip, the microchip code, trademark of the transponder manufacturer and, where possible, the location of the microchip in the specimen. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.
(9) Management Authority	The complete name and address of the issuing Management Authority as included in the CITES directory, which is available from the CITES website or us.
(10) Name and address	The complete name and address, including country, of the exporter and importer.

Required information	Description
(11) Purpose of transaction	The purpose of the transaction, if possible, using one of the codes given in paragraph (d) of this section. The code is determined by the issuing Management Authority through information submitted with an application. This is not required for a certificate of origin.
(12) Quantity	The quantity of specimens authorized in the shipment and, if appropriate, the unit of measurement using the metric system: (i) The unit of measurement should be appropriate to the type of specimen and agree with the *Guidelines for the preparation and submission of CITES annual reports* available from the CITES website or us. General descriptions such as ''one case'' or ''one batch'' are not acceptable. (ii) Weight should be in kilograms. If weight is used, net weight (weight of the specimen alone) must be stated, not gross weight that includes the weight of the container or packaging. (iii) Volume should be in cubic meters for logs and sawn wood and either square meters or cubic meters for veneer and plywood. (iv) For re-export, if the type of good has not changed since being imported, the same unit of measurement as on the export permit must be used, except to change to units that are to be used in the CITES annual report.
(13) Scientific name	The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using standard nomenclature as it appears in the CITES Appendices or the references adopted by the CoP. A list of current references is available from the CITES website or us. A CITES document may contain higher-taxon names in lieu of the species name only under one of the following circumstances: (i) The CoP has agreed that the use of a higher-taxon name is acceptable for use on CITES documents. (A) If the genus cannot be readily determined for coral rock, the scientific name to be used is the order Scleractinia. (B) Live and dead coral must be identified to the level of species except where the CoP has agreed that identification to genus is acceptable. A current list of coral taxa identifiable to genus is available from the CITES website or us. (C) Re-export of worked skins or pieces of *Tupinambis* species that were imported before August 1, 2000, may indicate *Tupinambis* spp. (ii) The issuing Party can show the use of a higher- taxon name is well justified and has communicated the justification to the Secretariat. (iii) The item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level.
(14) Seal or stamp	The embossed seal or ink stamp of the issuing Management Authority.
(15) Security stamp	If a Party uses a security stamp, the stamp must be canceled by an authorized signature and a stamp or seal, preferably embossed. The number of the stamp must also be recorded on the CITES document.
(16) Signature	An original handwritten signature of a person authorized to sign CITES documents for the issuing Management Authority. The signature must be on file with the Secretariat.
(17) Signature name	The name of the person who signed the CITES document.
(18) Source	The source of the specimen. For re-export, unless there is information to indicate otherwise, the source code on the CITES document used for import of the specimen must be used. See § 23.24 for a list of codes.
(19) Treaty name	Either the full name or acronym of the Treaty, or the CITES logo.
(20) Type of CITES document	The type of CITES document (import, export, re-export, or other): (i) If marked ''other,'' the CITES document must indicate the type of document, such as artificially propagated, bred-in-captivity, certificate of origin, certificate of ownership, introduction from the sea, pre-Convention, sample collection covered by an ATA carnet, scientific exchange, or traveling exhibition. (ii) If multiple types are authorized on one CITES document, the type that applies to each specimen must be clearly indicated.
(21) Validation or certification	The actual quantity of specimens exported or re-exported: (i) Using the same units of measurement as those on the CITES document. (ii) Validated or certified by the stamp or seal and signature of the inspecting authority at the time of export or re-export.

[1] The incorporation by reference of the IATA LAR was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IATA, 800 Place Victoria, P.O. Box 113, Montreal, Quebec, Canada H4Z 1M1, by calling 1–800–716–6326, or ordering through the Internet at *http://www.iata.org.* Copies may be inspected at the U.S. Management Authority or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(d) *Purpose of transaction.* If possible, the CITES document should contain one of the following codes:

Code	Purpose of transaction
B	Breeding in captivity or artificial propagation.
E	Education.
G	Botanical garden.
H	Hunting trophy.
L	Law enforcement/judicial/forensic.

Code	Purpose of transaction
M	Medical research (including biomedical research).
N	Reintroduction or introduction into the wild.
P	Personal.
Q	Circus and traveling exhibition.
S	Scientific.
T	Commercial.
Z	Zoo.

(e) *Additional required information.* The following describes the additional information that is required for specific types of documents (listed alphabetically):

Type of document	Additional required information
(1) Annex (such as an attached inventory, conditions, or continuation pages of a CITES document)	The page number, document number, and date of issue on each page of an annex that is attached as an integral part of a CITES document. The signature and ink stamp or seal, preferably embossed, of the Management Authority issuing the CITES document must also be included on each page of the annex. The CITES document must indicate an attached annex and the total number of pages.
(2) Certificate of origin (see § 23.38)	A statement that the specimen originated in the country of origin that issued the certificate.
(3) Copy when used in place of the original CITES document	(i) Information required in paragraph (e)(7) of this section when the document authorizes export or re-export. (ii) A statement by the Management Authority on the face of the document authorizing the use of a copy when the document authorizes import.
(4) Export permit for a registered commercial breeding operation or nursery—Appendix-I specimens (see § 23.46)	The registration number of the operation or nursery assigned by the Secretariat, and if the exporter is not registered operation or nursery, the name of the registered operation or nursery.
(5) Export permit with a quota	Number of specimens, such as 500/1,000, that were: (i) Exported thus far in the current calendar year, including those covered by the current permit (such as 500), and (ii) Included in the current annual quota (such as 1,000).
(6) Import permit (Appendix-I specimen) (see § 23.35)	A certification that the specimen will not be used for primarily commercial purposes and, for a live specimen, that the recipient has suitable facilities and expertise to house and care for it.
(7) Replacement CITES document (see § 23.52)	When a CITES document replaces an already issued CITES document that was lost, damaged, stolen, or accidentally destroyed: (i) If a newly issued CITES document, indication it is a ''replacement,'' the number and date of issuance of the CITES document that was replaced, and reason for replacement. (ii) If a copy of the original CITES document, indication it is a ''replacement'' and a ''true copy of the original,'' a new original signature of the issuing Management Authority, the date signed, and reason for replacement.
(8) Partially completed documents (see § 23.51)	(i) A list of the blocks that must be completed by the permit holder. (ii) If the list includes scientific names, an inventory of approved species must be included on the face of the CITES document or in an attached annex. (iii) A signature of the permit holder, which acts as a certification that the information entered is true and accurate.
(9) Pre-Convention document (see § 23.45)	(i) An indication on the face of the CITES document that the specimen is pre-Convention. (ii) A date that shows the specimen was acquired before the date the Convention first applied to it.
(10) Re-export certificate (see § 23.37)	(i) The country of origin, the export permit number, and the date of issue. (ii) If previously re-exported, the country of last re-export, the re-export certificate number, and the date of issue. (iii) If all or part of this information is not known, a justification must be given.
(11) Retrospective CITES document (see § 23.53)	A clear statement that the CITES document is issued retrospectively and the reason for issuance.
(12) Sample collection covered by an ATA carnet (see § 23.50)	(i) A statement that the document covers a sample collection and is invalid unless accompanied by a valid covered by a valid ATA carnet. (ii) The number of the accompanying ATA carnet either recorded by the Management Authority, customs, or other responsible CITES inspecting official.

(f) *Phytosanitary certificate.* A Party may use a phytosanitary certificate as a CITES document under the following conditions:

(1) The Party has provided copies of the certificate, stamps, and seals to the Secretariat.

(2) The certificate is used only when all the following conditions are met:

(i) The plants are being exported, not re-exported.

(ii) The plants are Appendix-II species or hybrids of one or more Appendix-I species or taxa that are not annotated to include hybrids.

(iii) The plants were artificially propagated in the exporting country.

(3) The certificate contains the following information:

(i) The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using

standard nomenclature as it appears in the CITES Appendices or the references adopted by the CoP.

(ii) The type (such as live plant or bulb) and quantity of the specimens authorized in the shipment.

(iii) A stamp, seal, or other specific indication stating that the specimen is artificially propagated (see § 23.64).

§ 23.24 What code is used to show the source of the specimen?

The Management Authority must indicate on the CITES document the source of the specimen using one of the following codes, except the code ''O'' for pre-Convention, which should be used in conjunction with another code:

Source of specimen	Code
(a) *Artificially propagated plant (see § 23.40):* (1) An Appendix-II or -III artificially propagated specimen. (2) An Appendix-I plant specimen artificially propagated for noncommercial purposes or certain Appendix-I hybrids (see § 23.42) propagated for commercial purposes.	A
(b) *Bred-in-captivity wildlife (see § 23.41):* (1) An Appendix-II or -III specimen bred-in-captivity. (See paragraph (d)(1) of this section for wildlife that does not qualify as bred-in-captivity.) (2) An Appendix-I specimen bred for noncommercial purposes. (See paragraph (c)(1) of this section for an Appendix-I specimen bred for commercial purposes.)	C
(c) *Bred-in-captivity or artificially propagated for commercial purposes (see §§ 23.46 and 23.47):* (1) An Appendix-I wildlife specimen bred-in-captivity for commercial purposes at an operation registered with the Secretariat. (2) An Appendix-I plant specimen artificially propagated for commercial purposes at a nursery that is registered with the Secretariat or a commercial propagating operation that meets the requirements of § 23.47.	D
(d) *Captive-bred wildlife (§ 23.36):* (1) An Appendix-II or -III species that is captive-bred. (2) An Appendix-I species that is one of the following: (i) Captive-bred. (ii) Bred for commercial purposes, but the commercial breeding operation was not registered with the Secretariat. (iii) Bred for noncommercial purposes, but the facility does not meet the definition in § 23.5 because it was not involved in a cooperative conservation program.	F
(e) *Confiscated or seized specimen (see § 23.78).*	I
(f) *Pre-Convention specimen (see § 23.45)* (code to be used in conjunction with another code).	O
(g) *Ranched wildlife* (wildlife that originated from a ranching operation).	R
(h) *Source unknown* (must be justified on the face of the CITES document).	U
(i) *Specimen taken from the wild:* (1) For wildlife, this includes a specimen born in captivity from an egg collected from the wild or from wildlife that mated or exchanged genetic material in the wild. (2) For a plant, it includes a specimen propagated from a propagule collected from a wild plant, except as provided in § 23.64.	W

§ 23.25 What additional information is required on a non-Party CITES document?

(a) *Purpose.* Under Article X of the Treaty, a Party may accept a CITES document issued by a competent authority of a non-Party only if the document substantially conforms to the requirements of the Treaty.

(b) *Additional certifications.* In addition to the information in § 23.23(c) through (e), a CITES document issued by a non-Party must contain the following certifications on the face of the document:

Activity by a non-party	Certification
(1) Export	(i) The Scientific Authority has advised that the export will not be detrimental to the survival of the species. (ii) The Management Authority is satisfied that the specimen was legally acquired.
(2) Import	The import will be for purposes that are not detrimental to the survival of the species.

§ 23.26 When is a U.S. or foreign CITES document valid?

(a) *Purpose.* Article VIII of the Treaty provides that Parties take appropriate measures to enforce the Convention to prevent illegal trafficking in wildlife and plants.

(b) *Original CITES documents.* A separate original or a true copy of a CITES document must be issued before the import, introduction from the sea, export, or re-export occurs, and the document must accompany each shipment. No copy may be used in place of an original except as provided in § 23.23(e)(3) or when a shipment is in transit (see § 23.22). Fax or electronic copies are not acceptable.

(c) *Acceptance of CITES documents.* We will accept a CITES document as valid for import, introduction from the sea, export, and re-export only if the document meets the requirements of this section, §§ 23.23 through 23.25, and the following conditions:

Key phrase	Conditions for an acceptable CITES document
(1) Altered or modified CITES document	The CITES document has not been altered (including by rubbing or scratching out), added to, or modified in any way unless the change is validated on the document by the stamp and signature of the issuing Management Authority, or if the document was issued as a partially completed document, the Management Authority lists on the face of the document which blocks must be completed by the permit holder.
(2) CITES document	U.S. and foreign CITES documents must meet the general provisions and criteria in subparts C and E.
(3) Conditions	All conditions on the CITES document are met.
(4) Extension of validity	The validity of a CITES document may not be extended except as provided in § 23.73 for certain timber species.
(5) Fraudulent CITES document or CITES document containing false information	The CITES document is authentic and does not contain erroneous or misleading information.
(6) Humane transport	Live wildlife or plants were transported in compliance with the *CITES Guidelines for Transport* or, in the case of air transport of wildlife, the *International Air Transport Association Live Animals Regulations.*
(7) Management Authority and Scientific Authority	The CITES document was issued by a Party or non-Party that has designated a Management Authority and Scientific Authority and has provided information on these authorities to the Secretariat.
(8) Name of importer and exporter	A CITES document is specific to the name on the face of the document and may not be transferred or assigned to another person.
(9) Phytosanitary certificate	A phytosanitary certificate can be used to export artificially propagated plants only if the issuing Party has provided copies of the certificates, stamps, and seals to the Secretariat.
(10) Registered commercial breeding operation for Appendix-I wildlife	(i) The operation is in the Secretariat's register. (ii) Each specimen is specifically marked, and the mark is described on the CITES document.
(11) Registered commercial nursery for Appendix-I plants	The operation is included in the Secretariat's register.
(12) Retrospective CITES documents	A CITES document was not issued retrospectively except as provided in § 23.53.
(13) Shipment contents	The contents of the shipment match the description of specimens provided on the CITES document, including the units and species. A shipment cannot contain more or different specimens or species than certified or validated on the CITES document at the time of export or re-export (the quantity of each specimen validated or certified may be less, but not more, than the quantity stated at the time of issuance).
(14) Quota	For species with a quota on file with the Secretariat, the quantity exported from a country does not exceed the quota.
(15) Wild-collected wildlife specimen	A wild-collected wildlife specimen (indicated on the CITES document with a source code of "W") is not coming from a country that is outside the range of the species, unless we have information indicating that the species has been established in the wild in that country through accidental introduction or other means.

(d) *Verification of a CITES document.* We may request verification of a CITES document from the Secretariat or a foreign Management Authority before deciding whether to accept it under some circumstances, including, but not limited to, the following:

(1) We receive reliable information that indicates the need for CITES document verification.

(2) We have reasonable grounds to believe that a CITES document is not valid or authentic because the species is being traded in a manner detrimental to the survival of the species or in violation of foreign wildlife or plant laws, or any applicable Management or Scientific Authority finding has not been made.

(3) The re-export certificate refers to an export permit that does not exist or is not valid.

(4) We have reasonable grounds to believe that the document is fraudulent, contains false information, or has unauthorized changes.

(5) We have reasonable grounds to believe that the specimen identified as bred-in-captivity or artificially propagated is a wild specimen or otherwise does not qualify for these exemptions.

(6) The import of a specimen designated as bred-in-captivity or artificially propagated is from a non-Party. For an Appendix-I specimen, we must consult with the Secretariat.

(7) For a retrospectively issued CITES document, if both the importing and exporting or re-exporting countries' Management Authorities have not agreed to the issuance of the document.

(8) For a replacement CITES document, we need clarification of the reason the document was issued.

§ 23.27 What CITES documents do I present at the port?

(a) *Purpose.* Article VIII of the Treaty provides that Parties establish an inspection process that takes place at a port of exit and entry. Inspecting officials must verify that valid CITES documents accompany shipments and take enforcement action when

shipments do not comply with the Convention.

(b) *Process.* Officials in each country inspect the shipment and validate or certify the CITES document. In the United States, you must follow the clearance requirements for wildlife in part 14 of this subchapter and for plants in 7 CFR parts 319, 352, and 355. The table in this paragraph (b) provides information on:

(1) The types of original CITES documents you must present to be validated or certified by the inspecting official to export or re-export from a country.

(2) When you need to surrender a copy of the original CITES document to the inspecting official at the time of export or re-export.

(3) When you need to surrender the original CITES document to the inspecting official at the time of import or introduction from the sea.

Type of CITES document	Present original for export or re-export validation or certificaion	Surrender copy upon export or re-export	Surrender original upon import or introduction from the sea
Bred-in-captivity certificate	Required	Required	Required.
Certificate for artificially propagated artificially propagated plants	Required	Required	Required.
Certificate of origin	Required	Required	Required.
Certificate of ownership	Required	Required	Not required; submit copy.
Export permit	Required	Required	Required.
Hybrid, excluded wildlife hybrid letter	Required [1]	Required	Not required; submit copy.
Import permit	Not required	Required	Required.
Introduction-from-the-sea certificate	Not applicable	Not applicable	Required.
Multiple-use document	Required [2]	Required	Not required; submit copy.
Pre-Convention document	Required	Required	Required.
Re-export certificate	Required	Required	Required.
Registered Appendix-I commercial breeding operation, export permit	Required	Required	Required.
Registered Appendix-I nursery, export permit	Required	Required	Required.
Registered scientific institution CITES label	Not required [3]	Not required	Not required.
Replacement document where a shipment has been made and is in a foreign country	Not required	Not required	Required.
Replacement document where a shipment has not left the United States	Required	Required	Required.
Retrospective document	Not required	Not required	Required.
Sample collection covered by an ATA carnet, CITES document	Required	Required	Not required; submit copy.
Traveling exhibition certificate	Required	Required	Not required; submit copy.

[1] Certification letter may not require validation.
[2] Orginal must be available for inspection, but permit conditions will indicate whether an original or copy is to be validated.
[3] Original label must be affixed to the package, which must be presented for inspection at the time of export, re-export, or import.

Subpart C—Application Procedures, Criteria, and Conditions

§ 23.32 How do I apply for a U.S. CITES document?

(a) To apply for a U.S. CITES document, you must complete a standard application form and submit it to the appropriate office shown on the top of the form.

(b) To determine the type of CITES document needed for your shipment, go to §§ 23.18 through 23.20 for further guidance.

(c) If a species is also regulated under another part of this subchapter (such as endangered or threatened, see § 23.3), the requirements of all parts must be met. You may submit a single application that contains all the information needed to meet the requirements of CITES and other applicable parts.

(d) You must also follow the general permit procedures in part 13 of this subchapter.

(e) You should review the criteria in all applicable regulations in this subchapter that apply to the type of permit you are seeking before completing the application form.

(f) We will review your application to assess whether it contains the information needed to make the required findings.

(1) Based on available information, we will decide if any of the exemptions apply and what type of CITES document you need.

(2) If we need additional information, we will contact you. If you do not provide the information within 45

calendar days, we will abandon your application. If you wish to apply for a permit at a later time, you must submit a new application.

§ 23.33 How is the decision made to issue or deny a request for a U.S. CITES document?

(a) Upon receiving a complete application, we will decide whether to issue a CITES document by considering:

(1) The general criteria in § 13.21(b) of this subchapter and, if the species is protected under a separate law or treaty, criteria in any other applicable parts.

(2) The CITES issuance criteria provided in this subpart (see subpart D of this part for factors we consider in making certain findings).

(b) As needed, the U.S. Management Authority, including FWS Law Enforcement, will forward a copy of the application to the U.S. Scientific Authority; State, tribal, or other Federal government agencies; or other applicable experts. We may also query the Secretariat and foreign Management and Scientific Authorities for information to use in making the required findings.

(c) You must provide sufficient information to satisfy us that all criteria specific to the proposed activity are met before we can issue a CITES document.

(d) We will base our decision on whether to issue or deny the application on the best available information.

§ 23.34 What kinds of records may I use to show the origin of a specimen when I apply for a U.S. CITES document?

(a) When you apply for a U.S. CITES document, you will be asked to provide information on the origin of the specimen that will be covered by the CITES document.

(1) You need to provide sufficient information for us to determine if the issuance criteria in this part are met (see the sections in this subpart for each type of CITES document).

(2) We require less detailed information when the import, introduction from the sea, export, or re-export poses a low risk to a species in the wild and more detailed information when the proposed activity poses greater risk to a species in the wild (see Subpart D of this part for factors we consider in making certain findings).

(b) Information you may want to provide in a permit application includes, but is not limited to, the following:

Source of specimen	Types of records
(1) Captive-bred or cultivated [1]	(i) Records that identify the breeder or propagator of the specimens that have been identified by birth, hatch, or propagation date and for wildlife by sex, size, band number, or other mark, or for plants by size or other identifying feature: (A) Signed and dated statement by the breeder or propagator that the specimen was bred or propagated under controlled conditions. (B) Name and address of the breeder or propagator as shown by documents such as an International SpeciesInventory System (ISIS) record, veterinary certificate, or plant nursery license. (ii) Records that document the breeding or propagating of specimens at the facility: (A) Number of wildlife (by sex and age-or size-class) or plants at the facility. (B) How long the facility has been breeding or propagating the species. (C) Annual production and mortalities. (D) Number of specimens sold or transferred annually. (E) Number of specimens added from other sources annually. (F) Transaction records with the date, species, quantity of specimens, and name and address of seller. (G) Marking system, if applicable. (H) Photographs or video of facility, including for wildlife any activities during nesting and production and rearing of young, and for plants, different stages of growth.
(2) Confiscated or seized	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession.
(3) Exempt plant material	Records that document how you obtained the exempt plant material, including the name and address of the person from whom you received the plant material.
(4) Imported previously	(i) A copy of the cancelled CITES document that accompanied the shipment into the United States. (ii) For wildlife, copies of a cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–77) for each shipment.
(5) Pre-Convention	Records that show the specimen was acquired before the date the provisions of the Convention first applied to it, such as: (i) Receipt or invoice. (ii) Catalog, inventory list, photograph, or art book. (iii) Statement from a qualified appraiser attesting to the age of a manufactured product. (iv) CBP (formerly U.S. Customs Service) import documents. (v) Phytosanitary certificate. (vi) Veterinary document or breeding or propagation logs.
(6) Sequential ownership or purchase	(i) Records that specifically identify the specimen, give the name and address of the owner, and show the specimen's origin (pre-Convention, previously imported, wild-collected, or born or propagated in a controlled environment in the United States). (ii) Records that document the history of all transfers in ownership (generally not required for pre-Convention specimens).
(7) Unknown origin, for non-commercial purposes	A complete description of the circumstances under which the specimen was acquired (where, when, and from whom I the specimen was acquired), including efforts made to obtain information on the origin of the specimen.

Source of specimen	Types of records
(8) Wild-collected	Records, such as permits, licenses, and tags, that demonstrate the specimen or the parental stock was legally removed from the wild under relevant foreign, Federal, tribal, State, or local wildlife or plant conservation laws or regulations: (i) If taken on private or tribal land, permission of the landowner if required under applicable law. (ii) If taken in a national, State, or local park, refuge, or other protected area, permission from the applicable agency, if required.

[1] If the wildlife was born in captivity from an egg collected from the wild or from parents that mated or exchanged genetic material in the wild, or the plant was propagated from a propagule collected from a wild plant, see paragraph (b)(8) of this section.

(c) If you intend to engage in international trade with a CITES specimen in the future, you should keep sufficient records to establish your eligibility for a CITES document for as long as you possess the specimen and, if you sell, donate, or transfer ownership of the specimen, by providing records to the new owner on the origin of the specimen.

§ 23.35 What are the requirements for an import permit?

(a) *Purpose.* Article III(3) of the Treaty sets out the conditions under which a Management Authority can issue an import permit.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority:

Type of application for an import permit for an Appendix-I specimen	Form No.
(1) CITES:	
Southern African Leopard, African Elephant, and Namibian Southern White Rhinoceros Sport-hunted Trophies	3–200–19
Appendix-I Plants	3–200–35
Appendix-I Wildlife	3–200–37
Appendix-I Biological Samples	3–200–29
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Sport-hunted Trophies	3–200–20
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Marine Mammals	3–200–43
(4) Wild Bird Conservation Act and CITES:	
Personal Pet Bird	3–200–46
Under an Approved Cooperative Breeding Program	3–200–48
Scientific Research or Zoological Breeding/Display	3–200–47

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign import permits. When applying for a U.S. import permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an import permit for an Appendix-I specimen	Section
(1) The proposed import would be for purposes that are not detrimental to the survival of the species.	23.61
(2) The specimen will not be used for primarily commercial purposes.	23.62
(3) The recipients are suitably equipped to house and care for any live wildlife or plant to be imported.	23.65
(4) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP.	23.23

(d) *U.S. standard conditions.* You must meet all of the provisions on use after import in § 23.55 and the standard conditions in § 23.56.

(e) *Prior issuance of an import permit.* For Appendix-I specimens, the Management Authority of the exporting country may:

(1) Issue an export permit for live or dead specimens or a re-export certificate for live specimens only after the Management Authority of the importing country has either issued an import permit or confirmed in writing that an import permit will be issued.

(2) Accept oral confirmation from the Management Authority of the importing country that an import permit will be issued in an emergency situation where the life or health of the specimen is threatened and no means of written communication is possible.

(3) Issue a re-export certificate for a dead specimen without confirmation that the import permit has been issued.

§ 23.36 What are the requirements for an export permit?

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may issue an export permit for an Appendix-I, -II, or -III specimen. Article XIV sets out the conditions under which a Management Authority may issue a document for export of certain Appendix-II marine specimens protected under a pre-existing treaty, convention, or international agreement.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority. Form 3–200–26 may also be submitted to FWS Law Enforcement at certain ports or regional offices:

Type of application for an export permit	Form No.
(1) CITES:	
American Ginseng	3–200–34
Appendix-I Plants Artificially Propagated for Commercial Purposes	3–200–33
Biological Specimens	3–200–29
Captive-born Raptors	3–200–25
Captive-born Wildlife (except raptors)	3–200–24
Export of Skins/Products of Bobcat, Canada Lynx, River Otter, Brown Bear, Gray Wolf, and American Alligator Taken under an Approved State or Tribal Program	3–200–26
Personal Pets, One-time Export	3–200–46
Plants	3–200–32
Registration of a Native Species Production Facility	3–200–75
Single-use Permits under a Master File or an Annual Program File	3–200–74
Trophies by Taxidermists	3–200–28
Wildlife, Removed from the Wild	3–200–27
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Biological Samples	3–200–29
Live Captive-held Marine Mammals	3–200–53
Take from the Wild for Export	3–200–43

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign export permits except as provided for certain marine specimens in paragraph (d) of this section. When applying for a U.S. permit or certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife or plant was legally acquired	Yes	Yes	Yes	23.60
(2) The proposed export would not be detrimental to the survival of the species	Yes	Yes	n/a	23.61
(3) An import permit has already been issued or the Management Authority of the importing country has confirmed that it will be issued	Yes	n/a	n/a	23.35
(4) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(5) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23
(6) The specimen originated in a country that listed the species	n/a	n/a	Yes	23.20
(7) For wildlife with the source code "W" or "F," the export is for noncommercial purposes (See § 23.46 for the export of specimens that originated at an Appendix-I commercial breeding operation that is registered with the Secretariat.)	Yes	n/a	n/a	

(d) *Export of certain exempt marine specimens.* Article XIV(4) and (5) of the Treaty provide a limited exemption for Appendix-II marine species that are protected under another treaty, convention, or international agreement that was in force at the time CITES entered into force. When all of the following conditions are met, export of exempt Appendix-II marine wildlife or plants requires only that the shipment is accompanied by a document issued by the Management Authority of the exporting country indicating that the specimens were taken in accordance with the provision of the other international treaty, convention, or agreement:

(1) The exporting country is a CITES Party and is a party to an international treaty, convention, or agreement that

affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered in the exporting country.

(3) The specimen was taken within waters under the jurisdiction of the exporting country or in the marine environment not under the jurisdiction of any country.

(4) The specimen was taken in accordance with the other international treaty, convention, or agreement, including any quotas.

(5) The shipment is accompanied by any official document required under the other international treaty, convention, or agreement or otherwise required by law.

(e) *Export of exempt specimens from the United States.* To export a specimen exempted under paragraph (d) of this section, you must obtain a CITES document from the U.S. Management Authority that indicates the specimen was taken in accordance with the provisions of another international treaty, convention, or agreement that was in force on July 1, 1975.

(f) *U.S. application for export of exempt specimens.* To apply for a CITES exemption document under paragraph (e) of this section, complete the appropriate form for your activity and submit it to the U.S. Management Authority.

(g) *Criteria.* The criteria in this paragraph (g) apply to the issuance and acceptance of U.S. and foreign export documents. To obtain a U.S. CITES document for export of specimens exempted under paragraph (d) of this section you must provide sufficient information for us to find that your proposed export meets all of the following issuance criteria:

(1) The specimen was taken in accordance with the provisions of an applicable international treaty, convention, or agreement that was in force on July 1, 1975.

(2) The scientific name of the CITES species is in the standard nomenclature in the CITES Appendices or references adopted by the CoP (see § 23.23).

§ 23.37 What are the requirements for a re-export certificate?

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may issue a re-export certificate for an Appendix-I, -II, or -III specimen.

(b) *U.S. application forms.* Complete the appropriate form for the proposed activity and submit it to the U.S. Management Authority. Form 3–200–73 may also be submitted to Law Enforcement at certain ports or regional offices:

Type of application for a re-export certificate	Form No.
(1) CITES:	
Biological Specimens	3–200–29
Plants	3–200–32
Single-use Permits under a Master File or an Annual Program File	3–200–74
Trophies by Taxidermists	3–200–28
Wildlife	3–200–73
(2) Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
(3) Marine Mammal Protection Act and CITES:	
Biological Samples	3–200–29
Live Captive-held Marine Mammals	3–200–53

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign re-export certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a re-export certificate	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife or plant was legally acquired	Yes	Yes	Yes	23.60
(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(3) For a live specimen, an import permit has already been issued or the Management Authority of the importing country has confirmed that it will be issued. This criterion does not apply to a specimen with the source code "D."	Yes	n/a	n/a	23.35
(4) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23
(5) For re-export of a confiscated specimen, the proposed re-export would not be detrimental to the survival of the species	Yes	Yes	n/a	23.61
(6) For wildlife with the source code "W" or "F," the re-export is for noncommercial purposes	Yes	n/a	n/a	.....

§ 23.38 What are the requirements for a certificate of origin?

(a) *Purpose.* Article V(3) of the Treaty requires that a shipment of Appendix-III specimens be accompanied by a certificate of origin when the shipment is not from a country that listed the species in Appendix III and is not a re-export.

(b) *U.S. application forms.* For a certificate of origin, complete one of the following forms and submit it to the U.S. Management Authority:

(1) Form 3–200–27 for wildlife removed from the wildlife.

(2) Form 3–200–24 for captive-born wildlife.

(3) Form 3–200–32 for plants.

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. and foreign certificates of origin. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimen originated in the country of export, which is not a country that listed the species in Appendix III. In the case of a listing that is annotated to cover only a certain population, no CITES document is required if the listed population does not occur in the country of export. For U.S. applicants, the country of origin must be the United States.

(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(3) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen (see § 23.23).

§ 23.39 What are the requirements for an introduction-from-the-sea certificate?

(a) *Purpose.* Articles III(5), IV(6), and IV(7) of the Treaty set out the conditions under which a Management Authority may issue a certificate of introduction from the sea.

(b) *U.S. application form.* Complete Form 3–200–31 and submit it to the U.S. Management Authority.

(c) *Criteria.* The criteria in this paragraph (c) apply to the issuance and acceptance of U.S. certificates. You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an introduction-from-the-sea certificate	Appendix of the specimen		Section
	I	II	
(1) The specimen was taken in the marine environment not under the jurisdiction of any country	Yes	Yes	
(2) The proposed introduction from the sea would not be detrimental to the survival of the species	Yes	Yes	23.61
(3) The specimen will not be used for primarily commercial purposes	Yes	n/a	23.62
(4) The recipients are suitably equipped to house and care for live wildlife or plants	Yes	n/a	23.65
(5) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	23.23
(6) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	23.23

(d) *Exemption.* As allowed under Article XIV(4) and (5) of the Treaty, you may directly introduce into the United States any Appendix-II wildlife or plant taken in the marine environment that is not under the jurisdiction of any country without a CITES document when all of the following conditions are met:

(1) The United States is a party to an international treaty, convention, or agreement that affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered in the United States.

(3) The specimen was taken in accordance with the other international treaty, convention, or agreement, including any quotas.

(4) The shipment is accompanied by any official document required under the other international treaty, convention, or agreement or otherwise required by U.S. law.

(e) *Export of exempt specimens.* To export a specimen exempted under paragraph (d) of this section, you must obtain a CITES document from the U.S. Management Authority that indicates the specimen was taken in accordance with the provisions of the other international treaty, convention, or agreement that was in force on July 1, 1975. See requirements in § 23.36 (e)—(g).

(f) *Appendix III.* Introduction-from-the-sea certificate requirements do not apply to Appendix-III species.

§ 23.40 What are the requirements for a certificate for artificially propagated plants?

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to plants that are artificially propagated when a Management Authority issues a certificate.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate for artificially propagated Appendix-I, -II, or -III plants:

(1) The certificate for artificially propagated plants and any subsequent re-export certificate must show the source code as ''A'' for artificially propagated.

(2) For an Appendix-I specimen that satisfies the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete Form 3–200–33 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a certificate for artificially propagated plants	Appendix of the specimen			Section
	I	II	III	
(1) The plant was artificially propagated	Yes	Yes	Yes	23.64
(2) The plant specimen is one of the following: (i) Was propagated for noncommercial purposes. (ii) Is part of a traveling exhibition. (iii) Is a hybrid of one or more Appendix-I species or taxa that is not annotated to include hybrids in the listing and was propagated for commercial or noncommercial purposes.	Yes	n/a	n/a	
(3) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(4) The live plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You may not export or re-export a plant (including its parts, products, or derivatives) under this certificate if the plant was removed from the wild or grown directly from a wild seed, except for plants grown from exempt plant materials that qualify as artificially propagated.

(2) You may not export an Appendix-I species that was propagated for commercial purposes under this certificate, except for hybrids of one or more Appendix-I species or taxa that are not annotated to include hybrids in the listing.

(3) You may export a native plant under this certificate only when specifically approved for export and listed on the certificate, inventory sheet, or an approved species list.

(4) You may export a specimen under a higher-taxon name only if you identified the taxon in your application and we approved it on this certificate.

§ 23.41 What are the requirements for a bred-in-captivity certificate?

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to wildlife that is bred-in-captivity when a Management Authority issues a certificate.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate for Appendix-I, -II, or -III wildlife that was bred-in-captivity:

(1) The certificate and any subsequent re-export certificate must show the source code as ''C'' for bred-in-captivity.

(2) For an Appendix-I specimen that satisfies the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete Form 3–200–24 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for a bred-in-captivity certificate	Appendix of the specimen			Section
	I	II	III	
(1) The wildlife was bred-in-captivity	Yes	Yes	Yes	23.63
(2) The wildlife specimen was bred for noncommercial purposes or is part of a traveling exhibition	Yes	n/a	n/a	23.5
(3) The scientific name of the species is the standard nomenclature in the CITES Apendices or the references adopted by the CoP	Yes	Yes	Yes	23.23
(4) Live wildlife will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	Yes	Yes	Yes	23.23

§ 23.42 What are the requirements for a plant hybrid?

General provisions. Except as provided in § 23.92, the export, re-export, or import of a plant hybrid of a CITES species must be accompanied by a valid CITES document that shows the Appendix of the specimen as follows:

Question on a plant hybrid	Answer and status of specimen
(a) Is the specimen an artificially propagated hybrid of one or more Appendix-I species or taxa?	(1) **YES.** Continue to paragraph (b) of this section. (2) **NO**. Continue to paragraph (c) of this section.

Question on a plant hybrid	Answer and status of specimen
(b) Is one or more of the Appendix-I species or taxa in paragraph (a) of this section annotated to include hybrids?	(1) **YES.** The hybrid is listed in Appendix I. (2) **NO.** The hybrid is listed in Appendix I, but may be granted a certificate for artificially propagated plants even if propagated for commercial purposes.
(c) Is the specimen a hybrid that includes two or more CITES species or taxa in its lineage?	(1) **YES.** Consider the specimen to be listed in the more restrictive Appendix, with Appendix I being the most restrictive and Appendix III the least. (2) **NO.** Continue to paragraph (d) of this section.
(d) Is the specimen a hybrid that includes one CITES species or taxon in its lineage?	(1) **YES.** Consider the specimen to be listed in the Appendix in which the species or taxon is listed in the CITES Appendices. (2) **NO.** The hybrid is not regulated by CITES.

§ 23.43 What are the requirements for a wildlife hybrid?

(a) *Definition.* For the purposes of this section, recent lineage means the last four generations of a specimen's ancestry (direct line of descent).

(b) *U.S. and foreign general provisions.* Except as provided in paragraph (c) of this section, the export, re-export, or import of a wildlife hybrid must be accompanied by a valid CITES document that shows the hybrid listed in the following Appendix:

If at least one specimen in the recent lineage is listed in:	Then the specimen is listed in:
(1) Appendix I	Appendix I
(2) Appendix II, and an Appendix-I species is not included in the recent lineage	Appendix II
(3) Appendix III, and an Appendix-I or -II species is not included in the recent lineage	Appendix III

(c) *Wildlife hybrid excluded from regulation.* A wildlife hybrid that does not have a CITES species in its recent lineage must be accompanied by either a CITES document or an excluded wildlife hybrid letter issued by us or a foreign Management Authority. This requirement does not apply to a domestic dog or domestic cat that has no CITES species in its recent lineage. The CITES document or letter must describe the specimen, provide the scientific name, and certify that the wildlife contains no CITES species in the last four generations of its ancestry.

(d) *U.S. application for wildlife hybrid.* To apply for a CITES document or an excluded wildlife hybrid letter, complete the appropriate form for the proposed activity (see §§ 23.18 through 23.20) and submit it to the U.S. Management Authority.

(e) *Criteria.* For export of a hybrid that contains a CITES species in its recent lineage, you must meet the requirements of § 23.36. For an excluded wildlife hybrid letter, you must provide sufficient information for us to find that your proposed activity meets all of the following issuance criteria:

(1) The wildlife hybrid does not include any CITES species in its recent lineage.

(2) The scientific name of the CITES species in the lineage of the hybrid is the standard nomenclature in the CITES Appendices or references adopted by the CoP (see § 23.23).

§ 23.44 What are the requirements to travel internationally with my personally owned live wildlife?

(a) *Purpose.* A Management Authority may use the exemption in Article VII(3) of the Treaty to issue a certificate of ownership that authorizes frequent cross-border movements of personally owned live wildlife for personal use.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a certificate of ownership for frequent international travel with live wildlife for personal use:

(1) The certificate must be obtained from the Management Authority in the country of the owner's primary residence.

(2) Parties should treat the certificate like a passport for import to and export or re-export from each country and should not collect the original certificate at the border.

(3) If offspring are born or an additional specimen is acquired while the owner is outside his or her country of primary residence, the owner must obtain the appropriate CITES document for the export or re-export of the wildlife, not a certificate of ownership, from the Management Authority of that country.

(4) Upon returning home, the owner may apply for a certificate of ownership for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete Form 3–200–64 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The traveler owns the live wildlife and it will accompany the owner.

(2) The cross-border movement will be frequent and for personal use, including, but not limited to, companionship or use in a noncommercial competition such as falconry.

(3) To apply for a U.S. certificate, the owner resides in the United States.

(4) The wildlife was legally acquired (see § 23.60).

(5) The owner does not intend to sell, donate, or transfer the wildlife while traveling internationally.

(6) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(7) The Management Authority of the country of import has agreed to the cross-border movement.

(8) The wildlife is securely marked or uniquely identified in such a manner

that the border official can verify that the specimen and CITES document correspond.

(9) The wildlife is transported and cared for in a way that minimizes risk of injury, damage to health, or cruel treatment of the specimen (see § 23.23).

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, all of the following conditions must be met:

(1) You must accompany the wildlife during any cross-border movement.

(2) You must transport the wildlife for personal use only.

(3) You must not sell, donate, or transfer the specimen while traveling internationally.

(4) You must present the certificate to the official for validation at each border crossing.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate from the issuing Management Authority.

(6) If you no longer own the live wildlife, you must immediately return the original document to the issuing Management Authority and report on the disposition of the wildlife, such as death, sale, or transfer.

§ 23.45 What are the requirements for a pre-Convention specimen?

(a) *Purpose.* Article VII(2) of the Treaty exempts a pre-Convention specimen from standard permitting requirements in Articles III, IV, and V of the Treaty when the exporting or re-exporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect.

(b) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of pre-Convention documents:

(1) Trade in a specimen under the pre-Convention exemption is allowed only if the importing county will accept a pre-Convention certificate.

(2) The pre-Convention date is the date the species was first listed under CITES regardless of whether the species has subsequently been transferred from one Appendix to another.

(3) For a pre-Convention Appendix-I specimen, no CITES import permit is required.

(4) The pre-Convention exemption does not apply to offspring or cell lines of any wildlife or plant born or propagated after the date the species was first listed under CITES.

(c) *U.S. application form.* Complete Form 3–200–23 (wildlife) or Form 3–200–32 (plants) and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that the specimen meets all of the following criteria:

(1) The specimen was removed from the wild or born or propagated in a controlled environment before the date CITES first applied to it, or is a product (including a manufactured item) or derivative made from such specimen.

(2) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP (see § 23.23).

(3) Live wildlife or plants will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.

(4) For the re-export of a pre-Convention specimen previously imported under a CITES document, the wildlife or plant was legally imported.

§ 23.46 What are the requirements for registering an Appendix-I commercial breeding operation and commercially exporting specimens?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I specimens that are bred-in-captivity for commercial purposes shall be deemed to be listed in Appendix II. This means that an Appendix-I specimen originating from a commercial breeding operation that is registered with the CITES Secretariat may be traded under an export permit or re-export certificate based on Appendix-II criteria. The specimen is still listed in Appendix I and is not eligible for any exemption granted to an Appendix-II species or taxon, including any exemption granted by an annotation (see § 23.92).

(b) *U.S. and foreign general provisions.* The following provisions apply to the registration of U.S. and foreign Appendix-I commercial breeding operations:

(1) If the Management Authority is satisfied that the operation in its country meets the conditions for registration in paragraph (d) of this section, it will send the request to register a breeding operation to the Secretariat.

(2) The Secretariat will verify that the application is complete and notify the Parties of the request.

(3) If any Party objects to or expresses concern about the registration within 90 days from the date of the Secretariat's notification, the Secretariat will refer the application to the Animals Committee. The Committee has 60 days to respond to objections. The Secretariat will provide the recommendations of the Committee to the Management Authority of the Party that submitted the application and the Party that objected to the registration, and will facilitate a dialogue for resolution of the identified problems within 60 days.

(4) If the objection is not withdrawn or the identified problems are not resolved, approval of the registration will require a two-thirds majority vote by the Parties at the next CoP or by a postal vote.

(5) If other operations have already been registered for the species, the Secretariat may send the request to appropriate experts for advice only if significant new information is available or if there are other reasons for concern.

(6) If the Secretariat is not satisfied that the operation meets the conditions for registration, it will provide the Management Authority that submitted the registration request with a full explanation of the reasons for rejection and indicate the specific conditions that must be met before the registration can be resubmitted for further consideration.

(7) When the Secretariat is satisfied that the operation meets the registration requirements, it will include the operation in its register.

(8) Operations are assigned an identification number and listed in the official register. Registration is not final until the Secretariat notifies all Parties.

(9) If a Party believes that a registered operation does not meet the bred-in-captivity requirements, it may, after consultation with the Secretariat and the Party concerned, propose that the CoP delete the operation from the register by a two-thirds vote of the Parties. Once an operation has been deleted, it must re-apply and meet the registration requirements to be reinstated.

(10) The Management Authority, in collaboration with the Scientific Authority, of a country where any registered operation is located must monitor the operation to ensure that it continues to meet the registration requirements. The Management Authority will advise the Secretariat of any major change in the nature of the operation or in the types of products being produced for export, and the Animals Committee will review the operation to determine whether it should remain registered.

(11) A Party may unilaterally request the removal of a registered operation within its jurisdiction by notifying the Secretariat.

(12) An Appendix-I specimen may not be imported for purposes of establishing or augmenting a commercial breeding operation, unless the specimen is pre-Convention (see § 23.45) or was bred at a commercial breeding operation that is

registered with the CITES Secretariat as provided in this section.

(c) *U.S. application to register.* Complete Form 3–200–65 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the registration of U.S. and foreign Appendix-I commercial breeding operations. For your breeding operation to be registered in the United States, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for registering an Appendix-I breeding operation	Section
(1) The operation breeds wildlife for commercial purposes	23.5
(2) The parental stock was legally acquired	23.60
(3) The wildlife meets bred-in-captivity criteria	23.63
(4) Where the establishment of a breeding operation involves the removal of animals from the wild (allowable only under exceptional circumstances), the operation must demonstrate to the satisfaction of the Management Authority on advice of the Scientific Authority and of the Secretariat that the removal is or was not detrimental to the conservation of the species	
(5) The potential escape of specimens or pathogens from the facility may not pose a risk to the ecosystem and native species	
(6) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	23.23
(7) The breeding operation will make a continuing, meaningful contribution to the conservation of the species, as warranted by the conservation needs of the species	
(8) The operation will be carried out at all stages in a humane (non-cruel) manner	

(e) *Standard conditions of the registration.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You must uniquely mark all specimens from the breeding operation in the manner proposed at the time of registration. Birds may be marked with closed bands, although other methods may be used.

(2) You may not import Appendix-I specimens for primarily commercial purposes (such as to establish a commercial captive-breeding operation) except from breeding operations registered for that species.

(3) You must provide information to the Management Authority each year on the year's production and your current breeding stock. You may provide the information by mail, fax, or e-mail.

(4) You must allow our agents to enter the premises at any reasonable hour to inspect wildlife held or to inspect, audit, or copy applicable records.

(f) *U.S. and foreign general provisions for export of specimens that originated in a registered breeding operation.* The following provisions apply to the issuance and acceptance of export permits for Appendix-I specimens bred at an operation registered with the CITES Secretariat:

(1) An export permit may be issued to the registered operation or to persons who have purchased a specimen that originated at the registered operation if the specimen has the unique mark applied by the operation. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(2) The export permit, and any subsequent re-export certificate, must show the specimen as listed in Appendix I and the source code as ''D,'' and give the identification number of the registered breeding operation where the specimen originated.

(3) No CITES import permit is required for a qualifying specimen.

(g) *U.S. application form.* Complete Form 3–200–24 and submit it to the U.S. Management Authority.

(h) *Criteria.* The criteria in this paragraph (h) apply to the issuance and acceptance of U.S. and foreign export permits. When applying for a U.S. permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Section
(1) The specimen was bred at an Appendix-I breeding operation that is registered with the CITES Secretariat	23.46
(2) The proposed export would not be detrimental to the survival of the species	23.61
(3) Live wildlife will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	23.23

§ 23.47 What are the requirements for export of an Appendix-I plant artificially propagated for commercial purposes?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I plants artificially propagated for commercial purposes shall be deemed to be listed in Appendix II. This means that an Appendix-I specimen originating from a commercial nursery that is registered with the CITES Secretariat or that meets the requirements of this section may be traded under an export permit or re-export certificate based on Appendix-II criteria. The specimen is still listed in Appendix I and is not eligible for any exemption granted to an Appendix-II species or taxon, including any exemption granted by an annotation.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of export permits for Appendix-I specimens artificially propagated for commercial purposes:

(1) An Appendix-I specimen may not be imported for purposes of establishing or augmenting a nursery or commercial propagating operation, unless the specimen is pre-Convention (see § 23.45) or was propagated at a nursery that is registered with the CITES Secretariat or a commercial propagating

operation that qualifies under paragraph (d) of this section and the CITES document indicates the source code as ''D.''

(2) An export permit may be issued to a CITES-registered nursery, to a commercial propagating operation that qualifies under paragraph (d) of this section, or to persons who have purchased a specimen that originated at such a nursery or operation. No CITES import permit is required for a qualifying specimen.

(3) The export permit, and any subsequent re-export certificate, must show the specimen as listed in Appendix I and the source code as ''D,'' and if from a nursery registered with the Secretariat, give the identification number of the registered nursery where the specimen originated.

(c) *U.S. application form.* Complete Form 3–200–33 or Form 3–200–74 (for additional single-use permits under a master file or an annual export program file). Complete Form 3–200–32 for one-time export. Submit the completed form to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign export permits. When applying for a U.S. permit, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for an export permit	Section
(1) The specimen was propagated for commercial purposes	23.5
(2) The parental stock was legally acquired	23.60
(3) The proposed export would not be detrimental to the survival of the species	23.61
(4) The plant was artificially propagated	23.64
(5) The scientific name of the species is the standard nomenclature in the CITES Appendices or the references adopted by the CoP	23.23
(6) The live plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen	23.23

(e) *Nursery registration.* [Reserved]

§ 23.48 What are the requirements for a registered scientific institution?

(a) *Purpose.* Article VII(6) of the Treaty grants an exemption that allows international trade in certain specimens for noncommercial loan, donation, or exchange between registered scientific institutions.

(b) *U.S. and foreign general provisions.* The following provisions apply to the registration of scientific institutions and acceptance of shipments from registered scientific institutions:

(1) The receiving and sending scientific institutions must be registered with the Management Authority in their country. Scientists who wish to use this exemption must be affiliated with a registered scientific institution.

(i) When a Management Authority is satisfied that a scientific institution has met the criteria for registration, it will assign the institution a five-character code, consisting of the ISO country code and a unique three-digit number. In the case of a non-Party, the Secretariat will ensure that the institution meets the standards and assign it a unique code.

(ii) The Management Authority must communicate the name, address, and assigned code to the Secretariat, which maintains a register of scientific institutions and provides that information to all Parties.

(2) A registered scientific institution does not need separate CITES documents for the noncommercial loan, donation, or exchange of preserved, frozen, dried, or embedded museum specimens, herbarium specimens, or live plant material with another registered institution. The shipment must have an external label that contains information specified in paragraph (e)(5) of this section.

(c) *U.S. application to register as a scientific institution.* To register, complete Form 3–200–39 and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the registration of U.S. and foreign institutions for scientific exchange. To be issued a certificate of scientific exchange as a registered U.S. scientific institution, you must provide sufficient information for us to find that your institution meets all of the following criteria:

(1) Collections of wildlife or plant specimens are permanently housed and professionally curated, and corresponding records are kept.

(2) Specimens are accessible to all qualified users, including those from other institutions.

(3) Specimens are properly accessioned in a permanent catalog.

(4) Records are permanently maintained for loans and transfers to and from other institutions.

(5) Specimens are acquired primarily for research that is to be reported in scientific publications, and CITES specimens are not used for commercial purposes or as decorations.

(6) Collections are prepared and arranged in a way that ensures their accessibility to researchers.

(7) Specimen labels, permanent catalogs, and other records are accurate.

(8) Specimens are legally acquired and lawfully possessed under a country's wildlife and plant laws.

(9) Appendix-I specimens are permanently and centrally housed under the direct control of the institution.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, any activity conducted under a certificate of scientific exchange must meet all of the following conditions:

(1) Both scientific institutions involved in the exchange must be registered by the applicable Management Authorities (or the Secretariat in the case of a non-Party), and be included in the Secretariat's register of scientific institutions.

(2) An institution may send and receive only preserved, frozen, dried, or embedded museum specimens, herbarium specimens, or live plant materials that have been permanently and accurately recorded by one of the institutions involved in the exchange and that are traded as a noncommercial loan, donation, or exchange.

(3) An institution may use specimens acquired under a certificate of scientific exchange and their offspring only for scientific research or educational display at a scientific institution and may not use specimens for commercial purposes.

(4) The institution must keep records to show that the specimens were legally acquired.

(5) A customs declaration label must be affixed to the outside of each shipping container or package that contains all of the following:

(i) The acronym ''CITES.''

(ii) A description of the contents (such as ''herbarium specimens'').

(iii) The names and addresses of the sending and receiving registered institutions.

(iv) The signature of a responsible officer of the sending registered scientific institution.

(v) The scientific institution codes of both registered scientific institutions involved in the loan, donation, or exchange.

(6) A registered institution may destroy samples during analysis, provided that a portion of the sample is maintained and permanently recorded at a registered scientific institution for future scientific reference.

§ 23.49 What are the requirements for an exhibition traveling internationally?

(a) *Purpose.* Article VII(7) of the Treaty grants an exemption for specimens that qualify as bred-in-captivity, artificially propagated, or pre-Convention and are part of a traveling exhibition.

(b) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of a certificate for an exhibition to travel internationally with live wildlife and plants, or their parts, products, or derivatives:

(1) The Management Authority in the country of the exhibition's primary place of business must have determined that the specimens are bred-in-captivity, artificially propagated, or pre-Convention and issued a traveling-exhibition certificate.

(2) The certificate must indicate that the wildlife or plant is part of a traveling exhibition.

(3) A separate certificate must be issued for each live wildlife specimen; a CITES document may be issued for more than one specimen for a traveling exhibition of live plants and dead parts, products, or derivatives of wildlife and plants.

(4) The certificate is not transferable.

(5) Parties should treat the certificate like a passport for import and export or re-export from each country, and should not collect the original certificate at the border.

(6) Parties should check specimens closely to determine that each specimen matches the certificate and ensure that each live specimen is being transported and cared for in a manner that minimizes the risk of injury, damage to health, or cruel treatment of the specimen.

(7) If offspring are born or a new specimen is acquired while the exhibitor is in another country, the exhibitor must obtain the appropriate CITES document for the export or re-export of the specimen from the Management Authority of that country.

(8) Upon returning home, the exhibitor may apply for a traveling exhibition certificate for wildlife born overseas or for wildlife or plants acquired overseas.

(c) *U.S. application form.* Complete Form 3–200–30 for wildlife and Form 3–200–32 for plants, and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign certificates. When applying for a U.S. certificate, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The traveling exhibition must be for frequent cross-border movement, and must return at the end of the tour to the country in which the exhibition is based before the certificate expires.

(2) The cross-border movement must be for exhibition, and not for breeding, propagating, or activities other than exhibition.

(3) The owner of the exhibition resides in and the exhibition is based in the country that issued the certificate.

(4) The specimen meets the criteria for a bred-in-captivity certificate, certificate for artificially propagated plants, or pre-Convention certificate.

(5) The exhibitor does not intend to sell or otherwise transfer the wildlife or plant while traveling internationally.

(6) The wildlife or plant is securely marked or identified in such a way that border officials can verify that the certificate and specimen correspond. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) The certificate may be used by you, and you must not transfer or assign it to another person or traveling exhibition.

(2) You must transport the specimen internationally only for exhibition, not for breeding, propagating, or activities other than exhibition.

(3) You must present the certificate to the official for validation at each border crossing.

(4) For live plants, the quantity of plants must be reasonable for the purpose of the exhibit.

(5) You must not sell or otherwise transfer the specimen, or any offspring born to such specimen, while traveling internationally.

(6) If the certificate is lost, stolen, or accidentally destroyed, you may obtain a replacement certificate only from the issuing Management Authority.

(7) If you no longer own the wildlife or plants, or no longer plan to travel as an exhibitor, the original certificate must be immediately returned to the issuing Management Authority.

§ 23.50 What are the requirements for a sample collection covered by an ATA carnet?

(a) *Purpose.* Article VII(1) of the Treaty allows for the transit of specimens through or within a Party country while the specimens remain under customs control.

(b) *Definition.* For purposes of this section, *sample collection* means a set of legally acquired parts, products, or derivatives of Appendix-II or -III species, or Appendix-I species bred or artificially propagated for commercial purposes, that will:

(1) Cross international borders only for temporary exhibition or display purposes and return to the originating country.

(2) Be accompanied by a valid ATA carnet and remain under customs control.

(3) Not be sold or otherwise transferred while traveling internationally.

(c) *U.S. and foreign general provisions.* The following general provisions apply to the issuance and acceptance of a CITES document for the movement of sample collections:

(1) The Management Authority in the country where the sample collection originated must issue a CITES document that:

(i) Clearly specifies that the document was issued for a ''sample collection.''

(ii) Includes the condition in block 5, or an equivalent place, of the document that it is valid only if the shipment is accompanied by a valid ATA carnet and that the specimens must not be sold, donated, or otherwise transferred while outside the originating country.

(2) The number of the accompanying ATA carnet must be recorded on the CITES document and, if this number is not recorded by the Management Authority, it must be entered by a customs or other CITES enforcement official responsible for the original endorsement of the CITES document.

(3) The name and address of the exporter or re-exporter and importer

must be identical, and the names of the countries to be visited must be indicated in block 5, or an equivalent place.

(4) The date of validity must not be later than that of the ATA carnet and the period of validity must not exceed 6 months from the date of issuance.

(5) At each border crossing, Parties must verify the presence of the CITES document, but allow it to remain with the shipment, and ensure that the ATA carnet is properly endorsed with an authorized stamp and signature by a customs official.

(6) The exporter or re-exporter must return the sample collection to the originating country prior to the expiration of the CITES document.

(7) Parties should check the CITES document and sample collection closely at the time of first export or re-export and upon its return to ensure that the contents of the sample collection have not been changed.

(8) For import into and export from the United States, the shipment must comply with the requirements of part 14 of this subchapter.

(d) *U.S. application form.* Complete Form 3–200–29 for wildlife and Form 3–200–32 for plants, and submit it to the U.S. Management Authority.

(e) *Criteria.* The criteria in this paragraph (e) apply to the issuance and acceptance of U.S. and foreign documents. When applying for a U.S. document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimens meet the definition of a sample collection as provided in paragraph (b) of this section.

(2) The wildlife or plant specimens must be securely marked or identified in such a way that border officials can verify that the CITES document, ATA carnet, and specimens correspond.

(f) *U.S. standard conditions.* In addition to the conditions in § 23.56, you must meet all of the following conditions:

(1) You must transport the sample collection only for temporary exhibition or display purposes.

(2) You must not transfer or assign the CITES document to another person.

(3) You must not sell, donate, or transfer specimens while traveling internationally.

(4) You must present the CITES document and the ATA carnet to the official for validation at each border crossing.

(5) You must return the sample collection to the United States prior to the expiration of the CITES document.

(6) If the CITES document is lost, stolen, or accidentally destroyed, you may obtain a replacement certificate only from the U.S. Management Authority.

(7) If you no longer own the sample collection, or no longer plan to travel with the sample collection, you must immediately return the original document to the U.S. Management Authority.

§ 23.51 What are the requirements for issuing a partially completed CITES document?

(a) *Purpose.* Under Article VIII(3), Parties are to ensure that CITES specimens are traded with a minimum of delay.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of partially completed CITES documents.

(1) A Management Authority may issue partially completed CITES documents only when:

(i) The permitted trade will have a negligible impact or no impact on the conservation of the species.

(ii) All provisions of CITES have been met.

(iii) The specimens are one of the following:

(A) Biological samples.

(B) Pre-Convention specimens.

(C) Specimens that qualify as bred-in-captivity or artificially propagated.

(D) Appendix-I specimens from registered commercial breeding operations.

(E) Appendix-I plants artificially propagated for commercial purposes.

(F) Other specimens that the Management Authority determines qualify for partially completed documents.

(2) A Management Authority may register applicants for species that may be traded under partially completed documents.

(3) Partially completed CITES documents require the permit holder to:

(i) Enter specific information on the CITES document or its annex as conditioned on the face of the CITES document.

(ii) Enter scientific names on the CITES document only if the Management Authority included an inventory of approved species on the face of the CITES document or an attached annex.

(iii) Sign the CITES document, which acts as a certification that the information entered is true and accurate.

(4) CITES documents issued for biological samples may be validated at the time of issuance provided that upon export the container is labeled with the CITES document number and indicates it contains CITES biological samples.

(c) *U.S. application form.* Complete the appropriate form for the proposed activity (see §§ 23.18 through 23.20) and submit it to the U.S. Management Authority.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign CITES documents. When applying for a U.S. CITES document, you must provide sufficient information for us to find that your proposed activity meets the criteria in subpart C for the appropriate CITES document and the following criteria:

(1) The use of partially completed documents benefits both the permit holder and the issuing Management Authority.

(2) The proposed activity will have a negligible impact or no impact upon the conservation of the species.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56 and any standard conditions in this part that apply to the specific CITES document, the following conditions must be met:

(1) You must enter the information specified in block 5, either on the face of the CITES document or in an annex to the document.

(2) You may not alter or enter any information on the face of the CITES document or in an annex to the document that is not authorized in block 5, or an equivalent place.

(3) If you are authorized to enter a scientific name, it must be for a species authorized in block 5, or an equivalent place, or in an attached annex of the CITES document.

(4) You must sign the CITES document to certify that all information entered by you is true and correct.

§ 23.52 What are the requirements for replacing a lost, damaged, stolen, or accidentally destroyed CITES document?

(a) *Purpose.* A Management Authority may issue a duplicate document, either a copy of the original or a re-issued original, when a CITES document has been lost, damaged, stolen, or accidentally destroyed. These provisions do not apply to a document that has expired or that requires amendment. To amend or renew a CITES document, see part 13 of this subchapter.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a replacement CITES document:

(1) The permittee must notify the issuing Management Authority that the document was lost, damaged, stolen, or accidentally destroyed.

(2) The issuing Management Authority must be satisfied that the CITES document was lost, damaged, stolen, or accidentally destroyed.

(3) The issuing Management Authority should immediately inform the Management Authority in the country of destination and, for commercial shipments, the Secretariat.

(4) If the replacement CITES document is a copy, it must indicate that it is a ''replacement'' and a ''true copy of the original,'' contain a new dated original signature of the issuing Management Authority, and give the reason for replacement.

(5) If the replacement CITES document is a newly issued original document, it must indicate that it is a ''replacement,'' include the number and date of issuance of the document being replaced, and give the reason for replacement.

(c) *U.S. application procedures.* To apply for a replacement CITES document, you must do all of the following:

(1) Complete application Form 3–200–66 and submit it to the U.S. Management Authority.

(2) Consult the list to find the types of information you need to provide (more than one circumstance may apply to you):

If	Then
(i) If the shipment has already occurred	Provide copies of: (A) Any correspondence you have had with the shipper or importing country's Management Authority concerning the shipment. (B) For wildlife, the validated CITES document and cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177). (C) For plants, the validated CITES document.
(ii) The original CITES document no longer exists	Submit a signed, dated, and notarized statement that: (A) Provides the CITES document number and describes the circumstances that resulted in the loss or destruction of the original CITES document. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.
(iii) An original CITES document exists but has been damaged	Submit the original damaged CITES document and a signed, dated, and notarized statement that: (A) Describes the circumstances that resulted in the CITES document being damaged. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S and foreign documents. When applying for a U.S. replacement document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The circumstances for the lost, damaged, stolen, or accidentally destroyed CITES document are reasonable.

(2) If the shipment has already been made, the wildlife or plant was legally exported or re-exported, and the Management Authority of the importing country has indicated it will accept the replacement CITES document.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, the following conditions apply:

(1) If the original CITES document is found, you must return it to the U.S. Management Authority.

(2) A CITES document issued for a shipment that has already occurred does not require validation.

(f) *Validation.* For an export or re-export that has not left the United States, follow the procedures in § 23.27. If the shipment has left the United States and is in a foreign country, submit the unvalidated replacement CITES document to the appropriate foreign authorities. We will not validate the replacement CITES document for a shipment that has already been shipped to a foreign country. We do not require validation on replacement documents issued by foreign Management Authorities.

§ 23.53 What are the requirements for obtaining a retrospective CITES document?

(a) *Purpose.* Retrospective CITES documents may be issued and accepted in certain limited situations to authorize an export or re-export after that activity has occurred, but before the shipment is cleared for import.

(b) *U.S. and foreign general provisions.* The following provisions apply to the issuance and acceptance of a retrospective CITES document:

(1) A retrospective document may not be issued for Appendix-I specimens except for certain specimens for personal use as specified in paragraph (d)(7) of this section.

(2) The exporter or re-exporter must notify the Management Authority in the exporting or re-exporting country of the irregularities that have occurred.

(3) A retrospective document may be one of the following:

(i) An amended CITES document where it can be shown that the issuing Management Authority made a technical error.

(ii) A newly issued CITES document where it can be shown that the applicant was misinformed by CITES officials or the circumstances in (d)(7) of this section apply and a shipment has occurred without a document.

(4) Retrospective documents can only be issued after consultation between the Management Authorities in both the exporting or re-exporting country and the importing country, including a thorough investigation of circumstances and agreement between them that criteria in paragraph (d) of this section have been met.

(5) The issuing Management Authority must provide all of the following information on any retrospective CITES document:

(i) A statement that it was issued retrospectively.

(ii) A statement specifying the reason for the issuance.

(iii) In the case of a document issued for personal use, a condition restricting sale of the specimen within 6 months following the import of the specimen.

(6) The issuing Management Authority must send a copy of the retrospective CITES document to the Secretariat.

(7) In general, except when the exporter or re-exporter and importer have demonstrated they were not responsible for the irregularities, any person who has been issued a CITES document in the past will not be eligible to receive a retrospective document.

(c) *U.S. application.* Complete application Form 3–200–58 and submit it to the U.S. Management Authority. In addition, submit one of the following:

(1) For a shipment that occurred under a document containing a

technical error, the faulty CITES document.

(2) For a shipment that occurred without a CITES document, a completed application form for the type of activity you conducted (see §§ 23.18 through 23.20).

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign documents. When applying for a U.S. document, you must provide sufficient information for us to find that your activity meets all of the following criteria:

(1) The specimens were exported or re-exported without a CITES document or with a CITES document that contained technical errors as provided in paragraph (d)(6)(ii) of this section.

(2) The specimens were presented to the appropriate official for inspection at the time of import and a request for a retrospective CITES document was made at that time.

(3) The export or re-export and import of the specimens was otherwise in compliance with CITES and the relevant national legislation of the countries involved.

(4) The importing Management Authority has agreed to accept the retrospectively issued CITES document.

(5) The specimens must be Appendix-II or -III wildlife or plants, except as provided in paragraph (d)(7) of this section.

(6) Except as provided in paragraph (d)(7) of this section, the exporter or re-exporter and importer were not responsible for the irregularities that occurred and have demonstrated one of the following:

(i) The Management Authority or officials designated to clear CITES shipments misinformed the exporter or re-exporter or the importer about the CITES requirements. In the United States, this would be an employee of the FWS (for any species) or APHIS or CBP (for plants).

(ii) The Management Authority unintentionally made a technical error that was not prompted by information provided by the applicant when issuing the CITES document.

(7) In the case of specimens for personal use, you must either show that you qualify under paragraph (d)(6) of this section, or that a genuine error was made and that there was no attempt to deceive. The following specimens for personal use may qualify for issuance of a retrospective document:

(i) Personal or household effects.

(ii) Live Appendix-II or -III specimens or live pre-Convention Appendix-I specimens that you own for your personal use, accompanied you, and number no more than two.

(iii) Parts, products, or derivatives of an Appendix-I species that qualify as pre-Convention when the following conditions are met:

(A) You own and possess the specimen for personal use.

(B) You either wore the specimen as clothing or an accessory or took it as part of your personal baggage, which was carried by you or checked as baggage on the same plane, boat, car, or train as you.

(C) The quantity is reasonably necessary or appropriate for the nature of your trip or stay.

(e) *U.S. standard conditions.* In addition to the conditions in § 23.56, the following condition applies: A CITES document issued for a shipment that has already occurred does not require validation.

(f) *Validation.* Submit the original unvalidated retrospective CITES document to the appropriate foreign authority. We will not validate the retrospective CITES document for a shipment that has already been shipped to a foreign country, and we do not require validation on retrospective documents issued by foreign Management Authorities.

§ 23.54 How long is a U.S. or foreign CITES document valid?

(a) *Purpose.* Article VI(2) of the Treaty sets the time period within which an export permit is valid. Validity periods for other CITES documents are prescribed in this section.

(b) *Time of validity.* CITES documents are valid only if presented for import or introduction from the sea within the time of validity (before midnight on the expiration date) noted on the face of the document.

(1) An export permit and re-export certificate will be valid for no longer than 6 months from the issuance date.

(2) An import permit, introduction-from-the-sea certificate, and certificate of origin will be valid for no longer than 12 months from the issuance date.

(3) A traveling-exhibition certificate and certificate of ownership will be valid for no longer than 3 years from the issuance date.

(4) Other CITES documents will state the length of their validity, but no U.S. CITES document will be valid for longer than 3 years from the issuance date.

(c) *Extension of validity.* The validity of a CITES document may not be extended beyond the expiration date on the face of the document, except under limited circumstances for certain timber species as outlined in § 23.73.

§ 23.55 How may I use a CITES specimen after import into the United States?

You may use CITES specimens after import into the United States for the following purposes:

If the species is listed in	Allowed use after import
(a) Appendix I except for specimens imported with a CITES exemption document listed in paragraph (d) of this section	The specimen may be used, including a transfer, donation, or exchange, only for noncommercial purposes.
(b) Appendix II with an annotation for noncommercial use where other specimens of that species are treated as listed in Appendix I	
(c) Appendix II and threatened under the ESA, except as provided in a special rule in for §§ 17.40 through 17.48 or under a permit granted under §§ 17.32 or 17.52	
(d) Appendix I, specimens imported with a CITES exemption document as follows: (1) U.S.-issued certificate for personally owned wildlife (2) Pre-Convention certificate (3) Export permit or re-export certificate for wildlife from a registered commercial breeding operation (4) Export permit or re-export certificate for a plant from a registered nursery or under a permit with a source code of "D." (5) U.S.-issued traveling-exhibition certificate	The specimen may be used for any purpose, except if the regulations in this part or other parts of this subchapter allowed the import only for noncommercial purposes, then the import and subsequent use must be only for noncommercial purposes.

If the species is listed in	Allowed use after import
(e) Appendix II, other than those in paragraphs (b) and (c) of this section.	
(f) Appendix III.	

§ 23.56 What U.S. CITES document conditions do I need to follow?

(a) *General conditions.* The following general conditions apply to all U.S. CITES documents:

(1) You must comply with the provisions of part 13 of this subchapter as conditions of the document, as well as other applicable regulations in this subchapter, including, but not limited to, any that require permits. You must comply with all applicable local, State, Federal, tribal, and foreign wildlife or plant conservation laws.

(2) For export and re-export of live wildlife and plants, transport conditions must comply with the *CITES Guidelines for Transport* or, in the case of air transport of live wildlife, with the *International Air Transport Association Live Animals Regulations.*

(3) You must return the original CITES document to the issuing office if you do not use it, it expires, or you request renewal or amendment.

(4) When appropriate, a Management Authority may require that you identify Appendix-II and -III wildlife or plants with a mark. All live Appendix-I wildlife must be securely marked or uniquely identified. Such mark or identification must be made in a way that the border official can verify that the specimen and CITES document correspond. If a microchip is used, we may, if necessary, ask the importer, exporter, or re-exporter to have equipment on hand to read the microchip at the time of import, export, or re-export.

(b) *Standard conditions.* You must comply with the standard conditions provided in this part for specific types of CITES documents.

(c) *Special conditions.* We may place special conditions on a CITES document based on the needs of the species or the proposed activity. You must comply with any special conditions contained in or attached to a CITES document.

Subpart D—Factors Considered in Making Certain Findings

§ 23.60 What factors are considered in making a legal acquisition finding?

(a) *Purpose.* Articles III, IV, and V of the Treaty require a Management Authority to make a legal acquisition finding before issuing export permits and re-export certificates. The Parties have agreed that a legal acquisition finding must also be made before issuing certain CITES exemption documents.

(b) *Types of legal acquisition.* Legal acquisition refers to whether the specimen and its parental stock were:

(1) Obtained in accordance with the provisions of national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws; and

(2) If previously traded, traded internationally in accordance with the provisions of CITES.

(c) *How we make our findings.* We make a finding that a specimen was legally acquired in the following way:

(1) The applicant must provide sufficient information for us to make a legal acquisition finding.

(2) We make this finding after considering all available information.

(3) The amount of information we need to make the finding is based on our review of general factors described in paragraph (d) of this section and additional specific factors described in paragraphs (e) through (k) of this section.

(4) As necessary, we consult with foreign Management and Scientific Authorities, the CITES Secretariat, State conservation agencies, Tribes, FWS Law Enforcement, APHIS or CBP, and other appropriate experts.

(d) *Risk assessment.* We review the general factors listed in this paragraph and additional specific factors in paragraphs (e) through (k) of this section to assess the level of scrutiny and amount of information we need to make a finding of legal acquisition. We give less scrutiny and require less detailed information when there is a low risk that specimens to be exported or re-exported were not legally acquired, and give more scrutiny and require more detailed information when the proposed activity poses greater risk. We consider the cumulative risks, recognizing that each aspect of the international trade has a continuum of risk from high to low associated with it as follows:

(1) *Status of the species:* From Appendix I to Appendix III.

(2) *Origin of the specimen:* From wild-collected to born or propagated in a controlled environment to bred-in-captivity or artificially propagated.

(3) *Source of the propagule used to grow the plant:* From documentation that the plant was grown from a non-exempt seed or seedling to documentation that the plant was grown from an exempt seed or seedling.

(4) *Origin of the species:* From species native to the United States or its bordering countries of Mexico or Canada to non-native species from other countries.

(5) *Volume of legal trade:* From low to high occurrence of legal trade.

(6) *Volume of illegal trade:* From high to low occurrence of illegal trade.

(7) *Type of trade:* From commercial to noncommercial.

(8) *Trade by range countries:* From range countries that do not allow commercial export, or allow only limited noncommercial export of the species, to range countries that allow commercial export in high volumes.

(9) *Occurrence of the species in a controlled environment in the United States:* From uncommon to common in a controlled environment in the United States.

(10) *Ability of the species to be bred or propagated readily in a controlled environment:* From no documentation that the species can be bred or propagated readily in a controlled environment to widely accepted information that the species is commonly bred or propagated.

(11) *Genetic status of the specimen:* From a purebred species to a hybrid.

(e) *Captive-bred wildlife or a cultivated plant.* For a specimen that is captive-bred or cultivated, we may consider whether the parental stock was legally acquired.

(f) *Confiscated specimen.* For a confiscated Appendix-II or -III specimen, we consider whether information shows that the transfer of the confiscated specimen or its offspring met the conditions of the remission decision, legal settlement, or disposal action after forfeiture or abandonment.

(g) *Donated specimen of unknown origin.* For an unsolicited specimen of unknown origin donated to a public institution (see § 10.12 of this subchapter), we consider whether:

(1) The public institution follows standard recordkeeping practices and has made reasonable efforts to obtain supporting information on the origin of the specimen.

(2) The public institution provides sufficient information to show it made a reasonable effort to find a suitable recipient in the United States.

(3) The export will provide a conservation benefit to the species.

(4) No persuasive information exists on illegal transactions involving the specimen.

(5) The export is noncommercial, with no money or barter exchanged except for shipping costs.

(6) The institution has no history of receiving a series of rare and valuable specimens or a large quantity of wildlife or plants of unknown origin.

(h) *Imported previously.* For a specimen that was previously imported into the United States, we consider any reliable, relevant information we receive concerning the validity of a CITES document, regardless of whether the shipment was cleared by FWS, APHIS, or CBP.

(i) *Personal use.* For a wildlife or plant specimen that is being exported or re-exported for personal use by the applicant, we consider whether:

(1) The specimen was acquired in the United States and possessed for strictly personal use.

(2) The number of specimens is reasonably appropriate for the nature of your export or re-export as personal use.

(3) No persuasive evidence exists on illegal transactions involving the specimen.

(j) *Sequential ownership.* For a specimen that was previously possessed by someone other than the applicant, we may consider the history of ownership for a specimen and its parental stock, breeding stock, or cultivated parental stock.

(k) *Wild-collected in the United States.* For a specimen collected from the wild in the United States, we consider the site where the specimen was collected, whether the species is known to occur at that site, the abundance of the species at that site, and if necessary, whether permission of the appropriate management agency or landowner was obtained to collect the specimen.

§ 23.61 What factors are considered in making a non-detriment finding?

(a) *Purpose.* Articles III and IV of the Treaty require that, before we issue a CITES document, we find that a proposed export or introduction from the sea of Appendix-I or -II specimens is not detrimental to the survival of the species and that a proposed import of an Appendix-I specimen is not for purposes that would be detrimental to the survival of the species.

(b) *Types of detriment.* Detrimental activities, depending on the species, could include, among other things, nonsustainable use and any activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, it also includes use or removal from the wild that results in habitat loss or destruction, interference with recovery efforts for a species, or stimulation of further trade.

(c) *General factors.* The applicant must provide sufficient information for us to make a finding of non-detriment. In addition to factors in paragraphs (d) and (e) of this section, we will consider whether:

(1) Biological and management information demonstrates that the proposed activity represents sustainable use.

(2) The removal of the animal or plant from the wild is part of a biologically based sustainable-use management plan that is designed to eliminate over-utilization of the species.

(3) If no sustainable-use management plan has been established, the removal of the animal or plant from the wild would not contribute to the over-utilization of the species, considering both domestic and international uses.

(4) The proposed activity, including the methods used to acquire the specimen, would pose no net harm to the status of the species in the wild.

(5) The proposed activity would not lead to long-term declines that would place the viability of the affected population in question.

(6) The proposed activity would not lead to significant habitat or range loss or restriction.

(d) *Additional factor for Appendix-II species.* In addition to the general factors in paragraph (c) of this section, we will consider whether the intended export of an Appendix-II species would cause a significant risk that the species would qualify for inclusion in Appendix I.

(e) *Additional factors for Appendix-I species.* In addition to the general factors in paragraph (c) of this section, we will consider whether the proposed activity:

(1) Would not cause an increased risk of extinction for either the species as a whole or the population from which the specimen was obtained.

(2) Would not interfere with the recovery of the species.

(3) Would not stimulate additional trade in the species. If the proposed activity does stimulate trade, we will consider whether the anticipated increase in trade would lead to the decline of the species.

(f) *How we make our findings.* We base the non-detriment finding on the best available biological information. We also consider trade information, including trade demand, and other scientific management information.

(1) We consult with the States, Tribes, other Federal agencies, scientists, other experts, and the range countries of the species.

(2) We consult with the Secretariat and other Parties to monitor the level of trade that is occurring in the species.

(3) Based on the factors in paragraphs (c) through (e) of this section, we evaluate the biological impact of the proposed activity.

(4) In cases where insufficient information is available or the factors above are not satisfactorily addressed, we take precautionary measures and would be unable to make the required finding of non-detriment.

(g) *Risk assessment.* We review the status of the species in the wild and the degree of risk the proposed activity poses to the species to determine the level of scrutiny needed to make a finding. We give greater scrutiny and require more detailed information for activities that pose a greater risk to a species in the wild. We consider the cumulative risks, recognizing that each aspect of international trade has a continuum of risk (from high to low) associated with it as follows:

(1) *Status of the species:* From Appendix I to Appendix II.

(2) *Origin of the specimen:* From wild-collected to born or propagated in a controlled environment to bred-in-captivity or artificially propagated.

(3) *Source of the propagule used to grow the plant:* From documentation that the plant was grown from a non-exempt seed or seedling to documentation that the plant was grown from an exempt seed or seedling.

(4) *Origin of the species:* From native species to non-native species.

(5) *Volume of legal trade:* From low to high occurrence of legal trade.

(6) *Volume of illegal trade:* From high to low occurrence of illegal trade.

(7) *Type of trade:* From commercial to noncommercial.

(8) *Genetic status of the specimen:* From a purebred species to a hybrid.

(9) *Risk of disease transmission:* From high to limited risk of disease transmission.

(10) *Basis for listing:* From listed under Article II(1) or II(2)(a) of the Treaty to listed under Article II(2)(b).

(h) *Quotas for Appendix-I species.* When an export quota has been set by the CoP for an Appendix-I species, we will consider the scientific and management aspects used as the basis of the quota together with the best available biological information when we make our non-detriment finding. We

will contact the Scientific and Management Authorities of the exporting country for further information if needed.

§ 23.62 What factors are considered in making a finding of not for primarily commercial purposes?

(a) *Purpose.* Under Article III(3(c)) and (5(c)) of the Treaty, an import permit or an introduction-from-the-sea certificate for Appendix-I species can be issued only if the Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.

(b) *How we make our findings.* We must find that the intended use of the Appendix-I specimen is not for primarily commercial purposes before we can issue a CITES document.

(1) We will make this decision on a case-by-case basis considering all available information.

(2) The applicant must provide sufficient information to satisfy us that the intended use is not for primarily commercial purposes.

(3) The definitions of ''commercial'' and ''primarily commercial purposes'' in § 23.5 apply.

(4) We will look at all aspects of the intended use of the specimen. If the noncommercial aspects do not clearly predominate, we will consider the import or introduction from the sea to be for primarily commercial purposes.

(5) While the nature of the transaction between the owner in the country of export and the recipient in the country of import or introduction from the sea may have some commercial aspects, such as the exchange of money to cover the costs of shipment and care of specimens during transport, it is the intended use of the specimen, including the purpose of the export, that must not be for primarily commercial purposes.

(6) We will conduct an assessment of factors listed in paragraph (d) of this section. For high-risk activities involving an anticipated measurable increase in revenue and other economic value due to incidental aspects of the intended use, we will conduct an analysis as described in paragraph (e) of this section.

(7) All net profits generated in the United States from high-risk activities must be used for the conservation of the Appendix-I species in a range country.

(c) *Examples.* The following are examples of types of transactions in which the noncommercial aspects of the intended use of the specimen may predominate depending on the facts of each situation. The discussions of each example provide further guidance in assessing the actual degree of commerciality on a case-by-case basis. These examples outline circumstances commonly encountered and do not cover all situations where import or introduction from the sea could be found to be not for primarily commercial purposes.

(1) *Personal use.* Import or introduction from the sea of an Appendix-I specimen for personal use generally is considered to be not for primarily commercial purposes. An example is the import of a personal sport-hunted trophy by the person who hunted the wildlife for display in his or her own home.

(2) *Scientific purposes.* The import or introduction from the sea of an Appendix-I specimen by a scientist or scientific institution may be permitted in situations where resale, commercial exchange, or exhibit for economic benefit of the specimen is not the primary intended use.

(3) *Conservation, education, or training.* Generally an Appendix-I specimen may be imported or introduced from the sea by government agencies or nonprofit institutions for purposes of conservation, education, or training. For example, a specimen could be imported or introduced from the sea primarily to train customs staff in effective CITES control, such as for identification of certain types of specimens.

(4) *Biomedical industry.* Import or introduction from the sea of an Appendix-I specimen by an institution or company in the biomedical industry is initially presumed to be commercial since specimens are typically imported or introduced from the sea to develop and sell products that promote public health for profit. However, if the importer clearly shows that the sale of products is only incidental to public health research and not for the primary purpose of economic benefit or profit, then such an import or introduction from the sea could be considered as scientific research under paragraph (c)(2) of this section if the principles of paragraph (b) of this section are met.

(5) *Captive-breeding or artificial propagation programs.* The import of an Appendix-I specimen for purposes of establishing a commercial operation for breeding or artificial propagation is considered to be for primarily commercial purposes. As a general rule, import or introduction from the sea of an Appendix-I specimen for a captive-breeding or artificial propagation program must have as a priority the long-term protection and recovery of the species in the wild. The captive-breeding or artificial propagation program must be part of a program aimed at the recovery of the species in the wild and be undertaken with the support of a country within the species' native range. Any profit gained must be used to support this recovery program. If a captive-breeding or artificial propagation operation plans to sell surplus specimens to help offset the costs of its program, import or introduction from the sea would be allowed only if any profit would be used to support the captive-breeding or artificial propagation program to the benefit of the Appendix-I species, not for the personal economic benefit of a private individual or share-holder.

(6) *Professional dealers.* Import or introduction from the sea by a professional dealer who states a general intention to eventually sell the specimen to an undetermined recipient would be considered to be for primarily commercial purposes. However, import or introduction from the sea through a professional dealer by a qualified applicant may be acceptable if the ultimate intended use would be for one of the purposes set out in paragraphs (c)(2), (3), and (5) of this section and where a binding contract, conditioned on the issuing of permits, is in place.

(d) *Risk assessment.* We review the factors listed in this paragraph (d) to assess the level of scrutiny and amount of information we need to make a finding of whether the intended use of the specimen is not for primarily commercial purposes. We give less scrutiny and require less detailed information when the import or introduction from the sea poses a low risk of being primarily commercial, and give more scrutiny and require more detailed information when the proposed activity poses greater risk. We consider the cumulative risks, recognizing that each aspect of the international trade has a continuum of risk from high to low associated with it as follows:

(1) *Type of importer:* From for-profit entity to private individual to nonprofit.

(2) *Ability of the proposed uses to generate revenue:* From the ability to generate measurable increases in revenue or other economic value to no anticipated increases in revenue or other economic value.

(3) *Appeal of the species:* From high public appeal to low public appeal.

(4) *Occurrence of the species in the United States:* From uncommon to common in a controlled environment in the United States.

(5) *Intended use of offspring:* From commercial to noncommercial.

(e) *Analysis of anticipated revenues and other economic value.* We will analyze revenues and other economic value anticipated to result from the use of the specimen for high-risk activities.

(1) We will examine the proposed use of any net profits generated in the United States. We consider net profit to include all funds or other valuable considerations (including enhanced value of common stock shares) received or attained by you or those affiliated with you as a result of the import or introduction from the sea, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activity.

(2) We will consider any conservation project to be funded and, if the species was or is to be taken from the wild, how the project benefits the species in its native range, including agreements, timeframes for accomplishing tasks, and anticipated benefits to the species.

(3) We will consider any plans to monitor a proposed conservation project, including expenditure of funds or completion of tasks.

(4) In rare cases involving unusually high net profits, we will require the applicant to provide a detailed analysis of expected revenue (both direct and indirect) and expenses to show anticipated net profit, and a statement from a licensed, independent certified public accountant that the internal accounting system is sufficient to account for and track funds generated by the proposed activities.

§ 23.63 What factors are considered in making a finding that an animal is bred-in-captivity?

(a) *Purpose.* Article VII(4) and (5) of the Treaty provide exemptions that allow for the special treatment of wildlife that was bred-in-captivity (see §§ 23.41 and 23.46).

(b) *Definitions.* The following terms apply when determining whether specimens qualify as ''bred-in-captivity:''

(1) A *controlled environment* means one that is actively manipulated for the purpose of producing specimens of a particular species; that has boundaries designed to prevent specimens, including eggs or gametes, from entering or leaving the controlled environment; and has general characteristics that may include artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food.

(2) *Breeding stock* means an ensemble of captive wildlife used for reproduction.

(c) *Bred-in-captivity criteria.* For a specimen to qualify as bred-in-captivity, we must be satisfied that all the following criteria are met:

(1) If reproduction is sexual, the specimen was born to parents that either mated or transferred gametes in a controlled environment.

(2) If reproduction is asexual, the parent was in a controlled environment when development of the offspring began.

(3) The breeding stock meets all of the following criteria:

(i) Was established in accordance with the provisions of CITES and relevant national laws.

(ii) Was established in a manner not detrimental to the survival of the species in the wild.

(iii) Is maintained with only occasional introduction of wild specimens as provided in paragraph (d) of this section.

(iv) Has consistently produced offspring of second or subsequent generations in a controlled environment, or is managed in a way that has been demonstrated to be capable of reliably producing second-generation offspring and has produced first-generation offspring.

(d) *Addition of wild specimens.* A very limited number of wild specimens (including eggs or gametes) may be introduced into a breeding stock if all of the following conditions are met:

(1) The specimens were acquired in accordance with the provisions of CITES and relevant national laws.

(2) The specimens were acquired in a manner not detrimental to the survival of the species in the wild.

(3) The specimens were added either to prevent or alleviate deleterious inbreeding, with the number of specimens added as determined by the need for new genetic material, or to dispose of confiscated animals.

§ 23.64 What factors are considered in making a finding that a plant is artificially propagated?

(a) *Purpose.* Article VII(4) and (5) of the Treaty provide special treatment of plants that were artificially propagated (see §§ 23.40 and 23.47).

(b) Definitions. The following terms apply when determining whether specimens qualify as ''artificially propagated:''

(1) *Controlled conditions* means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding, or protection from weather.

(2) *Cultivated parental stock* means the ensemble of plants grown under controlled conditions that are used for reproduction.

(c) *Artificially propagated criteria.* Except as provided in paragraphs (f) and (g) of this section, for a plant specimen to qualify as artificially propagated, we must be satisfied that the plant specimen was grown under controlled conditions from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that either is exempt from the provisions of CITES or has been derived from cultivated parental stock. The cultivated parental stock meets all of the following criteria:

(1) Was established in accordance with the provisions of CITES and relevant national laws.

(2) Was established in a manner not detrimental to the survival of the species in the wild.

(3) Is maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigor and productivity of the cultivated parental stock.

(d) *Cutting or division.* A plant grown from a cutting or division is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

(e) *Grafted plant.* A grafted plant is artificially propagated only when both the rootstock and the material grafted to it have been taken from specimens that were artificially propagated in accordance with paragraph (c) of this section. A grafted specimen that consists of taxa from different Appendices is treated as a specimen of the taxon listed in the more restrictive Appendix.

(f) *Timber.* Timber taken from trees planted and grown in a monospecific plantation is considered artificially propagated if the seeds or other propagules from which the trees are grown were legally acquired and obtained in a non-detrimental manner.

(g) *Exception for certain plant specimens grown from wild-collected seeds or spores.* Plant specimens grown from wild-collected seeds or spores may be considered artificially propagated only when all of the following conditions have been met:

(1) Establishment of a cultivated parental stock for the taxon presents significant difficulties because

specimens take a long time to reach reproductive age.

(2) The seeds or spores are collected from the wild and grown under controlled conditions within a range country, which must also be the country of origin of the seeds or spores.

(3) The Management Authority of the range country has determined that the collection of seeds or spores was legal and consistent with relevant national laws for the protection and conservation of the species.

(4) The Scientific Authority of the range country has determined that collection of the seeds or spores was not detrimental to the survival of the species in the wild, and allowing trade in such specimens has a positive effect on the conservation of wild populations. In making these determinations, all of the following conditions must be met:

(i) The collection of seeds or spores for this purpose must be limited in such a manner as to allow regeneration of the wild population.

(ii) A portion of the plants produced must be used to establish plantations to serve as cultivated parental stock in the future and become an additional source of seeds or spores and thus reduce or eliminate the need to collect seeds from the wild.

(iii) A portion of the plants produced must be used for replanting in the wild, to enhance recovery of existing populations or to re-establish populations that have been extirpated.

(5) Operations propagating Appendix-I species for commercial purposes must be registered with the CITES Secretariat in accordance with the Guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix-I species.

§ 23.65 What factors are considered in making a finding that an applicant is suitably equipped to house and care for a live specimen?

(a) *Purpose.* Under Article III(3)(b) and (5)(b) of the Treaty, an import permit or introduction-from-the-sea certificate for live Appendix-I specimens can be issued only if we are satisfied that the recipients are suitably equipped to house and care for them.

(b) *General principles.* We will follow these general principles in making a decision on whether an applicant has facilities that would provide proper housing to maintain the specimens for the intended purpose and the expertise to provide proper care and husbandry or horticultural practices.

(1) All persons who would be receiving a specimen must be identified in an application and their facilities approved by us, including persons who are likely to receive a specimen within 1 year after it arrives in the United States.

(2) The applicant must provide sufficient information for us to make a finding, including, but not limited to, a description of the facility, photographs, or construction plans, and resumes of the recipient or staff who will care for the specimen.

(3) We use the best available information on the requirements of the species in making a decision and will consult with experts and other Federal and State agencies, as necessary and appropriate.

(4) The degree of scrutiny that we give an application is based on the biological and husbandry or horticultural needs of the species.

(c) *Specific factors considered for wildlife.* In addition to the general provisions in paragraph (e) of this section, we consider the following factors in evaluating suitable housing and care for wildlife:

(1) Enclosures constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

(2) Appropriate forms of environmental enrichment, such as nesting material, perches, climbing apparatus, ground substrate, or other species-specific materials or objects.

(3) If the wildlife is on public display, an off-exhibit area, consisting of indoor and outdoor accommodations, as appropriate, that can house the wildlife on a long-term basis if necessary.

(4) Provision of water and nutritious food of a nature and in a way that are appropriate for the species.

(5) Staff who are trained and experienced in providing proper daily care and maintenance for the species being imported or introduced from the sea, or for a closely related species.

(6) Readily available veterinary care or veterinary staff experienced with the species or a closely related species, including emergency care.

(d) *Specific factors considered for plants.* In addition to the general provisions in paragraph (e) of the section, we consider the following factors in evaluating suitable housing and care for plants:

(1) Sufficient space, appropriate lighting, and other environmental conditions that will ensure proper growth and reproduction.

(2) Ability to provide appropriate culture, such as water, fertilizer, and pest and disease control.

(3) Staff with experience with the imported species or related species with similar horticultural requirements.

(e) *General factors considered for wildlife and plants.* In addition to the specific provisions in paragraphs (c) or (d) of this section, we will consider the following factors in evaluating suitable housing and care for wildlife and plants:

(1) Adequate enclosures or holding areas to prevent escape or unplanned exchange of genetic material with specimens of the same or different species outside the facility.

(2) Appropriate security to prevent theft of specimens and measures taken to rectify any previous theft or security problem.

(3) A reasonable survival rate of specimens of the same species or, alternatively, closely related species at the facility, including number of births or plants propagated, mortalities for the previous 3 years, significant injuries to wildlife or damage to plants, occurrence of significant disease outbreaks during the previous 3 years, and measures taken to prevent similar mortalities, injuries, damage, or diseases. Significant injuries, damage, or disease outbreaks are those that are permanently debilitating or re-occurring.

(4) Sufficient funding on a long-term basis to cover the cost of maintaining the facility and the specimens imported.

(f) *Incomplete facilities or insufficient staff.* For applications submitted to us before the facilities to hold the specimen are completed or the staff is identified or properly trained, we will:

(1) Review all available information, including construction plans or intended staffing, and make a finding based on this information.

(2) Place a condition on any permit that the import cannot occur until the facility has been completed or the staff hired and trained, and approved by us.

Subpart E—International Trade in Certain Specimens

§ 23.68 How can I trade internationally in roots of American ginseng?

(a) *U.S. and foreign general provisions.* Whole plants and roots (whole, sliced, and parts, excluding manufactured parts, products, and derivatives, such as powders, pills, extracts, tonics, teas, and confectionery) of American ginseng (*Panax quinquefolius*), whether wild or artificially propagated, are included in Appendix II. Cultivated American ginseng that does not meet the requirements of artificially propagated

will be considered wild for export purposes. The import, export, or re-export of ginseng roots must meet the requirements of this section and other requirements of this part (see subparts B and C for prohibitions and application procedures). For specimens that were harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and § 23.37 for re-export certificates.

(b) *Export approval of State and tribal programs.* States and Tribes set up and maintain ginseng management and harvest programs designed to monitor and protect American ginseng from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. For wild ginseng, a State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that ginseng harvested within its jurisdiction is legally acquired and that export will not be detrimental to the survival of the species in the wild. For artificially propagated ginseng, a State or Tribe must provide sufficient information for us to determine that ginseng grown within its jurisdiction meets the definition of artificially propagated and the State or Tribe must have procedures in place to minimize the risk that the roots of wild-collected plants would be claimed as artificially propagated.

(1) A State or Tribe seeking initial CITES export program approval for wild or artificially propagated American ginseng must submit the following information on the adoption and implementation of regulatory measures to the U.S. Management Authority:

(i) Laws or regulations mandating licensing or registration of persons buying and selling ginseng in that State or on tribal lands.

(ii) A requirement that ginseng dealers maintain records and provide copies of those records to the appropriate State or tribal management agency upon request. Dealer records must contain: the name and address of the ginseng seller, date of transaction, whether the ginseng is wild or artificially propagated and dried or green at time of transaction, weight of roots, State or Tribe of origin of roots, and identification numbers of the State or tribal certificates used to ship ginseng from the State or Tribe of origin.

(iii) A requirement that State or tribal personnel will inspect roots, ensure legal harvest, and have the ability to determine the age of roots of all wild-collected ginseng harvested in the State or on tribal lands. State or tribal personnel may accept a declaration statement by the licensed or registered dealer or grower that the ginseng roots are artificially propagated.

(iv) A requirement that State or tribal personnel will weigh ginseng roots unsold by March 31 of the year after harvest and give a weight receipt to the owner of the roots. Future export certification of this stock must be issued against the weight receipt.

(v) A requirement that State or tribal personnel will issue certificates of origin for wild and artificially propagated ginseng. Certificates of origin must contain at a minimum:

(A) State of origin.

(B) Serial number of certificate.

(C) Dealer's State or tribal license or registration number.

(D) Dealer's shipment number for that harvest season.

(E) Year of harvest of ginseng being certified.

(F) Designation as wild or artificially propagated.

(G) Designation as dried or fresh (green) roots.

(H) Weight of roots.

(I) Statement of State or tribal certifying official verifying that the ginseng was obtained in that State or on those tribal lands in accordance with all relevant laws for that harvest year.

(J) Name and title of State or tribal certifying official.

(2) In addition, a State or Tribe seeking initial CITES export program approval for wild American ginseng must submit the following information to the U.S. Management Authority:

(i) An assessment of the condition of the population and trends, including a description of the types of information on which the assessment is based, for example, an analysis of population demographics; population models; or analysis of past harvest levels or indices of abundance independent of harvest information, such as field surveys.

(ii) Historic, present, and potential distribution of wild ginseng on a county-by-county basis.

(iii) Phenology of ginseng, including flowering and fruiting periods.

(iv) Habitat evaluation.

(v) If available, copies of any ginseng management or monitoring plans or other relevant reports that the State or Tribe has prepared as part of its existing management program.

(3) A State or Tribe with an approved CITES export program must complete Form 3–200–61 and submit it to the U.S. Management Authority by May 1 of each year to provide information on the previous harvest season.

(c) *U.S. application process.* Application forms and a list of States and Tribes with approved ginseng programs can be obtained from our website or by contacting us.

(1) To export wild or artificially propagated ginseng harvested under an approved State or tribal program, complete Form 3–200–34 or Form 3–200–74 for additional single-use permits under an annual program file.

(2) To export wild ginseng harvested from a State or Tribe that does not have an approved program, complete Form 3–200–32. To export artificially propagated ginseng from a State or Tribe that does not have an approved program, complete Form 3–200–33.

(3) To re-export ginseng, complete Form 3–200–32.

(4) For information on issuance criteria for CITES documents, see § 23.36 for export permits, § 23.37 for re-export certificates, and § 23.40 for certificates for artificially propagated plants.

(d) *Conditions for export.* Upon export, roots must be accompanied by a certificate of origin containing the information specified in paragraph (b)(1)(v) of this section.

§ 23.69 How can I trade internationally in fur skins and and fur skin products of bobcat, river otter, Canada lynx, gray wolf, and brown bear?

(a) *U.S. and foreign general provisions.* For purposes of this section, *CITES furbearers* means bobcat (*Lynx rufus*), river otter (*Lontra canadensis*), Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), and brown bear (*Ursus arctos*) that are included in Appendix II based on Article II(2)(b) of the Treaty (see § 23.89). The import, export, or re-export of fur skins and fur skin products must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures). For specimens that were harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and § 23.37 for re-export certificates.

(b) *Export approval of State and tribal programs.* States and Tribes set up and maintain management and harvest programs designed to monitor and protect CITES furbearers from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. A State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that CITES furbearers harvested

within its jurisdiction are legally acquired and that export will not be detrimental to the survival of the species in the wild.

(1) A State or Tribe seeking initial CITES export program approval must submit the following information to the U.S. Management Authority:

(i) An assessment of the condition of the population and a description of the types of information on which the assessment is based, for example, an analysis of carcass demographics, population models, analysis of past harvest levels as a function of fur prices or trapper effort, or indices of abundance independent of harvest information, such as scent station surveys, archer surveys, track or scat surveys, or road kill counts.

(ii) Current harvest control measures, including laws regulating harvest, seasons and methods.

(iii) Total allowable harvest of the species.

(iv) Distribution of harvest.

(v) Indication of how frequently harvest levels are evaluated.

(vi) Tagging or marking requirements for fur skins.

(vii) Habitat evaluation.

(viii) If available, copies of any furbearer management plans or other relevant reports that the State or Tribe has prepared as part of its existing management program.

(2) A State or Tribe with an approved CITES export program must submit a CITES furbearer activity report to the U.S. Management Authority by October 31 of each year that provides information regarding harvest during the previous year. This report may reference information provided in previous years if the information has not changed. A furbearer activity report, at a minimum, should include the following:

(i) For each species, the number of specimens taken and the number of animals tagged, if different.

(ii) An assessment of the status of each species for which export is approved with an indication of whether the population is stable, increasing, or decreasing, and at what rate (if known). If population levels are decreasing, the activity report should include the State or Tribe's professional assessment of the reason for the decline and any steps being taken to address it.

(iii) Information on, and a copy of, any changes in laws or regulations affecting these species.

(iv) If available, copies of relevant reports that the State or Tribe has prepared during the year in question as part of its existing management programs for CITES furbearers.

(c) *CITES tags.* Unless an alternative method has been approved, each CITES fur skin to be exported or re-exported must have a U.S. CITES tag permanently attached.

(1) The tag must be inserted through the skin and permanently locked in place using the locking mechanism of the tag.

(2) The legend on the CITES tag must include the US-CITES logo, an abbreviation for the State or Tribe of harvest, a standard species code assigned by the Management Authority, and a unique serial number.

(3) Fur skins with broken, cut, or missing tags may not be exported. Replacement tags must be obtained before the furs are presented for export or re-export. To obtain a replacement tag, either from the State or Tribe that issued the original tag or from us, you must provide information to show that the fur was legally acquired.

(i) When a tag is broken, cut, or missing you may contact the State or Tribe of harvest for a replacement tag. If the State or Tribe cannot replace it, you may apply to FWS Law Enforcement for a replacement tag. If the tag is broken or cut, you must give us the tag. If the tag is missing, you must provide details concerning how the tag was lost. If we are satisfied that the fur was legally acquired, we will provide a CITES replacement tag.

(ii) A replacement tag must meet all of the requirements in paragraph (c) of this section, except the legend will include only the US-CITES logo, FWS-REPL, and a unique serial number.

(4) Tags are not required on fur skin products.

(d) *Documentation requirements.* The U.S. CITES export permit or an annex attached to the permit must contain all information that is given on the tag.

(e) *U.S. application process.* Application forms and a list of States and Tribes with approved furbearer programs can be obtained from our website or by contacting us.

(1) To export fur skins taken under an approved State or tribal program, complete Form 3–200–26 and submit it to either FWS Law Enforcement or the U.S. Management Authority.

(2) To export fur skins that were not harvested under an approved program, complete Form 3–200–27 and submit it to the U.S. Management Authority.

(3) To re-export fur skins, complete Form 3–200–73 and submit it either to FWS Law Enforcement or the U.S. Management Authority.

(4) For information on issuance criteria for CITES documents, see § 23.36 for export permits and § 23.37 for re-export certificates.

(f) *Conditions for export.* Upon export, each fur skin, other than a fur skin product, must be clearly identified in accordance with paragraph (c) of this section.

§ 23.70 How can I trade internationally in American alligator and other crocodilian skins, parts and products?

(a) *U.S. and foreign general provisions.* For the purposes of this section, crocodilian means all species of alligator, caiman, crocodile, and gavial of the order Crocodylia. The import, export, or re-export of any crocodilian skins, parts, or products must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures). For American alligator specimens harvested from a State or Tribe without an approved CITES export program, see § 23.36 for export permits and § 23.37 for re-export certificates.

(b) *Definitions.* Terms used in this section are defined as follows:

(1) *Crocodilian skins* means whole or partial skins, flanks, chalecos, and bellies (including those that are salted, crusted, tanned, partially tanned, or otherwise processed), including skins of sport-hunted trophies.

(2) *Crocodilian parts* means body parts with or without skin attached (including tails, throats, feet, meat, skulls, and other parts) and small cut skin pieces.

(c) *Export approval of State and tribal programs for American alligator.* States and Tribes set up and maintain management and harvest programs designed to monitor and protect American alligators from over-harvest. When a State or Tribe with a management program provides us with the necessary information, we make programmatic findings and have specific requirements that allow export under CITES. A State or Tribe must provide sufficient information for us to determine that its management program and harvest controls are appropriate to ensure that alligators harvested within its jurisdiction are legally acquired and that the export will not be detrimental to the survival of the species in the wild.

(1) A State or Tribe seeking initial CITES export program approval must submit the following to the U.S. Management Authority:

(i) An assessment of the condition of the wild population and a description of the types of information on which the assessment is based, for example, an analysis of carcass demographics, population models, analysis of past harvest levels as a function of skin

prices or harvester effort, or indices of abundance independent of harvest information, such as nest surveys, spotlighting surveys, or nuisance complaints.

(ii) Current harvest control measures, including laws regulating harvest, seasons, and methods.

(iii) Total allowable harvest of the species.

(iv) Distribution of harvest.

(v) Indication of how frequently harvest levels are evaluated.

(vi) Tagging or marking requirements for skins and parts.

(vii) Habitat evaluation.

(viii) Information on nuisance alligator management programs.

(ix) Information on alligator farming programs, including whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set harvest levels, and whether any alligators are returned to the wild.

(x) If available, copies of any alligator management plans or other relevant reports for American alligator that the State or Tribe has prepared as part of its existing management program.

(2) A State or Tribe with an approved CITES export program must submit an American alligator activity report to the U.S. Management Authority by July 1 of each year to provide information regarding harvests during the previous year. This report may reference information provided in previous years if the information has not changed. An American alligator activity report, at a minimum, should include the following:

(i) The total number of skins from wild or farmed alligators that were tagged by the State or Tribe.

(ii) An assessment of the status of the alligator population with an indication of whether the population is stable, increasing, or decreasing, and at what rate (if known). If population levels are decreasing, activity reports should include the State or Tribe's professional assessment of the reason for the decline and any steps being taken to address it.

(iii) For wild alligators, information on harvest, including harvest of nuisance alligators, methods used to determine harvest levels, demographics of the harvest, and methods used to determine the total number and population trends of alligators in the wild.

(iv) For farmed alligators, information on whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set harvest levels, and whether any alligators are returned to the wild.

(v) Information on, and a copy of, any changes in laws or regulations affecting the American alligator.

(vi) If available, copies of relevant reports that the State or Tribe has prepared during the reporting period as part of its existing management program for the American alligator.

(3) We provide CITES export tags to States and Tribes with approved CITES export programs. American alligator skins and parts must meet the marking and tagging requirements of paragraphs (d), (e), and (f) of this section.

(d) *Tagging of crocodilian skins.* You may import, export, or re-export any crocodilian skin only if a non-reusable tag is inserted through the skin and locked in place using the locking mechanism of the tag. A mounted sport-hunted trophy must be accompanied by the tag from the skin used to make the mount.

(1) Except as provided for a replacement tag in paragraph (d)(3)(ii) of this section, the tag must:

(i) Be self-locking, heat resistant, and inert to chemical and mechanical processes.

(ii) Be permanently stamped with the two-letter ISO code for the country of origin, a unique serial number, a standardized species code (available on our Web site), and the year of production or harvest. For American alligator, the export tags include the US–CITES logo, an abbreviation for the State or Tribe of harvest, a standard species code (MIS = *Alligator mississippiensis*), the year of taking, and a unique serial number.

(iii) If the year of production or harvest and serial number appear next to each other on a tag, the information should be separated by a hyphen.

(2) Skins and flanks must be individually tagged, and chalecos must have a tag attached to each flank.

(3) Skins with broken, cut, or missing tags may not be exported. Replacement tags must be obtained before the skins are presented for import, export, or re-export. To obtain a replacement tag, either from the State or Tribe of harvest (for American alligator) or from us, you must provide information to show that the skin was legally acquired.

(i) In the United States, when an American alligator tag is broken, cut, or missing you may contact the State or Tribe of harvest for a replacement tag. If the State or Tribe cannot replace it, you may apply to FWS Law Enforcement for a replacement tag. To obtain replacement tags for crocodilian skins other than American alligator in the United States, contact FWS Law Enforcement. If the tag is broken or cut, you must give us the tag. If the tag is missing, you must provide details concerning how the tag was lost. If we are satisfied that the skin was legally acquired, we will provide a CITES replacement tag.

(ii) A replacement tag must meet all of the requirements in paragraph (d)(1) of this section except that the species code and year of production or harvest will not be required, and for re-exports the country of re-export must be shown in place of the country of origin. In the United States, the legend will include the US–CITES logo, FWS–REPL, and a unique serial number.

(e) *Meat and skulls.* Except for American alligator, you may import, export, or re-export crocodilian meat and skulls without tags or markings. American alligator meat and skulls may be imported, exported, or re-exported if packaged and marked or tagged in accordance with State or tribal laws as follows:

(1) Meat from legally harvested and tagged alligators must be packed in permanently sealed containers and labeled as required by State or tribal laws or regulations. Bulk meat containers must be marked with any required State or tribal parts tag or bulk meat tag permanently attached and indicating, at a minimum, State or Tribe of origin, year of take, species, original U.S. CITES tag number for the corresponding skin, weight of meat in the container, and identification of State licensed processor or packer.

(2) Each American alligator skull must be marked as required by State or tribal law or regulation. This marking must include, at a minimum, reference to the corresponding U.S. CITES tag number on the skin.

(f) *Tagging or labeling of crocodilian parts other than meat, skulls, and scientific specimens.* You may import, export, or re-export crocodilian parts when the following conditions are met:

(1) Parts must be packed in transparent sealed containers.

(2) Containers must be clearly marked with a non-reusable parts tag or label that includes all of the information in paragraph (d)(1)(ii) of this section and a description of the contents, the total weight (contents and container), and the number of the CITES document.

(3) Tags are not required on crocodilian products.

(g) *Documentation requirements.* The CITES document or an annex attached to the document must contain all information that is given on the tag or label.

(h) *U.S. application process.* Application forms and a list of States and Tribes with approved American

alligator programs can be obtained from our Web site or by contacting us.

(1) To export American alligator specimens taken under an approved State or tribal program, complete Form 3–200–26 and submit it to either FWS Law Enforcement or the U.S. Management Authority.

(2) To export American alligator specimens that are not from an approved program, complete Form 3–200–27 and submit it to the U.S. Management Authority.

(3) For information on issuance criteria for CITES documents, see § 23.36 for export permits and § 23.37 for re-export certificates.

(i) *Conditions for import, export, or re-export.* Upon import, export, or re-export, each crocodilian skin must be clearly identified by a tag in accordance with paragraph (d) of this section. Crocodilian parts, other than meat, skulls, and scientific specimens, must be packaged and clearly identified with a parts tag in accordance with paragraph (f) of this section. Crocodilian products do not require a tag. American alligator meat and skulls must be packaged and tagged, labeled, or marked in accordance with paragraph (e) of this section.

§ 23.71 How can I trade internationally in sturgeon caviar?

(a) *U.S. and foreign general provisions.* For the purposes of this section, *sturgeon caviar* means the processed roe of any species of sturgeon, including paddlefish (Order Acipenseriformes). The import, export, or re-export of sturgeon caviar must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Labeling.* You may import, export, or re-export sturgeon caviar only if labels are affixed to containers prior to export or re-export in accordance with this paragraph.

(1) The following definitions apply to caviar labeling:

(i) *Non-reusable label* means any label or mark that cannot be removed without being damaged or transferred to another container.

(ii) *Primary container* means any container in direct contact with the caviar.

(iii) *Secondary container* means the receptacle into which primary containers are placed.

(iv) *Processing plant* means a facility in the country of origin responsible for the first packaging of caviar into a primary container.

(v) *Repackaging plant* means a facility responsible for receiving and repackaging caviar into new primary containers.

(vi) *Lot identification number* means a number that corresponds to information related to the caviar tracking system used by the processing plant or repackaging plant.

(2) The caviar processing plant in the country of origin must affix a non-reusable label on the primary container that includes all of the following information:

(i) Standardized species code; for hybrids, the species code for the male is followed by the code for the female and the codes are separated by an ''x'' (codes are available on our website).

(ii) Source code.

(iii) Two-letter ISO code of the country of origin.

(iv) Year of harvest.

(v) Processing plant code and lot identification number.

(3) If caviar is repackaged before export or re-export, the repackaging plant must affix a non-reusable label to the primary container that includes all of the following information:

(i) The standardized species code, source code, and two-letter ISO code of the country of origin.

(ii) Year of repackaging and the repackaging plant code, which incorporates the two-letter ISO code for the repackaging country if different from the country of origin.

(iii) Lot identification number or CITES document number.

(4) The exact quantity of caviar must be indicated on any secondary container along with a description of the contents in accordance with international customs regulations.

(c) *Documentation requirements.* Unless the sturgeon caviar qualifies as a personal or household effect under § 23.15, the CITES document or an annex attached to the document must contain all information that is given on the label. The exact quantity of each species of caviar must be indicated on the CITES document.

(d) *Export quotas.* Commercial shipments of sturgeon caviar from stocks shared between different countries may be imported only if all of the following conditions have been met:

(1) The relevant countries have established annual export quotas for the shared stocks that were derived from catch quotas agreed among the countries and based on an appropriate regional conservation strategy and monitoring regime.

(2) The quotas have been communicated to the CITES Secretariat and the Secretariat has confirmed that the quotas have been agreed by all relevant countries.

(3) The CITES Secretariat has communicated these annual quotas to CITES Parties.

(4) The caviar is exported during the calendar year in which it was harvested and processed.

(e) *Re-exports.* Any re-export of sturgeon caviar must occur within 18 months from the date of issuance of the original export permit.

(f) *Pre-Convention.* Sturgeon caviar may not be imported, exported, or re-exported under a pre-Convention certificate.

(g) *Pressed caviar.* Pressed caviar, the combined roe of one or more species remaining after the processing and preparation of higher-quality caviar, may only be imported into or exported from the United States if the exact quantity of roe from each species is known and is indicated on the CITES document.

(h) *U.S. application forms.* Application forms can be obtained from our website or by contacting us. For CITES document requirements, see § 23.36 for export permits and § 23.37 for re-export certificates. For export, complete Form 3–200–27 and submit it to the U.S. Management Authority. For re-export, complete Form 3–200–26 and submit it to FWS Law Enforcement.

§ 23.72 How can I trade internationally in plants?

(a) *U.S. and foreign general provisions:* In addition to the requirements of this section, the import, export, or re-export of CITES plant specimens must meet the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Seeds.* International shipments of seeds of any species listed in Appendix I, except for seeds of certain artificially propagated hybrids (see § 23.92), or seeds of species listed in Appendix II or III with an annotation that includes seeds must be accompanied by a valid CITES document. International shipments of CITES seeds that are artificially propagated also must be accompanied by a valid CITES document.

(c) *A plant propagated from exempt plant material.* A plant grown from exempt plant material is regulated by CITES.

(1) The proposed shipment of the specimen is treated as an export even if the exempt plant material from which it was derived was previously imported. The country of origin is the country in which the specimen ceased to qualify for the exemption.

(2) Plants grown from exempt plant material qualify as artificially

propagated provided they are grown under controlled conditions.

(3) To export plants grown from exempt plant material under controlled conditions, complete Form 3–200–33 for a certificate for artificially propagated plants.

(d) *Salvaged plants.* (1) For purposes of this section, *salvaged plant* means a plant taken from the wild as a result of some environmental modification in a country where a Party has done all the following:

(i) Ensured the environmental modification program does not threaten the survival of CITES plant species, and that protection of Appendix-I species *in situ* is considered a national and international obligation.

(ii) Established salvaged specimens in cultivation after concerted attempts have failed to ensure that the environmental modification program would not put at risk wild populations of CITES species.

(2) International trade in salvaged Appendix-I plants, and Appendix-II plants whose entry into trade might otherwise have been considered detrimental to the survival of the species in the wild, may be permitted only when all the following conditions are met:

(i) Such trade would clearly benefit the survival of the species in the wild or in captivity.

(ii) Import is for the purposes of care and propagation.

(iii) Import is by a *bona fide* botanic garden or scientific institution.

(iv) Any salvaged Appendix-I plant will not be sold or used to establish a commercial operation for artificial propagation after import.

§ 23.73 How can I trade internationally in timber?

(a) *U.S. and foreign general provisions:* In addition to the requirements of this section, the import, export, or re-export of timber species listed under CITES must meet the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Definitions.* The following definitions apply to parts, products, and derivatives that appear in the annotations to certain timber species in the CITES Appendices. These definitions are based on the tariff classifications of the Harmonized System of the World Customs Organization.

(1) *Logs* means all wood in the rough, whether or not stripped of bark or sapwood, or roughly squared for processing, notably into sawn wood, pulpwood, or veneer sheets.

(2) *Sawn wood* means wood simply sawn lengthwise or produced by a profile-chipping process. Sawn wood normally exceeds 6 mm in thickness.

(3) *Veneer sheets* means thin layers or sheets of wood of uniform thickness, usually 6 mm or less, usually peeled or sliced, for use in making plywood, veneer furniture, veneer containers, or similar products.

(4) *Plywood* means wood material consisting of three or more sheets of wood glued and pressed one on the other and generally disposed so that the grains of successive layers are at an angle.

(c) The following exceptions apply to Appendix-II or -III timber species that have a substantive annotation that designates either logs, sawn wood, and veneer sheets, or logs, sawn wood, veneer sheets, and plywood:

(1) *Change in destination.* When a shipment of timber destined for one country is redirected to another, the Management Authority in the country of import may change the name and address of the importer indicated on the CITES document under the following conditions:

(i) The quantity imported is the same as the quantity certified by a stamp or seal and signature of the Management Authority on the CITES document at the time of export or re-export.

(ii) The number of the bill of lading for the shipment is on the CITES document, and the bill of lading is presented at the time of import.

(iii) The import takes place before the CITES document expires, and the period of validity has not been extended.

(iv) The Management Authority of the importing country includes the following statement in block 5, or an equivalent place, of the CITES document: ''Import into [name of country] permitted in accordance with [cite the appropriate section number from the current permit and certificate resolution] on [date].'' The modification is certified with an official stamp and signature.

(v) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and the Secretariat.

(2) *Extension of CITES document validity.* A Management Authority in the country of import may extend the validity of an export permit or re-export certificate beyond the normal maximum of 6 months after the date of issue under the following conditions:

(i) The shipment has arrived in the port of final destination before the CITES document expires, is being held in customs bond, and is not considered imported.

(ii) The time extension does not exceed 6 months from the date of expiration of the CITES document and no previous extension has been issued.

(iii) The Management Authority has included in block 5, or an equivalent place, of the CITES document the date of arrival and the new date of expiration on the document, and certified the modification with an official stamp and signature.

(iv) The shipment is imported into the country from the port where the Management Authority issued the extension and before the amended CITES document expires.

(v) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and to the Secretariat.

§ 23.74 How can I trade internationally in personal sport-hunted trophies?

(a) *U.S. and foreign general provisions.* Except as provided for personal and household effects in § 23.15, the import, export, or re-export of sport-hunted trophies of species listed under CITES must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures).

(b) *Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by a hunter, who is also the importer, exporter, or re-exporter, during a sport hunt for personal use. It may include the bones, claws, hair, head, hide, hooves, horns, meat, skull, teeth, tusks, or any taxidermied part, including, but not limited to, a rug or taxidermied head, shoulder, or full mount. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items.

(c) *Use after import.* You may use your sport-hunted trophy after import into the United States as provided in § 23.55.

(d) *Quantity and tagging.* The following provisions apply to the issuance and acceptance of U.S. and foreign CITES documents:

(1) The number of trophies that may be imported in any calendar year for the following species is:

(i) No more than two leopard (*Panthera pardus*) trophies.

(ii) No more than one markhor (*Capra falconeri*) trophy.

(iii) No more than one black rhinoceros (*Diceros bicornis*) trophy.

(2) Each trophy imported, exported, or re-exported must be marked or tagged in the following manner:

(i) Leopard and markhor: Each raw or tanned skin must have a self-locking tag

inserted through the skin that indicates the country of origin, the number of the specimen in relation to the annual quota, and the calendar year in which the specimen was taken in the wild.

(ii) Black rhinoceros: Parts of the trophy, including, but not limited to, skin, skull, or horns, whether mounted or loose, should be individually marked with reference to the country of origin, species, the number of the specimen in relation to the annual quota, and the year of export.

(3) The export permit or re-export certificate or an annex attached to the permit or certificate must contain all the information that is given on the tag.

Subpart F—Disposal of Confiscated Wildlife and Plants

§ 23.78 What happens to confiscated wildlife and plants?

(a) *Purpose.* Article VIII of the Treaty provides for confiscation or return to the country of export of specimens that are traded in violation of CITES.

(b) *Disposal options.* Part 12 of this subchapter provides the options we have for disposing of forfeited and abandoned live and dead wildlife and plants. These include maintenance in captivity either in the United States or in the country of export, return to the wild under limited circumstances, and sale of certain Appendix-II or -III specimens. Under some conditions, euthanasia or destruction may be necessary.

(1) We use a plant rescue center program to dispose of confiscated live plants. Participants in this program may also assist APHIS, CBP, and FWS Law Enforcement in holding seized specimens as evidence pending any legal decisions.

(2) We dispose of confiscated live wildlife on a case-by-case basis at the time of seizure and forfeiture, and consider the quantity, protection level, and husbandry needs of the wildlife.

(c) *Re-export.* We may issue a re-export certificate for a CITES specimen that was forfeited or abandoned when the certificate indicates the specimen was confiscated and when the re-export meets one of the following purposes:

(1) For any CITES species, the return of a live specimen to the Management Authority of the country of export, placement of a live specimen in a rescue center, or use of the specimen for law enforcement, judicial, or forensic purposes.

(2) For an Appendix-II or -III species, the disposal of the specimen in an appropriate manner that benefits enforcement and administration of the Convention.

(d) *Consultation process.* FWS and APHIS may consult with the Management Authority in the country of export or re-export and other relevant governmental and nongovernmental experts before making a decision on the disposal of confiscated live specimens that have been forfeited or abandoned to FWS, APHIS, or CBP.

§ 23.79 How may I participate in the Plant Rescue Center Program?

(a) *Purpose.* We have established the Plant Rescue Center Program to place confiscated live plants quickly to prevent physical damage to the plants.

(b) *Criteria.* Institutions interested in participating in this program must be:

(1) Nonprofit, open to the public, and have the expertise and facilities to care for confiscated exotic plant specimens. A participating institution may be a botanical garden, arboretum, zoological park, research institution, or other qualifying institution.

(2) Willing to transfer confiscated plants from the port where they were confiscated to their facilities at their own expense.

(3) Willing to return the plants to the U.S. Government if the country of export has requested their return. The U.S. Government will then coordinate the plants' return to the country of export.

(4) Willing to accept and maintain a plant shipment as a unit until it has received authorization from us to incorporate the shipment into its permanent collection or transfer a portion of it to another participating institution.

(c) *Participation.* Institutions wishing to participate in the Plant Rescue Center Program should contact the U.S. Management Authority. They must provide a brief description of the greenhouse or display facilities, the names and telephone numbers of any individuals authorized to accept plants on behalf of the institution, and the mailing address where the plants should be sent. In addition, interested institutions must indicate if they are limited with regard to the type of plants they are able to maintain or the quantities of plants they can handle at one time.

Subpart G—CITES Administration

§ 23.84 What are the roles of the Secretariat and the committees?

(a) *Secretariat.* The Secretariat is headed by the Secretary-General. Its functions are listed in Article XII of the Treaty and include:

(1) Arranging and staffing meetings of the Parties.

(2) Performing functions as requested in relation to listings in the Appendices.

(3) Undertaking scientific and technical studies, as authorized by the CoP, to contribute to implementation of the Convention.

(4) Studying reports of the Parties and requesting additional information as appropriate to ensure effective implementation of the Convention.

(5) Bringing to the attention of the Parties matters relevant to the Convention.

(6) Periodically publishing and distributing to the Parties current editions of the Appendices as well as information on the identification of specimens of species listed in the Appendices.

(7) Preparing annual reports to the Parties on its work and on the implementation of the Convention.

(8) Making recommendations for the implementation of the aims and provisions of the Convention, including the exchange of scientific and technical information.

(9) Performing other functions entrusted to it by the Parties.

(b) *Committees.* The Parties have established four committees to provide administrative and technical support to the Parties and to the Secretariat. The CoP may charge any of these committees with tasks.

(1) The Standing Committee steers the work and performance of the Convention between CoPs.

(i) This committee oversees development and execution of the Secretariat's budget, advises other committees, appoints working groups, and carries out activities on behalf of the Parties between CoPs.

(ii) Regional representatives are countries that are elected by their respective geographic regions at the CoP.

(2) The Animals Committee and the Plants Committee provide advice and guidance to the CoP, the other committees, working groups, and the Secretariat on all matters relevant to international trade in species included in the Appendices.

(i) These committees also assist the Nomenclature Committee in the development and maintenance of a standardized list of species names; provide assistance with regard to identification of species listed in the Appendices; cooperate with the Secretariat to assist Scientific Authorities; compile and evaluate data on Appendix-II species that are considered significantly affected by trade; periodically review the status of wildlife and plant species listed in the Appendices; advise range countries on

management techniques when requested; draft resolutions on wildlife and plant matters for consideration by the Parties; deal with issues related to the transport of live specimens; and report to the CoP and the Standing Committee.

(ii) Regional representatives are individuals, who are elected by their respective geographic regions at the CoP.

(3) The Nomenclature Committee is responsible for developing or identifying standard nomenclature references for wildlife and plant taxa and making recommendations on nomenclature to Parties, the CoP, other committees, working groups, and the Secretariat. The Nomenclature Committee is made up of one zoologist and one botanist, who are appointed by the CoP.

§ 23.85 What is a Meeting of the Conference of the Parties (CoP)?

(a) *Purpose.* Article XI of the Treaty provides general guidelines for meetings of the countries that have ratified, accepted, approved, or acceded to CITES. The Parties currently meet for 2 weeks every 3 years. At these meetings, the Parties consider amendments to the Appendices and resolutions and decisions to improve the implementation of CITES. The Parties adopt amendments to the lists of species in Appendix I and II and resolutions by a two-thirds majority of Parties present and voting. The Secretariat or any Party may also submit reports on wildlife and plant trade for consideration.

(b) *CoP locations and dates.* At a CoP, Parties interested in hosting the next meeting notify the Secretariat. The Parties vote to select the location of the next CoP. Once a country has been chosen, it works with the Secretariat to set the date and specific venue. The Secretariat then notifies the Parties of the date for the next CoP.

(c) *Attendance at a CoP.* All Parties may participate and vote at a CoP. Non-Party countries may participate, but may not vote. Organizations technically qualified in protection, conservation, or management of wildlife or plants may participate in a CoP as observers if they are approved, but they are not eligible to vote.

(1) International organizations must apply to the CITES Secretariat for approval to attend a CoP as an observer.

(2) National organizations must apply to the Management Authority of the country where they are located for approval to attend a CoP as an observer.

§ 23.86 How can I obtain information on a CoP?

As we receive information on an upcoming CoP from the CITES Secretariat, we will notify the public either through published notices in the **Federal Register** or postings on our website. We will provide:

(a) A summary of the information we have received with an invitation for the public to comment and provide information on the agenda, proposed amendments to the Appendices, and proposed resolutions that they believe the United States should submit for consideration at the CoP.

(b) Information on times, dates, and locations of public meetings.

(c) Information on how international and national organizations may apply to participate as observers.

§ 23.87 How does the United States develop documents and negotiating positions for a CoP?

(a) In developing documents and negotiating positions for a CoP, we:

(1) Will provide for at least one public meeting.

(2) Consult with appropriate Federal, State, and tribal agencies, foreign governmental agencies, scientists, experts, and others.

(3) Seek public comment through published **Federal Register** notices or postings on our website that:

(i) Solicit recommendations on potential proposals to amend the Appendices, draft resolutions, and other documents for U.S. submission to the CoP.

(ii) Announce proposals to amend the Appendices, draft resolutions, and other documents that the United States is considering submitting to the CoP.

(iii) Provide the CoP agenda and a list of the amendments to the Appendices proposed for the CoP, a summary of our proposed negotiating positions on these items, and the reasons for our proposed positions.

(4) Consider comments received in response to notices or postings provided in paragraph (a)(3) of this section.

(b) We submit the following documents to the Secretariat for consideration at the CoP:

(1) Draft resolutions and other documents at least 150 days before the CoP.

(2) Proposals to amend the Appendices at least 150 days before the CoP if all range countries have been consulted, or 330 days before the CoP if the range countries are not consulted.

(c) The Director may modify or suspend any of these procedures if they would interfere with the timely or appropriate development of documents for submission to the CoP and U.S. negotiating positions.

(d) We may receive additional information at a CoP or circumstances may develop that have an impact on our tentative negotiating positions. As a result, the U.S. representatives to a CoP may find it necessary to modify, reverse, or otherwise change any of those positions where to do so would be in the best interests of the United States or of the conservation of the species.

§ 23.88 What are the resolutions and decisions of the CoP?

(a) *Purpose.* Under Article XI of the Treaty, the Parties agree to resolutions and decisions that clarify and interpret the Convention to improve its effectiveness. Resolutions are generally intended to provide long-standing guidance, whereas decisions typically contain instructions to a specific committee, Parties, or the Secretariat. Decisions are often intended to be implemented by a specific date, and then they expire.

(b) *Effective date.* A resolution or decision adopted by the Parties becomes effective 90 days after the meeting at which it was adopted, unless otherwise specified in the resolution or decision.

Subpart H—Lists of Species

§ 23.89 What are the criteria for listing species in Appendix I or II?

(a) *Purpose.* Article XV of the Treaty sets out the procedures for amending CITES Appendices I and II. A species must meet trade and biological criteria listed in the CITES resolution for amendment of Appendices I and II. When determining whether a species qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, we will:

(1) Consult with States, Tribes, range countries, relevant experts, other Federal agencies, and the general public.

(2) Utilize the best available biological information.

(3) Evaluate that information against the criteria in paragraphs (b) through (f) of this section.

(b) *Listing a species in Appendix I.* Any species qualifies for inclusion in Appendix I if it is or may be affected by trade and meets, or is likely to meet, at least one biological criterion for Appendix I.

(1) These criteria are:

(i) The size of the wild population is small.

(ii) Area of distribution is restricted.

(iii) There is an observed, inferred, or projected marked decline in the population size in the wild.

(2) Factors to be considered include, but are not limited to, population and range fragmentation; habitat availability or quality; area of distribution; taxon-specific vulnerabilities due to life history, behavior, or other intrinsic factors, such as migration; population structure and niche requirements; threats from extrinsic factors such as the form of exploitation, introduced species, habitat degradation and destruction, and stochastic events; or decreases in recruitment.

(c) *Listing a species in Appendix II due to actual or potential threats.* Any species qualifies for inclusion in Appendix II if it is or may be affected by trade and meets at least one of the criteria for listing in Appendix II based on actual or potential threats to that species. These criteria are:

(1) It is known, or can be inferred or projected, that the regulation of trade is necessary to avoid the species becoming eligible for inclusion in Appendix I in the near future.

(2) It is known, or can be inferred or projected, that the regulation of trade in the species is required to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened by continued harvest or other influences.

(d) *Listing a species in Appendix II due to similarity of appearance or other factors.* Any species qualifies for inclusion in Appendix II if it meets either of the criteria for listing in Appendix II due to similarity of appearance or other factors. These criteria are:

(1) The specimens of the species in the form in which they are traded resemble specimens of a species listed in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, such that enforcement officers who encounter specimens of such similar CITES species are unlikely to be able to distinguish between them.

(2) There are compelling reasons other than those in paragraph (d)(1) of this section to ensure that effective control of trade in currently listed species is achieved.

(e) *Other issues.* We will evaluate any potential changes to the Appendices, taking into consideration other issues, including but not limited to, split-listing, annotation, listings of higher taxa and hybrids, and specific listing issues related to plants and commercially exploited aquatic species.

(f) *Precautionary measures.* We will evaluate any potential transfers from Appendix I to II or removal of species from the Appendices in the context of precautionary measures.

(g) *Proposal.* If a Party determines that a taxon qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, a proposal may be submitted to the Secretariat for consideration by the CoP.

(1) The proposal should indicate the intent of the specific action (such as inclusion in Appendix I or II); be specific and accurate as to the parts and derivatives to be included in the listing; ensure that any proposed annotation is consistent with existing annotations; state the criteria against which the proposal is to be judged; and provide a justification for the basis on which the species meets the relevant criteria.

(2) The proposal must be in a prescribed format. Contact the U.S. Scientific Authority for a copy.

§ 23.90 What are the criteria for listing species in Appendix III?

(a) *Purpose.* Article XVI of the Treaty sets out the procedures for amending Appendix III.

(b) *General procedure.* A Party may unilaterally, at any time, submit a request to list a species in Appendix III to the CITES Secretariat. The listing will become effective 90 days after the Secretariat notifies the Parties of the request.

(c) *Criteria for listing.* For a Party to list a species in Appendix III, all of the following criteria must be met:

(1) The species must be native to the country listing the species.

(2) The species must be protected under that country's laws or regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.

(3) The species is in international trade, and there are indications that the cooperation of other Parties would help to control illegal trade.

(4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinions on the potential effects of the listing.

(d) *Annotation.* The listing Party may annotate the Appendix–III listing to include only specific parts, products, derivatives, or life stages, as long as the Secretariat is notified of the annotation.

(e) *U.S. procedure.* The procedure to list a species native to the United States in Appendix III is as follows:

(1) We will consult with and solicit comments from all States where the species occurs and all other range countries.

(2) We will publish a proposed rule in the **Federal Register** to solicit comments from the public.

(3) If after evaluating the comments received and available information we determine the species should be listed in Appendix III, we will publish a final rule in the **Federal Register** and notify the Secretariat of the listing.

(f) *Removing a species from Appendix III.* We will monitor the international trade in Appendix–III species listed by us and periodically evaluate whether each species continues to meet the listing criteria in paragraph (c) of this section. We will remove a species from Appendix III provided all of the following criteria are met:

(1) International trade in the species is very limited. As a general guide, we will consider removal when exports involve fewer than 5 shipments per year or fewer than 100 individual animals or plants.

(2) Legal and illegal trade in the species, including international trade or interstate commerce, is determined not to be a concern.

(g) *Transferring a species from Appendix III to Appendix I or II.* If, after monitoring the trade and evaluating the status of an Appendix–III species we listed, we determine that the species meets the criteria in § 23.89(b) through (d) of this section for listing in Appendix I or II, we will consider whether to submit a proposal to amend the listing at the next CoP.

§ 23.91 How do I find out if a species is listed?

(a) *CITES list.* The official CITES list includes species of wildlife and plants placed in Appendix I, II, and III in accordance with the provisions of Articles XV and XVI of the Treaty. This list is maintained by the CITES Secretariat based on decisions of the Parties. You may access the official list from the CITES website (*http://www.cites.org*).

(b) *Effective date.* Amendments to the CITES list are effective as follows:

(1) Appendix–I and –II species listings adopted at the CoP are effective 90 days after the last day of the CoP, unless otherwise specified in the proposal.

(2) Appendix–I and –II species listings adopted between CoPs by postal procedures are effective 120 days after the Secretariat has communicated comments and recommendations on the listing to the Parties if the Secretariat does not receive an objection to the proposed amendment from a Party.

(3) Appendix–III species listings are effective 90 days after the date the Secretariat has communicated such listings to the Parties. A listing Party may withdraw a species from the list at any time by notifying the Secretariat.

The withdrawal is effective 30 days after the Secretariat has communicated the withdrawal to the Parties.

§ 23.92 Are any wildlife or plants, and their parts, products, or derivatives, exempt?

(a) All living or dead wildlife and plants in Appendix I, II, and III and all their readily recognizable parts, products, and derivatives must meet the requirements of CITES and this part, except as indicated in paragraph (b) of this section.

(b) The following are exempt from the requirements of CITES and do not need CITES documents:

(1) *Appendix–III wildlife.* Any part, product, or derivative of an Appendix–III wildlife species that is specifically excluded by an annotation in the CITES list.

(2) *Appendix–II or –III plants.* Any part, product, or derivative of an Appendix–II or –III plant species that is not specifically included by an annotation in the CITES list.

(3) *Plant hybrids.*

(i) Seeds and pollen (including pollinia), cut flowers, and flasked seedlings or tissue cultures of Appendix–I artificially propagated hybrids produced from one or more Appendix–I species or taxa that are not annotated to specifically include hybrids in the CITES list.

(ii) Appendix–II or –III plant species or taxon, and its parts, products, and derivatives, with an annotation that specifically excludes hybrids.

(4) *Flasked seedlings of Appendix–I orchids.* Flasked seedlings of an Appendix–I orchid species that has been artificially propagated.

(5) *Marine specimens listed in Appendix II that are protected under another treaty, convention or international agreement which was in force on July 1, 1975* as provided in § 23.39 (d).

(6) *Coral sand and coral fragments* as defined in § 23.5.

(7) *Personal and household effects* as provided in § 23.15.

(8) *Urine, feces, and synthetically derived DNA* as provided in § 23.16.

Dated: November 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received at the **Federal Register** on April 4, 2006.

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April 19, 2006

Part III

Department of Labor

Employee Benefits Security Administration

Voluntary Fiduciary Correction Program Under the Employee Retirement Income Security Act of 1974; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–AB03

Voluntary Fiduciary Correction Program Under the Employee Retirement Income Security Act of 1974

AGENCY: Employee Benefits Security Administration, DOL.

ACTION: Adoption of Updated Voluntary Fiduciary Correction Program.

SUMMARY: This Notice includes an updated and streamlined version of the Voluntary Fiduciary Correction Program (VFC Program or the Program) under the Employee Retirement Income Security Act. The VFC Program is designed to encourage the voluntary correction of fiduciary violations by permitting persons to avoid potential civil actions and civil penalties if they take steps to correct identified violations in a manner consistent with the Program. The Program included in this Notice reflects changes made in response to public comments received on the VFC Program modifications implemented in April 2005. The final Program includes additional transactions, reduced documentation requirements, a simplified application form, a checklist, and availability of an online calculator for determining the amount to be restored to plans. These changes serve to both encourage and facilitate the use of the Program as a means by which to correct covered fiduciary violations.

DATES: The VFC Program contained in this Notice is effective May 19, 2006.

FOR FURTHER INFORMATION CONTACT:

For Questions Regarding the VFC Program Amendments: Contact Kristen L. Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8510.

For General Questions Regarding the VFC Program: Contact Caroline Sullivan, Office of Enforcement, EBSA, (202) 693–8463. (These are not toll-free numbers.)

For Questions Regarding Specific Applications Under the VFC Program: Contact the appropriate EBSA Regional Office listed in Appendix C.

SUPPLEMENTARY INFORMATION:

A. Background

The Voluntary Fiduciary Correction Program was adopted by EBSA of the Department of Labor (Department) on a permanent basis in March 2002 (the original VFC Program).[1] The VFC Program is designed to encourage employers and plan fiduciaries to voluntarily comply with ERISA and allows those potentially liable for certain specified fiduciary violations under ERISA to voluntarily apply for relief from enforcement actions and certain penalties, provided they meet the VFC Program's criteria and follow the procedures outlined in the VFC Program. Many workers have also benefited from the VFC Program as a result of the restoration of plan assets and payment of promised benefits.

The VFC Program describes how to apply for relief, the specific transactions covered,[2] acceptable methods for correcting violations, and examples of potential violations and corrective actions. Eligible applicants that satisfy the terms and conditions of the VFC Program receive a ''no-action letter'' from EBSA and are not subject to civil monetary penalties. In 2002, the original VFC Program was further expanded to include a class exemption (PTE 2002–51) providing excise tax relief for four specific VFC Program transactions.[3]

In April 2005, EBSA published revisions to the VFC Program (the April 2005 VFC Program)[4] containing, among other amendments, several new covered transactions, on which EBSA invited public comment. EBSA believed that these revisions, designed to both simplify and expand the original Program, were needed to further encourage utilization of the Program. EBSA made the April 2005 VFC Program effective upon publication to permit use of the simplified processes and new covered transactions during the interim period prior to the adoption of final changes to the Program. Concurrently, EBSA proposed an amendment to the related class exemption, PTE 2002–51,[5] to accommodate a new transaction contained in the April 2005 VFC Program. However, the excise tax relief afforded by the amendments to PTE 2002–51 was not immediately available and could not be relied upon for relief during the interim period.

EBSA received six comment letters in response to the April 2005 VFC Program and related class exemption. Copies of these comments are posted on EBSA's Web site.[6]

After careful consideration of the issues raised by the comment letters and input from EBSA Regional Office personnel charged with administering the Program, EBSA is adopting final changes to the Program (the final VFC Program) in this Notice. EBSA believes these modifications will facilitate both the correction of violations of ERISA's fiduciary responsibility and prohibited transaction rules and the restoration of losses to participants resulting from the Breaches (as defined in the VFC Program). The final VFC Program will continue to be administered in EBSA Regional Offices. In tandem with today's publication of the final VFC Program, EBSA is publishing a final amendment to PTE 2002–51 in response to comments received and to conform with certain revisions in the final VFC Program. This amendment also appears in the Notice section of today's **Federal Register**.

B. Overview of Changes in the Final VFC Program

The final VFC Program retains the fundamentals of the original Program, adopted in 2002. The original Program was revised on April 6, 2005 (70 FR 17516), and public comment was solicited. The final VFC Program contained in this Notice includes additions to and modifications of the April 2005 Program. Set forth below is an overview of the changes to the April 2005 Program. To facilitate reference to the Program, this Notice includes a restatement of the Program in its entirety.

(1) Scope of Relief

Unlike the earlier versions of the Program, the final Program now affords relief from the imposition of potential civil penalties under section 502(i) of ERISA when correction is undertaken in accordance with the Program. This modification was made to provide more thorough and complete relief under the Program. In general, section 502(i) permits the Secretary to assess a civil penalty on prohibited transactions with respect to welfare plans and nonqualified pension plans.

[1] 67 FR 15062 (March 28, 2002). Prior to adoption in March 2002, the VFC Program was made available on an interim basis during which the Department invited and considered public comments on the Program. (*See* 65 FR 14164, March 15, 2000).

[2] EBSA acknowledges, based on its experience, that certain transactions may fit within one or more of the listed categories of transactions, even if not specifically named in the category, for example certain transactions involving contributions in kind under section 7.4(a) of the Program. EBSA encourages potential applicants to discuss eligibility and similar issues with the appropriate regional VFC Program coordinator.

[3] PTE 2002–51 published at 67 FR 70623 (November 25, 2002).

[4] 70 FR 17516 (April 6, 2005).

[5] 70 FR 17476 (April 6, 2005).

[6] *http://www.dol.gov/ebsa/regs/cmt_vfcp.html.*

(2) Covered Transactions

(i) Illiquid Assets—Section 7.4(f)

The April 2005 Program included a correction for a transaction that permits a plan to divest, rather than continue to hold in its portfolio, a previously purchased asset that is determined to be illiquid, within the meaning of the Program. The Program described three scenarios for the plan's acquisition of the asset. Each acquisition eventually resulted in the plan holding an illiquid asset, for which the applicant must determine that the correction is determined to be necessary. One commenter suggested that the description of this transaction be expanded to include a fourth scenario reflecting the acquisition of an asset from a party in interest to which a statutory or administrative exemption applied. EBSA has decided to adopt this suggestion and, accordingly, has modified the description of the transaction in section 7.4(f) of the final Program. The related class exemption has been similarly amended.

(ii) Participant Loans—Section 7.3

The April 2005 VFC Program added two new categories of transactions involving plan loans to participants in section 7.C.1. These transactions provided an approved correction method for situations where participant loans exceeded the Internal Revenue Code (Code) section 72(p) limitations on amount or duration, which were incorporated into the plan. The statutory exemption from the prohibited transaction provisions for participant loans provided by section 408(b)(1) of ERISA requires that participant loans are made in accordance with plan terms regarding such loans. A violation would therefore occur when the section 72(p) loan limitations were exceeded.

Several comment letters on the April 2005 Program urged expansion of the categories of participant loan transactions. One commenter suggested including loans violating plan terms that imposed more stringent amount and duration limitations than Code section 72(p) restrictions. One comment letter requested including loans that were granted with inappropriate interest rates. Another commenter suggested including situations when loan repayments are not properly withheld from participants' wages (''default loans''), but instead are paid to the participant. This commenter observed that such withholding failures are administrative errors that frequently occur because of a change in service provider, for example, following a merger or acquisition. Several commenters asserted the necessity for coordination between EBSA and the IRS and also requested assurance that the Program's loan corrections would be compatible with resolution of the associated income tax issues under the Voluntary Correction Program of the IRS'' Employee Plans Compliance Resolution System (EPCRS) corrections.

EBSA believes that the transactions covered by the VFC Program should be as congruent as possible with the resolution of the related income tax issues. EBSA also believes that correction of participant loan issues under the VFC Program should be compatible with coordinating changes that EBSA understands will be made in a revision to the IRS'' EPCRS, based on informal discussions between EBSA and the staffs of the Internal Revenue Service and Treasury Department.

Accordingly, section 7.3(a) of the final Program has been modified to include a category of participant loan transactions for Breaches involving level amortization in addition to the transactions previously included for amount and duration Breaches. Section 7.3(b) also has been revised to include a category of transactions for default loans. The final Program's description of the loan transactions in section 7.3 is applicable only to plan participants who are parties in interest with respect to the plan based solely on their employee status with any employer whose employees are covered by the plan.

To simplify and expedite the correction process, the final VFC Program has been modified to require only that an applicant correct participant loan violations under the coordinating IRS'' EPCRS correction, when published, and then submit a copy of the resulting EPCRS compliance statement, along with proof of payment of any required amounts, to EBSA. Applicants are not required to submit any other documentation under the Program.

(iii) Settlor Expenses—Section 7.6

The preamble to the April 2005 Program specifically requested public input on viable additional transactions and reasonable methods of correction for such additional transactions. One commenter suggested the future development of transactions if and when additional fiduciary errors were identified. A second commenter recommended the addition of categories of transactions that might violate specific sections of ERISA under 404(a)(1) and 406(b). The recommended categories included the payment of expenses with plan assets in violation of ERISA section 404(a)(1)(A), (B) and (D), the holding of real estate in violation of ERISA section 404(a)(1)(C) and the acquisition of plan assets in violation of ERISA section 404(a)(1)(D).

In response to these comments, EBSA has revised the transactions in section 7.6 ''Plan Expenses'' to clarify that violations involving the use of plan assets to pay expenses that should have been paid by the plan sponsor may be corrected under the Program, as described more fully below. The related class exemption has also been revised to provide excise tax relief for certain plan expense violations corrected under the Program.

Beyond this expansion, however, EBSA believes that the addition of *general* categories of transactions, in contrast with the precisely described transactions currently included in the Program, would raise questions about the adequacy of the corrections. Program corrections depend on facts and circumstances and must be sufficiently uniform to obviate all need for negotiation and the consequent triggering of ERISA section 502(l) penalties.

The final Program includes a new section 7.6(b) ''Expenses Improperly Paid by a Plan.'' The description of this transaction posits that a plan used plan assets to pay expenses, including commissions or fees, which should have been paid by the plan sponsor, to a service provider for (A) services appropriately characterized as plan expenses, which involved the administration and maintenance of the plan, in circumstances where a plan provision requires that such plan expenses be paid by the plan sponsor, or (B) services appropriately characterized as settlor expenses, which relate to the activities of the plan sponsor in its capacity as settlor. The correction requires that the applicant restore the Principal Amount plus the greater of Lost Earnings or Restoration of Profits. For purposes of this transaction, the Principal Amount is defined as the entire amount improperly paid by the plan to the service provider for expenses that should have been paid by the plan sponsor.

Section 7.6(a) also has been revised and the definition of the Principal Amount for each of the described variations of the transaction has been clarified. A new example has also been added to illustrate a situation where the use of plan assets to pay compensation was a Breach because the compensation was for services that were simply unnecessary, in that they were not helpful or appropriate in carrying out the purposes for which the plan is maintained. Section 7.6(c) ''Payment of

Dual Compensation to a Plan Fiduciary'' has not been substantively altered in the final Program.

(3) Definitions

(i) Under Investigation

Several commenters suggested clarifying the changes made to the April 2005 Program's definition of ''Under Investigation.'' One commenter expressed concern that the current definition, which bars applicants if EBSA or any other federal agency is conducting an investigation in connection with a plan transaction, might prevent Program applications where an investigation has only an indirect impact on the plan, such as an employment tax audit resulting in misclassified employees. Another commenter suggested that the definition be modified to permit applications by financial institutions subject to ongoing investigations that are not plan specific, but might arguably ''involve'' the plan, such as annual examinations by the Federal Reserve.

EBSA has decided to amend the definition to more narrowly focus on situations when an investigation, either ongoing or for which notice has been given, involves the plan or an act or transaction involving the plan. For example, a plan would be ''Under Investigation'' if undergoing an Employee Plans examination by the Tax Exempt and Government Entities Division of the IRS. For non-criminal investigations and examinations of a plan, or of the applicant or plan sponsor in connection with an act or transaction directly related to the plan, by the Pension Benefit Guaranty Corporation (PBGC) or certain state agency officials, EBSA is instituting an optional disclosure provision. Potential applicants who choose to disclose such an investigation may apply under the final Program, while potential applicants who opt for nondisclosure cannot apply because they are considered ''Under Investigation.''

If an applicant discloses the existence of an investigation to EBSA in writing when submitting an application, EBSA will promptly notify the investigating agency of such application. EBSA's written notice is designed to afford the investigating agency an opportunity to provide EBSA with information relevant to the investigation or examination. EBSA will take suitable action in response to information received from the investigating agency and as a result, in appropriate circumstances, may decline to issue a no action letter to the applicant.

If EBSA has completed an investigation resulting in a referral of transactions to the IRS, eligibility to participate in the VFC Program to correct such transactions is limited. Section 4(c) has been revised to clarify that potential applicants continue to be eligible except with regard to the specific transactions identified by EBSA in a written notice to a plan fiduciary concerning the referral to the IRS.

(ii) Plan Official

One commenter suggested that the definition of ''Plan Official'' be revised to provide that in cases of multiemployer plans or multiple employer plans, an application could be made only by the ''plan administrator,'' rather than by any contributing or adopting employer. EBSA has decided to retain the existing definition of ''Plan Official,'' because the current definition provides maximum flexibility as to who may apply under the Program to correct violations involving multiemployer plans or multiple employer plans. The Program, of course, allows the plan administrator of such a plan to apply on behalf of the entire plan; any participating employer may apply on its own behalf.

(4) Correction Methodology

(i) Cash Settlement

One commenter requested that the correction for a plan's purchase of an asset from a party in interest under section 7.4(a) be amended to allow the plan to retain the asset and settle the correction amount in cash if doing so is determined to be in the best interest of participants and beneficiaries. The April 2005 Program required that a plan's purchase of an asset from a party in interest be corrected by selling the asset back to the party in interest, or to a non-party in interest. EBSA has decided to modify the correction under the final Program to permit the suggested alternative correction. A plan will be permitted to retain an asset purchased from a party in interest by settling the correction amount in cash, provided an independent fiduciary determines that the plan will realize a greater benefit from this correction than it would from the resale of the asset. An independent fiduciary is not required if the plan sells the asset back to the party in interest, because this correction is in essence a reversal of the original sale. EBSA believes that the determination to resell the asset to the party in interest may be properly determined by a plan fiduciary.

The correction for a plan's sale of an asset to a party in interest under section 7.4(b) is also being revised under the final Program. Although this correction already permitted both a cash settlement and the reversal of the transaction by the plan's repurchase of the asset from the party in interest, it is being modified to require a determination by an independent fiduciary only in the limited circumstances where the plan settles the transaction in cash. The related class exemption is being amended for consistency with these changes.

(ii) Credit for Voluntary Contributions

One commenter requested that the correction for delinquent participant contributions under section 7.1(a) be modified to permit an employer, which failed to timely remit withheld participant contributions to a contributory defined benefit plan, to credit any employer contribution in excess of amounts legally required by the minimum funding standard or bargaining agreements against the Program's required Lost Earnings or Restoration of Profits for that same plan year. EBSA has decided to retain the existing correction because it adequately addresses the Breach. EBSA believes that the proposed modification would create uncertainty and contravene sound funding policy.

(iii) Transaction Costs

In the interest of accurate applications and the desire to provide timely review by EBSA staff, EBSA wishes to emphasize that the general rule for determining the Principal Amount under section 5(b)(2) requires, where appropriate, the inclusion of any transaction costs associated with entering into the transaction that constitutes the Breach in the determination of the Principal Amount.

(5) Program Calculations

(i) Multiple Recovery Dates

One commenter asked for clarification regarding Program transactions that involve more than one correction period and result in separate calculations and multiple Recovery Dates. This commenter offered as examples: A plan's purchase of securities in a prohibited transaction where such securities are sold over time in more than one transaction, and the repayment of debt securities over time in installments of principal and interest. Corrections under the Program, which may involve multiple transactions with different time periods, may be corrected by performing the calculations in steps using different Recovery Dates. The Online Calculator is generally available

to perform such calculations; however, if the factual circumstances surrounding the correction cannot be accommodated by the Online Calculator's functions, a manual calculation may be submitted.

(ii) Lost Earnings Formulation

One commenter observed that certain language in the original Program's formulation of Lost Earnings, which allowed applicants in appropriate circumstances to subtract ''actual net earnings or realized net appreciation'' or to add ''net loss to the plan as a result of the transaction,'' was not included in the April 2005 Program. EBSA deliberately eliminated such language from the April 2005 Program in an effort to provide more straightforward calculations. The April 2005 Program was designed to provide simplicity and uniformity in correction amount calculations; EBSA eliminated complicated requirements for the computation of actual plan earnings, as well as the associated additions and subtractions for net gains and losses. Instead, the April 2005 Program focused on the IRC section 6621 rate in its Lost Earnings calculation. The final Program retains this approach.

(iii) Corporate Transactions

One commenter asked whether the Online Calculator can accommodate corporate transactions such as stock splits, tenders, and mergers, or if such transactions had to be accounted for manually. EBSA believes that is the responsibility of applicants to take into account any adjustments necessary because of corporate transactions before entering data into the Online Calculator in order to ensure that the results are current and correct. In the event the factual circumstances surrounding the correction cannot be accommodated by the Online Calculator, applicants may submit a manual calculation.

(6) Documentation Requirements

(i) Summary Documentation

With regard to the correction of delinquent participant contributions or loan repayments to pension plans, the April 2005 Program under section 7.A.1. permitted applicants correcting Breaches that involved (A) amounts below $50,000 or (B) amounts greater than $50,000 that were remitted within 180 calendar days after receipt by the employer to provide summary documentation. EBSA has decided to expand the summary documentation requirements to two additional transactions involving the delinquent remittance of participant funds.

Specifically, with regard to the correction of delinquent participant contributions to insured welfare plans under section 7.1(b) and to welfare plan trusts under section 7.1(c), the final VFC Program permits the use of simplified documentation requirements for applicants correcting Breaches that involved (A) amounts below $50,000 or (B) amounts greater than $50,000 that were remitted within 180 calendar days after receipt by the employer. EBSA believes that extending the summary documentation requirements to these additional transactions not only minimizes the paperwork burden on applicants making smaller corrections, but provides consistency among all three transactions in section 7.1 of the final Program.

Applicants who fail to meet the $50,000 and 180 day standards may still be eligible to correct transactions involving the delinquent remittance of participant funds under the Program, but are simply precluded from submitting summary documentation to substantiate their applications. It should also be noted that the 180 day standard for summary documentation is separate and distinct from the 180 day standard for excise tax relief under the related class exemption for delinquent participant contributions or loan repayments to pension plans; for purposes of the exemption, the 180 day standard applies regardless of the amount involved.

(ii) Bonding

In the April 2005 VFC Program, section 6 was modified to eliminate the requirement that applicants provide certain information relating to the plan's fidelity bond. This modification was not changed in the final VFC Program, but this decision should not be misconstrued as eliminating the bonding requirement itself. This change focuses merely on streamlining the application process to eliminate documentation of the bond, and not on compliance with the substantive bonding requirements of ERISA.

(iii) Online Calculator

One commenter observed that the provisions requiring the submission of documents and information in support of calculations in circumstances where the Online Calculator is used to perform Program calculations were unclear. In response to this comment, EBSA has modified section 6(d), ''Detailed Narrative,'' which lists documents and information that must be submitted with an application. Subparagraph (ii) of section 6(d)(6) clarifies that applicants using the Online Calculator for Program calculations only need to submit a copy of the final page(s) that results from using the ''Print Viewable Results'' function. This function is used after inputting all data elements and completing all calculations using the Online Calculator.

(7) EBSA Procedures

(i) Investigations

One commenter inquired whether EBSA would commence investigations related to already filed Program applications if the statute of limitations for the transaction described in the application was close to expiring. As stated in the preamble to the original Program, EBSA generally does not anticipate taking enforcement action in response to an application, except where EBSA becomes aware of possible criminal behavior, material misrepresentations or omissions, or other abuses of the Program. In rare and appropriate circumstances, EBSA will consider entering into tolling agreements with applicants, but EBSA is not amending the VFC Program to require tolling agreements as a matter of course.

(ii) Timing

One commenter inquired whether relief under the Program remains available for transactions covered by a filed application if an investigation were to begin after the application is filed, but before a no action letter is issued. Relief under the Program is available for covered transactions if, *at the time the application is filed,* the plan or applicant is not considered to be ''Under Investigation'' as defined in section 3(b)(3) and meets the conditions under section 4 ''VFC Program Eligibility.''

(iii) Self Correction Component

One commenter requested that EBSA expand the VFC Program to include a voluntary self correction component within the Program. EBSA has decided not to include a formal self correction component. EBSA continues to believe that an important result under the Program is the certainty that applicants have complied with the terms of the Program and have revealed the details of the transaction and the correction under penalty of perjury in their applications.

(8) Miscellaneous

(i) Reporting

One commenter requested that EBSA implement a *de minimis* filing rule under the Program so that applicants would be required to correct previously filed Forms 5500 only in circumstances

where the Breach involved a reasonable and defined threshold of the plan's assets. EBSA has declined to adopt this suggestion. EBSA believes that when a plan has engaged in a prohibited transaction or plan assets have been improperly valued, previously filed Forms 5500 must be amended to reflect these important reporting items. Applicants are directed to the instructions for the Form 5500 to determine their reporting obligations.

(ii) Application of Program to Other Plans

One commenter requested that EBSA provide relief under the Program and the related class exemption for breaches involving plans that currently are not eligible to participate in the Program.[7] The commenter suggested that it would be administratively convenient if a Program applicant, who had caused a number of plans, including plans subject only to provisions in the Code, to engage in a violation subject to correction under the Program, could correct and receive a no action letter with respect to all of the plans. The Department has determined that it cannot expand the Program as requested by the commenter, as it lacks jurisdiction to issue a no action letter under the Program with respect to violations of the Code.

C. De Minimis Excise Tax

The IRS requested a modification to the requirement in the related class exemption that employers notify interested persons in writing of transactions corrected under the VFC Program. Specifically, the IRS requested that the notice requirement not apply in those instances when the excise tax otherwise due under section 4975 of the Code would be less than or equal to $100.00. The IRS requested that the amount of the excise tax otherwise due be contributed to the plan, and that the contribution be allocated to the plan's participants and beneficiaries in a manner consistent with the plan's provisions for allocating earnings. The Department has adopted this request, which is discussed further in the preamble to the amendment to PTE 2002–51 published simultaneously with this Notice.

D. Effective Date

The Department has determined that the relief afforded to applicants under the final VFC Program will be available thirty days following publication of the final Program in the **Federal Register**. EBSA believes that any further delay for potential applicants in the availability of the provisions of the final Program would serve no useful purpose. During the thirty day period following publication of the final Program, applicants may continue to pursue relief by filing applications under either the original VFC Program or the April 2005 VFC Program. These applications will be processed under the provisions of the applicable Program. However, upon expiration of the 30 day period following publication of the final Program in the **Federal Register**, both the April 2005 VFC Program and original VFC Program will be superseded by the final VFC Program.

The Department notes that implementation of the final Program does not foreclose resolution of fiduciary breaches by other means, including entering into settlement agreements with the Department.

E. Impact of Program Amendments

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the Department has assessed the costs and benefits of the regulation. OMB has reviewed this regulatory action.

As stated in its previous analysis in the preamble to the April 2005 Program published in April, 2005, the Department believes that the benefits of the VFC Program justify its costs. The Program is designed to provide an efficient, cost-effective method for correcting a variety of fiduciary Breaches and prohibited transactions and receiving Departmental recognition of the correction. The methods of correction set out in the Program provide the required conditions for correction, which are adequate and protective of the rights of participants and beneficiaries. Participation in the Program is voluntary. The Department believes that the costs to a plan and its fiduciaries of correcting a potential fiduciary Breach through voluntary participation in the VFC Program are lower than if correction were imposed in connection with a civil action; further, correction of potential fiduciary Breaches and prohibited transactions through the Program satisfactorily protects the assets of the participating plans.

The VFC Program imposes costs only when Plan Officials choose to use the Program to correct a potential fiduciary Breach. Such costs to Plan Officials generally include payment of the correction amount required by the Program and preparation and submission of the application to the Department. Benefits for Plan Officials who apply for relief under the Program include elimination of risks arising from an otherwise uncorrected fiduciary Breach, as well as savings of resources that otherwise might have been needed to defend against a civil action based on the Breach.

An additional and significant benefit of the VFC Program accrues to participants and beneficiaries through the correction of fiduciary violations and the restoration to the plan of amounts representing losses or improperly generated profits arising from impermissible transactions, resulting in greater security of plan assets and future benefits.

The Department expects that the improvements to the final VFC Program published today will increase efficiency and accessibility for potential applicants. These improvements, described above, include: Extending to welfare plans the summary documentation requirements permitted for certain delinquent participant contributions to pension plans; clarifying the availability of a correction for the improper use of plan assets to pay expenses that should have been paid by a plan sponsor based on a plan provision or that are properly characterized as settlor expenses; expanding the correctable categories of

[7] Certain individual retirement accounts and other types of plans are regulated solely under the provisions of the Code. Compliance with and enforcement of those provisions are not within the jurisdiction of the Department of Labor.

defective participant plan loans and simplifying the loan documentation requirements; and permitting the use of a cash settlement as a correction methodology when a plan decides to retain an improperly purchased asset and an independent fiduciary approves such decision.

The Department has determined that the particular changes made to the final Program will reduce costs by reducing the number of hours required to make corrections and file applications. The Department has also estimated that participation in the Program will continue to rise in the future due to a combination of factors, including increases in the number and types of correctable transactions and increased public familiarity. Although the Department is unable to estimate accurately the extent to which the particular changes made in the final Program will contribute to this projected increase in participation in the Program, the Department is projecting that participation in the Program will increase from 985 in fiscal year 2005 to an annual application level of 1,250. See discussion below under *Paperwork Reduction Act.* The Department will continue to actively monitor the use of the Program in order to better evaluate its strengths and weaknesses.

Paperwork Reduction Act

The Information Collection Request (ICR) included in the 2002 edition of the Program and PTE 2002–51 was originally approved by the Office of Management and Budget (OMB) under control number 1210–0118. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA 95), the Department submitted the revision to the existing ICR attributable to changes made to section 7.A.1(c) of the April 2005 Program to OMB for review and clearance at the time the April 2005 VFC Program was published in the **Federal Register** (April 6, 2005). At that time, the Department solicited public comment on the revision to the ICR. No comments were received on the information collection provisions contained in the revision to the ICR. OMB approved the revision on September 26, 2005, under the same control number, 1210–0118. A copy of the ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor, Departmental Clearance Office, Ira Mills, at (202) 693–4122. (This is not a toll-free number.) Certain of the additional changes being made in the final VFC Program as a result of public comment on the April 2005 Program, as described above, will cause adjustment of the prior ICR and the estimates of burden. These adjustments and their effect on the estimates of the overall paperwork burden imposed by the final Program are discussed below.

The final VFC Program extensively simplifies the documentation requirements for correction of certain participant loan and welfare plan contribution violations. In the final VFC Program, the Department requires voluntary correction of certain participant loans to employees under the IRS'' Employee Plans Compliance Resolution System (EPCRS) as a prerequisite to application for relief under the Program. Following correction under the EPCRS, applicants must only provide the Department with a copy of the compliance statement received from the IRS and proof of payment of any required correction amounts. No additional documentation is required. The Department also simplified the documentation requirements for applicants correcting delinquent participant contributions to insured welfare plans and welfare plan trusts. The April 2005 Program permitted summary documentation, rather than detailed payroll and accounting records, in support of applications for delinquent participant contributions or loan repayments to pension plans; the Department decided to extend these reduced requirements for Breaches involving delinquent participant contributions to welfare plans that are within certain amount and duration thresholds. Finally, the Department clarified that applicants using the Online Calculator to perform required calculations are not required to submit detailed documentation in support of the calculations; rather, they are simply asked to provide a copy of the final page(s) that results from using the ''Print Viewable Results'' feature of the Online Calculator.

The ''Fees and Expenses'' category of transactions in the final VFC Program has been restructured to clarify that applicants may correct Breaches involving the improper use of plan assets to pay plan expenses that should have been paid by the plan sponsor based on a plan provision or that are properly characterized as settlor expenses. Applicants must provide copies of the plan's accounting records showing the date and amount of the improperly paid expenses in addition to the supporting documentation generally required by the Program.

As a further change, the final VFC Program permits plans to utilize a cash settlement as a correction methodology when a plan decides to retain an improperly purchased asset, such as real estate. Plans that pursue this type of correction must hire an independent fiduciary to determine that the plan will realize a greater benefit from this correction than a reversal of the original transaction. If a plan chooses this method of correction, its application to the VFC Program must include a report of the independent fiduciary's determination explaining the basis for his or her conclusion that the plan will receive a greater benefit than if the plan had reversed the purchase by reselling the asset in accordance with Program requirements.

The overall paperwork burden of the final VFC Program and the amended PTE 2002–51 is estimated as follows. The Department projects an increase in the number of respondents from 985 in fiscal year 2005 to 1,250 annually. For the final VFC Program alone, Plan Officials will have to devote 3.5 hours to each application; they will spend an additional 1 hour on recordkeeping. Therefore, total burden hours for Plan Officials will equal 5,625 hours (4.5 hrs. × 1,250).

Service providers will need about 2 hours (at $34.50 per hour) for their work preparing plans' applications. The total burden cost for service providers equates to $86,250 ($34.50 × 2 hrs. × 1,250). Factoring in mailing costs of $8 per application ($10,000), the complete burden costs for applicants will be $96,250 ($86,250 + $10,000).

In addition to the Program, the Department is publishing an amendment to the class exemption PTE 2002–51, which applies only to qualifying applicants participating in the final VFC Program. A detailed discussion of the economic impact under Executive Order 12866 and the paperwork burdens under the Paperwork Reduction Act for the exemption, together with a table summarizing the relevant numbers, can be found in the preamble to the amendment to PTE 2002–51 published simultaneously with this Notice in today's **Federal Register**. In brief, the Department calculates that 250 of the applicants to the final VFC Program will be covered by the class exemption. The Department has determined that service providers will prepare the requisite documentation, which will require approximately one hour for completion and delivery. The paperwork burden cost of the exemption therefore equals $8,625 ($34.50 × 1 hr. × 250). Total mailing costs for the paperwork under the exemption will be $4,427. The Department assumes, however, that all applicants who send interested party notices will send the Department its

copy of the notice by mail, using certified or overnight delivery services and that this copy will be included in the application package described above under costs for the VFC Program. The annual mailing costs for notices to interested persons and the Department is therefore estimated at $4,427. In total, the paperwork burden costs entailed by PTE 2002–51, as amended, is $13,052 ($8,625 + $4,427).

In summary, the categories in the table below encompass the numbers for both the final VFC Program and the amended class exemption:

Type of Review: Revision of currently approved collection of information.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 1,250.

Frequency of Response: On occasion.

Responses: 11,790.

Estimated Total Burden Hours: 5,625.

Total Annual Cost (Operating and Maintenance): $109,302.

Persons are not required to respond to the revised information collection unless it displays a currently valid OMB control number.

Regulatory Flexibility Act

This document describes an enforcement policy of the Department, and is not being issued as a general notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply and the Department is not required to either certify that the rule will not have a significant economic impact on a substantial number of small entities, or conduct a regulatory flexibility analysis. However, EBSA considered the potential costs and benefits of this action for small plans and the Plan Officials in developing the final Program, and believes that its greater simplicity and accessibility will make the Program more useful to small employers who wish to avail themselves of the relief offered.

Congressional Review Act

The VFC Program is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review. The Program is not a ''major rule'' as that term is defined in 5 U.S.C. 804 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this regulatory action does not include any Federal mandate that may result in annual expenditures by State, local, or tribal governments, or the private sector, of $100 million or more.

F. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects 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. This Program would not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated that are not pertinent here, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this Program do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

Authority: Secretary of Labor's Order 1–2003, 68 FR 5374 (February 3, 2003). ERISA Sec. 502(a)(2) and (a)(5) also issued under 29 U.S.C. 1132(a)(2) and (a)(5), ERISA Sec. 506(b) also issued under 29 U.S.C. 1136(b).

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Section 1. Purpose and Overview of the VFC Program

The purpose of the Voluntary Fiduciary Correction Program (VFC Program or Program) is to protect the financial security of workers by encouraging identification and correction of transactions that violate Part 4 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Part 4 of Title I of ERISA sets out the responsibilities of employee benefit plan fiduciaries. Section 409 of ERISA provides that a fiduciary who breaches any of these responsibilities shall be personally liable to make good to the plan any losses to the plan resulting from each breach and to restore to the plan any profits the fiduciary made through the use of the plan's assets. Section 405 of ERISA provides that a fiduciary may be liable, under certain circumstances, for a co-fiduciary's breach of his or her fiduciary responsibilities. In addition, under certain circumstances, there may be liability for knowing participation in a fiduciary breach. In order to assist all affected persons in understanding the requirements of ERISA and meeting their legal responsibilities, the Employee Benefits Security Administration (EBSA) is providing guidance on what constitutes adequate correction under Title I of ERISA for the breaches described in this Program.

Section 2. Effect of the VFC Program

(a) *In general.* EBSA generally will issue to the applicant a no action letter [8] with respect to a breach identified in the application if the eligibility requirements of section 4 are satisfied and a Plan Official corrects a breach, as defined in section 3, in accordance with the requirements of sections 5, 6 and 7. Pursuant to the no action letter it issues, EBSA will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no action letter, or assess civil penalties under either section 502(l) or 502(i) of ERISA on the correction amount paid to the plan or its participants.

(b) *Verification.* EBSA reserves the right to conduct an investigation at any time to determine (1) the truthfulness and completeness of the factual statements set forth in the application and (2) that the corrective action was, in fact, taken.

(c) *Limits on the effect of the VFC Program.* (1) *In general.* Any no action letter issued under the VFC Program is limited to the breach and applicants identified therein. Moreover, the method of calculating the correction amount described in this Program is only intended to correct the specific breach described in the application. Methods of calculating losses other than, or in addition to, those set forth in the Program may be more appropriate, depending on the facts and circumstances, if the transaction violates provisions of ERISA other than those that can be corrected under the Program. If a transaction gave rise to violations not specifically described in the Program, the relief afforded by the Program would not extend to such additional violations.

(2) *No implied approval of other matters.* A no action letter does not imply Departmental approval of matters not included therein, including steps that the fiduciaries take to prevent recurrence of the breach described in the application and to ensure the plan's future compliance with Title I of ERISA.

(3) *Material misrepresentation.* Any no action letter issued under the VFC Program is conditioned on the truthfulness, completeness and accuracy of the statements made in the application and of any subsequent oral and written statements or submissions. Any material misrepresentations or omissions will void the no action letter, retroactive to the date that the letter was issued by EBSA, with respect to the transaction that was materially misrepresented.

(4) *Applicant fails to satisfy terms of the VFC Program.* If an application fails to satisfy the terms of the VFC Program, as determined by EBSA, EBSA reserves the right to investigate and take any other action with respect to the transaction and/or plan that is the subject of the application, including refusing to issue a no action letter.

(5) *Criminal investigations not precluded.* Participation in the VFC Program will not preclude:

(i) EBSA or any other governmental agency from conducting a criminal investigation of the transaction identified in the application;

(ii) EBSA's assistance to such other agency; or

(iii) EBSA making the appropriate referrals of criminal violations as required by section 506(b) of ERISA.[9]

(6) Other actions not precluded. Compliance with the terms of the VFC Program will not preclude EBSA from taking any of the following actions:

(i) Seeking removal from positions of responsibility with respect to a plan or other non-monetary injunctive relief against any person responsible for the transaction at issue;

(ii) Referring information regarding the transaction to the Internal Revenue Service (IRS) as required by section 3003(c) of ERISA; [10] or

(iii) Imposing civil penalties under section 502(c)(2) of ERISA based on the failure or refusal to file a timely, complete and accurate annual report Form 5500. Applicants should be aware that amended annual report filings may be required if possible breaches of ERISA have been identified, or if action is taken to correct possible breaches in accordance with the VFC Program.

(7) *Not binding on others.* The issuance of a no action letter does not affect the ability of any other government agency, or any other person, to enforce any rights or carry out any authority they may have, with respect to matters described in the no action letter.

(8) *Example.* A plan fiduciary causes the plan to purchase real estate from the plan sponsor under circumstances to which no prohibited transaction exemption applies. In connection with this transaction, the purchase causes the plan assets to be no longer diversified, in violation of ERISA section 404(a)(1)(C). If the application reflects full compliance with the requirements of the Program, the Department's no action letter would apply to the violation of ERISA section 406(a)(1)(A), but would not apply to the violation of section 404(a)(1)(C).

(d) *Correction.* The correction criteria listed in the VFC Program represent EBSA enforcement policy with respect to applications under the Program and are provided for informational purposes to the public, but are not intended to confer enforceable rights on any person who purports to correct a violation. Applicants are advised that the term ''correction'' as used in the VFC Program is not necessarily the same as ''correction'' pursuant to section 4975 of the Internal Revenue Code (Code).[11]

[8] See Appendix A.

[9] Section 506(b) provides that the Secretary of Labor shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of Title I of ERISA and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of Title 18 of the United States Code.

[10] Section 3003(c) provides that, whenever the Secretary of Labor obtains information indicating that a party in interest or disqualified person is violating section 406 of ERISA, she shall transmit such information to the Secretary of the Treasury.

[11] *See* section 4975(f)(5) of the Code; section 141.4975–13 of the temporary Treasury Regulations and section 53.4941(e)–1(c) of the Treasury Regulations. The IRS has indicated that the federal tax treatment of a breach and correction under the VFC Program (including the Federal income and

Continued

Correction may not be achieved under the Program by engaging in a prohibited transaction that is not subject to a prohibited transaction administrative exemption.

(e) *EBSA's authority to investigate.* EBSA reserves the right to conduct an investigation and take any other enforcement action relating to the transaction identified in a VFC Program application in certain circumstances, such as prejudice to the Department that may be caused by the expiration of the statute of limitations period, material misrepresentations or omissions, other abuses of the VFC Program, or significant harm to the plan or its participants that is not cured by the correction provided under the VFC Program. EBSA may also conduct a civil investigation and take any other enforcement action relating to matters not covered by the VFC Program application or relating to other plans sponsored by the same plan sponsor, while a VFC Program application involving the plan or the plan sponsor is pending.

(f) *Confidentiality.* EBSA will maintain the confidentiality of any documents submitted under the VFC Program, to the extent permitted by law. However, as noted in (c)(5) and (6) of this section, EBSA has an obligation to make referrals to the IRS and to refer to other agencies evidence of criminality and other information for law enforcement purposes.

Section 3. Definitions

(a) The terms used in this document have the same meaning as provided in section 3 of ERISA, 29 U.S.C. 1002, unless separately defined herein.

(b) The following definitions apply for purposes of the VFC Program:

(1) *Breach.* The term ''Breach'' means any transaction that is or may be a breach of the fiduciary responsibilities contained in Part 4 of Title I of ERISA.

(2) *Plan Official.* The term ''Plan Official'' means a plan fiduciary, plan sponsor, party in interest with respect to a plan, or other person who is in a position to correct a Breach.

(3) *Under Investigation.* For purposes of section 4(a), a plan or potential applicant shall be considered to be ''Under Investigation'' if:

(i) EBSA is conducting an investigation of the plan;

(ii) EBSA is conducting an investigation of the potential applicant or plan sponsor in connection with an act or transaction directly related to the plan;

(iii) Any governmental agency is conducting a criminal investigation of the plan, or of the potential applicant or plan sponsor in connection with an act or transaction directly related to the plan;

(iv) The Tax Exempt and Government Entities Division of the IRS is conducting an Employee Plans examination of the plan; or

(v) The Pension Benefit Guaranty Corporation (PBGC), any state attorney general, or any state insurance commissioner is conducting an investigation or examination of the plan, or of the applicant or plan sponsor in connection with an act or transaction directly related to the plan, unless the applicant notifies EBSA, in writing, of such an investigation or examination at the time of the application;

and the plan, a Plan Official, or any authorized plan representative has received a written or oral notice of an investigation or examination described in (i), (ii), (iii), (iv), or (v).

An applicant notifying EBSA of an investigation or examination under section 3(b)(3)(v) must submit the name of the examining agency and a contact person at such agency. Upon receipt of an application including such information, EBSA will promptly notify the investigating agency in writing of the VFC Program application. EBSA's notice will afford the examining agency an opportunity to provide EBSA with information relevant to the investigation or examination. In response to the information received from the investigating agency, EBSA, in its sole discretion, may decline to issue a no action letter to the applicant.

For purposes of section 4(a), a plan shall not be considered to be ''Under Investigation'' merely because EBSA staff has contacted the plan, the applicant, or the plan sponsor in connection with a participant complaint, unless the participant complaint concerns the transaction described in the application and the plan has not received the correction amount due under the Program as of the date EBSA staff contacted the plan, the applicant, or the plan sponsor. A plan also is not considered to be ''Under Investigation'' if the accountant of the plan is undergoing a work paper review by EBSA's Office of the Chief Accountant under the authority of ERISA section 504(a).

Example 1. On March 1 the plan sponsor of a multiple employer welfare arrangement (MEWA) received written notification from an agent of the state insurance commissioner's office that the MEWA has been scheduled for examination. The applicant does not notify EBSA of the examination. As of March 1, the plan is ineligible for participation in the VFC Program because the plan sponsor has received a notice from the state insurance commissioner's office concerning its intent to examine the plan, and the applicant did not provide EBSA written notice of the examination with the application.

Example 2. Assume the same facts as in Example 1, except that the applicant chooses to notify EBSA in writing of the examination. The plan's eligibility to apply under the VFC Program would not be affected because the applicant provides written notice of the examination to EBSA with the application. EBSA will promptly notify the state insurance commissioner of the pending VFC Program application so that the state insurance commissioner's office has an opportunity to provide information about its examination to EBSA. EBSA will include the information received from the state insurance commissioner's office in its review of the VFC Program application.

Section 4. VFC Program Eligibility

Eligibility for the VFC Program is conditioned on the following:

(a) Neither the plan nor the applicant is Under Investigation.

(b) The application contains no evidence of potential criminal violations as determined by EBSA.

(c) EBSA has not conducted an investigation which resulted in written notice to a plan fiduciary that the transaction, for which the potential applicant could otherwise have sought relief under the Program, has been referred to the IRS. This condition applies only to those transactions specifically identified in EBSA's written notice of referral to the IRS.

Section 5. General Rules for Acceptable Corrections

(a) *Fair Market Value Determinations.* Many corrections require that the current or fair market value (FMV) of an asset be determined as of a particular date, usually either the date the plan originally acquired the asset or the date of the correction, or both. In order to be acceptable as part of a VFC Program correction, the valuation must meet the following conditions:

(1) If there is a generally recognized market for the property (*e.g.,* the New York Stock Exchange), the FMV of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies

employment tax consequences to participants, beneficiaries, and plan sponsors) are determined under the Code and that, based on its review of the Program, except in those instances where the fiduciary breach or its correction involve a tax abuse, a correction under the VFC Program for a breach that constitutes a prohibited transaction under section 4975 of the Code generally will constitute correction for purposes of section 4975 and a correction under the VFC Program for a breach that also constitutes an operational plan qualification failure generally will constitute correction for purposes of the IRS' Employee Plans Compliance Resolution System (EPCRS).

another objectively determined value (*e.g.,* the closing price).

(2) If there is no generally recognized market for the asset, the FMV of that asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.

(3) An appraiser is ''qualified'' if he or she has met the education, experience, and licensing requirements that are generally recognized for appraisal of the type of asset being appraised.

(4) An appraiser is ''independent'' if he or she is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following:

(i) The prior owner of the asset, if the asset was purchased by the plan;

(ii) The purchaser of the asset, if the asset was, or is now being, sold by the plan;

(iii) Any other owner of the asset, if the plan is not the sole owner;

(iv) A fiduciary of the plan;

(v) A party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or

(vi) The VFC Program applicant.

(b) *Correction Amount*. (1) *In general*. For purposes of the VFC Program, the correction amount is the amount that must be paid to the plan as a result of the Breach in order to make the plan whole. In most instances, the correction amount will be a combination of the Principal Amount involved in the transaction (*see* paragraph (b)(2) of this section), the Lost Earnings amount, which is earnings that would have been earned on the Principal Amount for the period of the transaction (*see* paragraph (b)(5) of this section), and any interest on Lost Earnings. However, in circumstances when the Restoration of Profits amount (*see* paragraph (b)(6) of this section) exceeds the Lost Earnings amount and any interest on Lost Earnings, the correction amount will be a combination of the Principal Amount and the Restoration of Profits amount.

(2) *Principal Amount*. ''Principal Amount'' is the amount that would have been available to the plan for investment or distribution on the date of the Breach, had the Breach not occurred. The Principal Amount, when applicable, must be determined for each transaction by reference to section 7 of the VFC Program. Generally, the Principal Amount is the base amount on which Lost Earnings and, if applicable, Restoration of Profits is calculated. The Principal Amount shall include any transaction costs associated with entering into the transaction that constitutes the Breach.

(3) *Loss Date*. ''Loss Date'' is the date that the plan lost the use of the Principal Amount.

(4) *Recovery Date*. ''Recovery Date'' is the date that the Principal Amount is restored to the plan.

(5) *Lost Earnings*. (i) General. ''Lost Earnings'' is intended to approximate the amount that would have been earned by the plan on the Principal Amount, but for the Breach. For purposes of this Program, Lost Earnings shall be calculated in accordance with this paragraph.

(ii) *Initial Calculation*. Lost earnings shall be calculated by: (A) Determining the applicable corporate underpayment rate(s) established under section 6621(a)(2) of the Code [12] for each quarter (or portion thereof) for the period beginning with the Loss Date and ending with the Recovery Date; (B) determining, by reference to IRS Revenue Procedure 95–17,[13] the applicable factor(s) for such quarterly underpayment rate(s) for each quarter (or portion thereof) of the period beginning with the Loss Date and ending with the Recovery Date; and (C) multiplying the Principal Amount by the first applicable factor to determine the amount of earnings for the first quarter (or portion thereof). If the Loss Date and Recovery Date are within the same quarter, the initial calculation is complete. If the Recovery Date is not in the same quarter as the Loss Date, the applicable factor for each subsequent quarter (or portion thereof) must be applied to the sum of the Principal Amount and all earnings as of the end of the immediately preceding quarter (or portion thereof), until Lost Earnings have been calculated for the entire period, ending with the Recovery Date.

(iii) *Payment of Lost Earnings after Recovery Date*. If Lost Earnings are not paid to the plan on the Recovery Date along with the Principal Amount, payment of Lost Earnings shall include interest on the amount of Lost Earnings determined in accordance with paragraph (b)(5)(ii) above. Such interest shall be calculated in the same manner as Lost Earnings described in paragraph (b)(5)(ii) above, for the period beginning on the Recovery Date and ending on the date the Lost Earnings are paid to the plan.

(iv) *Special Rule for Transactions Causing Large Losses*. If the amount of Lost Earnings (determined in accordance with paragraph (b)(5)(ii) above) and any interest added to such Lost Earnings (determined in accordance with paragraph (b)(5)(iii) above), exceed $100,000, the amount of Lost Earnings and interest, if any, to be paid to the plan shall be determined in accordance with paragraphs (b)(5)(ii) and (iii) above, substituting the applicable underpayment rates under section 6621(c)(1) of the Code [14] in lieu of the rates under section 6621(a)(2).

(v) *Method of Calculation*. For purposes of calculating Lost Earnings and interest, if any, a Plan Official may either (A) use the Online Calculator described in paragraph (b)(7) below, or (B) perform a manual calculation in accordance with subparagraphs (i) through (iv) of this paragraph (b)(5). A Plan Official using the Online Calculator or performing a manual calculation shall include as part of the VFC Program application sufficient information to verify the correctness of the amounts to be paid to the plan.

(6) *Restoration of Profits*. (i) *General*. If the Principal Amount was used for a specific purpose such that a profit on the use of the Principal Amount is determinable, the Plan Official must calculate the Restoration of Profits amount and compare it to the Lost Earnings amount to determine the correction amount (*see* paragraph (b)(1) of this section). ''Restoration of Profits'' is a combination of two amounts: (A) The amount of profit made on the use of the Principal Amount by the fiduciary or party in interest who engaged in the Breach, or by a person who knowingly participated in the Breach, and (B) if the profit is returned to the plan on a date later than the date on which the profit was realized (*i.e.,* received or determined), the amount of interest earned on such profit from the date the profit was realized to the date on which the profit is paid to the plan. The amount of such interest shall be determined in accordance with paragraph (b)(6)(ii) below.

If the Restoration of Profits amount exceeds Lost Earnings and interest, if any, the Restoration of Profits amount must be paid to the plan instead of Lost Earnings.

(ii) *Calculation of Interest*. Interest shall be calculated by: (A) Determining the applicable corporate underpayment

[12] These underpayment rates are displayed on EBSA's Web site and will be updated when necessary.

[13] Rev. Proc. 95–17, 1995–1 C.B. 556 (Feb. 8, 1995). These factors, which are displayed on EBSA's Web site in a tabular format, incorporate daily compounding of an interest rate over a set period of time.

[14] These underpayment rates are displayed on EBSA's Web site and will be updated when necessary.

rate(s) established under section 6621(a)(2) of the Code for each quarter (or portion thereof) for the period beginning with the date the profit was realized (*i.e.* received or determined) and ending with the date on which the profit is paid to the plan; (B) determining, by reference to IRS Revenue Procedure 95–17, the applicable factor(s) for such quarterly underpayment rate(s) for each quarter (or portion thereof) of the period beginning with the date the profit was realized and ending with the date on which the profit is paid to the plan; and (C) multiplying the first applicable factor by the profit on the Principal Amount, referred to in paragraph (b)(6)(i)(A) above, to determine the amount of interest for the first quarter (or portion thereof). If the date the profit was realized and the date the profit is paid to the plan are within the same quarter, the initial calculation is complete. If the date the profit was realized is not in the same quarter as the date the profit was paid to the plan, the applicable factor for each subsequent quarter (or portion thereof) must be applied to the sum of the profit on the Principal Amount, referred to in paragraph (b)(6)(i)(A) above, and all interest as of the end of the immediately preceding quarter (or portion thereof), until interest has been calculated for the entire period, ending with the date the profit is paid to the plan.

(iii) *Special Rule for Transactions Resulting in Large Restorations.* If the amount of Restoration of Profits (determined in accordance with paragraph (b)(6)(i) above) exceeds $100,000, the amount of any interest on the Restoration of Profits to be paid to the plan shall be determined in accordance with paragraph (b)(6)(ii), above, substituting the applicable underpayment rates under section 6621(c)(1) of the Code in lieu of the rates under section 6621(a)(2).

(iv) *Method of Calculation.* For purposes of calculating the interest amount for Restoration of Profits, pursuant to paragraphs (b)(6)(ii) and (iii) above, a Plan Official may either (A) use the Online Calculator described in paragraph (b)(7) below, or (B) perform a manual calculation in accordance with subparagraphs (ii) and (iii) of this paragraph (b)(6). A Plan Official using the Online Calculator or performing a manual calculation shall include as part of the VFC Program application sufficient information to verify the correctness of the amounts to be paid to the plan.

(7) *Online Calculator.* ''Online Calculator'' is an Internet based compliance assistance tool provided on EBSA's Web site that permits applicants to calculate the amount of Lost Earnings, any interest on Lost Earnings, and the interest amount for Restoration of Profits, if applicable, for certain transactions. The Online Calculator will be updated as necessary.

(i) *Lost Earnings and Interest.* To calculate Lost Earnings, applicants must input the (A) Principal Amount, (B) Loss Date, (C) Recovery Date, and, if the final payment will occur after the Recovery Date, (D) the date of such final payment. The Online Calculator selects the applicable factors under Revenue Procedure 95–17 after referencing the underpayment rates over the relevant time period. The Online Calculator then automatically applies the factors to provide applicants with the amount of Lost Earnings and interest, if any, that must be paid to the plan.

(ii) *Interest Amount for Restoration of Profits.* To calculate the interest amount on the profit, applicants must input (A) the amount of profit, (B) the date the amount of profit was realized (*i.e.* received or determined), and (C) the date of payment of the Restoration of Profits amount. The Online Calculator selects the applicable factors under Revenue Procedure 95–17 after referencing the underpayment rates over the relevant time period. The Online Calculator then automatically applies the factors to provide applicants with the interest amount on the profit that must be paid to the plan.

(8) The principles of paragraph (b) of this Section are illustrated by example in Appendix D.

(c) *Costs of Correction.* (1) The fiduciary, plan sponsor or other Plan Official, shall pay the costs of correction, which may not be paid from plan assets.

(2) The costs of correction include, where appropriate, such expenses as closing costs, prepayment penalties, or sale or purchase costs associated with correcting the transaction.

(3) The principle of paragraph (c)(1) of this Section is illustrated in the following example and in paragraph (d) below:

Example: The plan fiduciaries did not obtain a required independent appraisal in connection with a transaction described in section 7. In connection with correcting the transaction, the plan fiduciaries now propose to have the appraisal performed as of the date of purchase. The plan document permits the plan to pay reasonable and necessary expenses; the fiduciaries have objectively determined that the cost of the proposed appraisal is reasonable and is not more expensive than the cost of an appraisal contemporaneous with the purchase. The plan may therefore pay for this appraisal. However, the plan may not pay any costs associated with recalculating participant account balances to take into account the new valuation. There would be no need for these additional calculations or any increased appraisal cost if the plan's assets had been valued properly at the time of the purchase. Therefore, the cost of recalculating the plan participants' account balances is not a reasonable plan expense, but is part of the costs of correction.

(d) *Distributions.* Plans will have to make supplemental distributions to former employees, beneficiaries receiving benefits, or alternate payees, if the original distributions were too low because of the Breach. In these situations, the Plan Official or plan administrator must determine who received distributions from the plan during the time period affected by the Breach, recalculate the account balances, and determine the amount of the underpayment to each affected individual. The applicant must demonstrate proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant. For individuals whose location is unknown, applicants must demonstrate that they have segregated adequate funds to pay the missing individuals and that the applicant has commenced the process of locating the missing individuals using either the IRS and Social Security Administration locator services, or other comparable means. The costs of such efforts are part of the costs of correction.

(e) *De Minimis Exception.* Where correction under the Program requires distributions in amounts less than $20 to former employees, their beneficiaries and alternate payees, who neither have account balances with, nor have a right to future benefits from the plan, and the applicant demonstrates in its submission that the cost of making the distribution to each such individual exceeds the amount of the payment to which such individual is entitled in connection with the correction of the transaction that is the subject of the application, the applicant need not make distributions to such individuals who would receive less than $20 each as part of the correction. However, the applicant must pay to the plan as a whole the total of such de minimis amounts not distributed to such individuals.

Example. Employer X sponsors Plan Y. Employer X submits an application under the VFC Program to correct a failure to timely forward participant contributions to Plan Y. Employer X had paid the delinquent contributions six months late, but had not paid lost earnings on the delinquency. The correction under the VFC Program, therefore, required only payment of Lost Earnings for the six-month delinquency. During the six-

month period 25 employees separated from service and rolled over their plan accounts to individual retirement accounts. The amount of lost earnings due to 20 of those former employees is less than $20, and Employer X demonstrates that the cost of making the distribution to those former employees is $27 per individual. Employer X need not make distributions to those 20 former employees. However, the total amount of distributions that would have been due to those former employees must be paid to Plan Y. The payment to Plan Y may be used for any purpose that payments or credits, which are not allocated directly to participant accounts, are used. Employer X must make distributions to the five former employees who are entitled to receive distributions of more than $20.

Section 6. Application Procedures

(a) *In general.* Each application must adhere to the requirements set forth below. Failure to do so may render the application invalid.

(b) *Preparer.* The application must be prepared by a Plan Official or his or her authorized representative (*e.g.*, attorney, accountant, or other service provider). If a representative of the Plan Official is submitting the application, the application must include a statement signed by the Plan Official that the representative is authorized to represent the Plan Official. Any fees paid to such representative for services relating to the preparation and submission of the application may not be paid from plan assets.

(c) *Contact person.* Each application must include the name, address and telephone number of a contact person. The contact person must be familiar with the contents of the application, and have authority to respond to inquiries from EBSA.

(d) *Detailed narrative.* The applicant must provide to EBSA a detailed narrative describing the Breach and the corrective action. The narrative must include:

(1) A list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers);

(2) The employer identification number (EIN), plan number, and address of the plan sponsor and administrator;

(3) The date the plan's most recent Form 5500 was filed;

(4) An explanation of the Breach, including the date it occurred;

(5) An explanation of how the Breach was corrected, by whom and when; and

(6)(i) If the applicant performs a manual calculation in accordance with paragraphs (b)(5)(i) through (iv) of section 5, specific calculations demonstrating how Principal Amount and Lost Earnings or, if applicable, Restoration of Profits were computed;

(ii) If the applicant uses the Online Calculator in accordance with (b)(7) of section 5, the data elements required to be input into the Online Calculator under paragraphs (b)(7)(i) and/or (ii) of section 5, as applicable (to satisfy this requirement, applicants may submit a copy of the page(s) that results from the ''*View Printable Results*'' function used after inputting data elements and completing use of the Online Calculator); and

(iii) An explanation of why payment of Lost Earnings or Restoration of Profits was chosen to correct the Breach.

(e) *Supporting documentation.* The applicant must also include:

(1) Copies of the relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract); [15]

(2) Documentation that supports the narrative description of the transaction and its correction;

(3) Documentation establishing the Lost Earnings amount;

(4) Documentation establishing the amount of Restoration of Profits, if applicable;

(5) All documents described in section 7 with respect to the transaction involved; and

(6) Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.

Applicants using the Online Calculator may satisfy the requirements of paragraph (e)(3) above, with respect to Lost Earnings, and paragraph (e)(4) above, as to the amount of interest, if any, payable with respect to the profit amount, by complying with the requirements of paragraph (d)(6)(ii) of this section. Except for proof of payment, as described in paragraph (e)(6) above, applicants correcting participant loan transactions in section 7.3 are not required to submit the other documentation described above.

(f) *Examples of supporting documentation.* (1) Examples of documentation supporting the description of the transaction and correction are leases, appraisals, notes and loan documents, service provider contracts, invoices, settlement documents, deeds, perfected security interests, and amended annual reports.

(2) Examples of acceptable proof of payment include copies of canceled checks, executed wire transfers, a signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution), and bank statements for the plan's account.

(g) *Penalty of Perjury Statement.* Each application must include the following statement: ''Under penalties of perjury I certify that I am not Under Investigation (as defined in section 3(b)(3)) and that I have reviewed this application, including all supporting documentation, and to the best of my knowledge and belief the contents are true, correct, and complete.'' The statement must be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and the authorized representative of the applicant, if any. In addition, each Plan Official applying under the VFC Program must sign and date the Penalty of Perjury statement. The statement must accompany the application and any subsequent additions to the application. Use of the Penalty of Perjury Statement included with the Model Application Form in Appendix E will satisfy the requirements of paragraph (g) of this section.

(h) *Checklist.* The checklist in Appendix B must be completed, signed, and submitted with the application. Use of the checklist included with the Model Application Form in Appendix E also will satisfy the requirements of paragraph (h) of this section.

(i) *Where to apply.* The application shall be mailed to the appropriate EBSA Regional Office listed in Appendix C.

(j) *Submission of Additional Documentation.* If EBSA determines that required information is missing from the application or that additional documentation is needed to complete EBSA's review, EBSA will request such documentation in writing from the applicant or authorized representative. If EBSA does not receive the requested documentation within a time period specified in writing by the EBSA reviewer, EBSA may suspend its review of the application and consider appropriate action. EBSA will notify the applicant or authorized representative in writing regarding such suspension.

(k) *Recordkeeping.* The applicant must maintain copies of the application and any subsequent correspondence with EBSA for the period required by section 107 of ERISA.

Section 7. Description of Eligible Transactions and Corrections Under the VFC Program

EBSA has identified certain Breaches and methods of correction that are suitable for the VFC Program. Any Plan Official may correct a Breach listed in this section in accordance with section

[15] Applicants must supply complete copies of the plan documents and other pertinent documents if requested by EBSA during its review of the application.

5 and the applicable correction method. The correction methods set forth are strictly construed and are the only acceptable correction methods under the VFC Program for the transactions described in this section. EBSA will only accept applications concerning correction of Breaches described in this section.

7.1 Delinquent Remittance of Participant Funds

(a) Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans

(1) *Description of Transaction.* An employer receives directly from participants, or withholds from employees' paychecks, certain amounts for either contribution to a pension plan or for repayment of participants' plan loans. Instead of forwarding participant contributions for investment in accordance with the provisions of the plan and by reference to the principles of the Department's regulation at 29 CFR 2510.3–102, the employer retains such contributions for a longer period of time. Similarly, in the case of participant loan repayments, instead of applying such repayments to outstanding loan balances within a reasonable period of time determined by reference to the guiding principles of 29 CFR 2510.3–102 and in accordance with the provisions of the plan, the employer retains such repayments for a longer period of time.

(2) *Correction of Transaction.* (i) *Unpaid Contributions or Participant Loan Repayments.* Pay to the plan the Principal Amount plus the greater of (A) Lost Earnings on the Principal Amount or (B) Restoration of Profits resulting from the employer's use of the Principal Amount, as described in section 5(b). The Loss Date for such contributions is the date on which each contribution reasonably could have been segregated from the employer's general assets. In no event shall the Loss Date for such contributions be later than the applicable maximum time period described in 29 CFR 2510.3–102. The Loss Date for such repayments is the date on which each repayment reasonably could have been segregated from the employer's general assets consistent with the guiding principles of 29 CFR 2510.3–102.[16] Any penalties, late fees or other charges shall be paid by the employer and not from participant loan repayments.

(ii) *Late Contributions or Participant Loan Repayments.* If participant contributions or loan repayments were remitted to the plan outside of the time periods described above, the only correction required is to pay to the plan the greater of (A) Lost Earnings or (B) Restoration of Profits resulting from the employer's use of the Principal Amount as described in section 5(b). Any penalties, late fees or other charges shall be paid by the employer and not from participant loan repayments.

(iii) For this transaction, the Principal Amount is the amount of delinquent participant contributions or loan repayments retained by the employer.

(iv) *Example.* The principles of paragraph (a)(2) of this section are illustrated by example in Appendix D.

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) A statement from a Plan Official identifying the earliest date on which the participant contributions and/or repayments reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion;

(ii) If restored participant contributions and/or repayments (exclusive of Lost Earnings) (A) total $50,000 or less; or (B) exceed $50,000 and were remitted to the plan within 180 calendar days from the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(*1*) A narrative describing the applicant's contribution and/or repayment remittance practices before and after the period of unpaid or late contributions and/or repayments; and

(*2*) Summary documents demonstrating the amount of unpaid or late contributions and/or repayments; and

(iii) If restored participant contributions and/or repayments (exclusive of Lost Earnings) exceed $50,000 and were remitted more than 180 calendar days after the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(A) A narrative describing the applicant's contribution and/or repayment remittance practices before and after the period of unpaid or late contributions and/or repayments;

(B) For participant contributions and/or repayments received from participants, a copy of the accounting records which identify the date and amount of each contribution received; and

(C) For participant contributions and/or repayments withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding.

(b) Delinquent Participant Contributions to Insured Welfare Plans

(1) *Description of Transaction.* Benefits are provided exclusively through insurance contracts issued by an insurance company or similar organization qualified to do business in any state or through a health maintenance organization (HMO) defined in section 1310(c) of the Public Health Service Act, 42 U.S.C. 300e–9(c). An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to an insurance provider for the purpose of providing group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan (including the provisions of any insurance contract) or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(2) *Correction of Transaction.* (i) Pay to the insurance provider or HMO the Principal Amount, as well as any penalties, late fees or other charges necessary to prevent a lapse in coverage due to such failure. Any penalties, late fees or other such charges shall be paid by the employer and not from participant contributions.

(ii) For this transaction, the Principal Amount is the amount of delinquent participant contributions retained by the employer.

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) A statement from a Plan Official: (A) Identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion; (B) attesting that there are no instances in which claims have been denied under the plan for nonpayment,

[16] Although the maximum time periods described in 29 CFR 2510.3–102 are not directly applicable to participant loan repayments, retaining repayments beyond such periods raises a question as to whether the employer forwarded repayments to the plan as soon as they could reasonably be segregated from the employer's general assets. *See* Advisory Opinion 2002–02A (May 17, 2002).

nor has there been any lapse in coverage; and (C) attesting that any penalties, late fees or other such charges have been paid by the employer and not from participant contributions;

(ii) Copies of the insurance contract or contracts for the group health or other welfare benefits for the plan; and

(iii) If restored participant contributions (A) total $50,000 or less, or (B) exceed $50,000 and were remitted to the plan within 180 calendar days from the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(*1*) A narrative describing the applicant's contribution practices before and after the period of unpaid or late contributions, and

(*2*) Summary documents demonstrating the amount of unpaid or late contributions; and

(iv) If restored participant contributions exceed $50,000 and were remitted more than 180 calendar days after the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(A) A narrative describing the applicant's contribution remittance practices before and after the period of unpaid or late contributions,

(B) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received, and

(C) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding.

(c) Delinquent Participant Contributions to Welfare Plan Trusts

(1) *Description of Transaction.* An employer receives directly from participants or withholds from employees' paychecks certain amounts that the employer forwards to a trust maintained to provide, through insurance or otherwise, group health or other welfare benefits. The employer fails to forward such amounts in accordance with the terms of the plan or the requirements of the Department's regulation at 29 CFR 2510.3–102. There are no instances in which claims have been denied under the plan, nor has there been any lapse in coverage, due to the failure to transmit participant contributions on a timely basis.

(2) *Correction of Transaction.* (i) *Unpaid Contributions.* Pay to the trust (A) the Principal Amount, and, where applicable, any penalties, late fees or other charges necessary to prevent a lapse in coverage due to the failure to make timely payments, and (B) the greater of (*1*) Lost Earnings on the Principal Amount or (*2*) Restoration of Profits resulting from the employer's use of the Principal Amount as described in section 5(b). The Loss Date for such contributions is the date on which each contribution would become plan assets under 29 CFR 2510.3–102. Any penalties, late fees or other charges shall be paid by the employer and not from participant contributions.

(ii) *Late Contributions.* If participant contributions were remitted to the trust outside of the time period required by the regulation, the only correction required is to pay to the trust the greater of (A) Lost Earnings or (B) Restoration of Profits resulting from the employer's use of the Principal Amount as described in section 5(b). Any penalties, late fees or other such charges shall be paid by the employer and not from participant contributions.

(iii) For this transaction, the Principal Amount is the amount of delinquent participant contributions retained by the employer.

(3) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(i) A statement from a Plan Official: (A) Identifying the earliest date on which the participant contributions reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the Plan Official relied in reaching this conclusion, and (B) attesting that there are no instances in which claims have been denied under the plan for nonpayment, nor has there been any lapse in coverage;

(ii) If restored participant contributions (exclusive of Lost Earnings) (A) total $50,000 or less, or (B) exceed $50,000 and were remitted to the plan within 180 calendar days from the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(*1*) A narrative describing the applicant's contribution practices before and after the period of unpaid or late contributions, and

(*2*) Summary documents demonstrating the amount of unpaid or late contributions; and

(iii) If restored participant contributions (exclusive of Lost Earnings) exceed $50,000 and were remitted more than 180 calendar days after the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash (regarding amounts withheld by an employer from employees' paychecks), submit:

(A) A narrative describing the applicant's contribution remittance practices before and after the period of unpaid or late contributions,

(B) For participant contributions received directly from participants, a copy of the accounting records which identify the date and amount of each contribution received, and

(C) For participant contributions withheld from employees' paychecks, a copy of the payroll documents showing the date and amount of each withholding.

7.2 Loans

(a) Loan at Fair Market Interest Rate to a Party in Interest With Respect to the Plan

(1) *Description of Transaction.* A plan made a loan to a party in interest at an interest rate no less than that for loans with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(2) *Correction of Transaction.* Pay off the loan in full, including any prepayment penalties. An independent commercial lender must also confirm in writing that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.

(3) *Documentation.* In addition to the documentation required by section 6, submit a narrative describing the process used to determine the fair market interest rate at the time the loan was made, validated in writing by an independent commercial lender.

(b) Loan at Below-Market Interest Rate to a Party in Interest With Respect to the Plan

(1) *Description of Transaction.* A plan made a loan to a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest

rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness. The loan was not exempt from the prohibited transaction provisions of Title I of ERISA.

(2) *Correction of Transaction.* (i) Pay off the loan in full, including any prepayment penalties. Pay to the plan the Principal Amount, plus the greater of (A) the Lost Earnings as described in section 5(b), or (B) the Restoration of Profits, if any, as described in section 5(b).

(ii) For purposes of this transaction, each loan payment has a Principal Amount equal to the excess of the loan payment that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over the loan payment actually received under the loan terms during such period. Under the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

Example: The plan made to a party in interest a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The party in interest or Plan Official must repay the loan in full plus any applicable prepayment penalties. The party in interest or Plan Official also must pay the difference between what the plan would have received through the Recovery Date had the loan been made at 7% and what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as described in section 5(b).

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) A narrative describing the process used to determine the fair market interest rate at the time the loan was made;

(ii) A copy of the independent commercial lender's fair market interest rate determination(s); and

(iii) A copy of the independent fiduciary's dated, written approval of the fair market interest rate determination(s).

(c) Loan at Below-Market Interest Rate to a Person Who Is Not a Party in Interest With Respect to the Plan

(1) *Description of Transaction.* A plan made a loan to a person who is not a party in interest with respect to the plan at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms (for example, the amount of loan, amount and type of security, repayment schedule, and duration of the loan) to a borrower of similar creditworthiness.

(2) *Correction of Transaction.* (i) Pay to the plan the Principal Amount, plus Lost Earnings through the Recovery Date, as described in section 5(b).

(ii) For purposes of this transaction, each loan payment has a Principal Amount equal to the excess of the loan payment that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the Recovery Date) over the loan payment actually received under the loan terms during such period. Under the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

(iii) From the inception of the loan to the Recovery Date, the amount to be paid to the plan is the Lost Earnings on the series of Principal Amounts, calculated in accordance with section 5(b).

(iv) From the Recovery Date to the maturity date of the loan, the amount to be paid to the plan is the present value of the remaining Principal Amounts, as determined by an independent commercial lender. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(v) The principles of paragraph (c)(2) of this section are illustrated in the following example:

Example: The plan made a $150,000 mortgage loan, secured by a first Deed of Trust, at a fixed interest rate of 4% per annum. The loan was to be fully amortized over 30 years. The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum. The borrower or the Plan Official must pay the excess of what the plan would have received through the Recovery Date had the loan been made at 7% over what, in fact, the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount as described in section 5(b). The Plan Official must also pay on the Recovery Date the difference in the value of the remaining payments on the loan between the 7% and the 4% for the duration of the time the plan is owed repayments on the loan.

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) A narrative describing the process used to determine the fair market interest rate at the time the loan was made; and

(ii) A copy of the independent commercial lender's fair market interest rate determination(s).

(d) Loan at Below-Market Interest Rate Solely Due to a Delay in Perfecting the Plan's Security Interest

(1) *Description of Transaction.* For purposes of the VFC Program, if a plan made a purportedly secured loan to a person who is not a party in interest with respect to the plan, but there was a delay in recording or otherwise perfecting the plan's interest in the loan collateral, the loan will be treated as an unsecured loan until the plan's security interest is perfected.

(2) *Correction of Transaction.* (i) Pay to the plan the Principal Amount, plus Lost Earnings as described in section 5(b), through the date the loan became fully secured.

(ii) For purposes of this transaction, each loan payment has a Principal Amount equal to the excess of the loan payment that would have been received if the loan had been made at the fair market interest rate for an unsecured loan (from the beginning of the loan until the Recovery Date) over the loan payment actually received under the loan terms during such period. Under the VFC Program, the fair market interest rate must be determined by an independent commercial lender.

(iii) In addition, if the delay in perfecting the loan's security caused a permanent change in the risk characteristics of the loan, the fair market interest rate for the remaining term of the loan must be determined by an independent commercial lender. In that case, the correction amount includes an additional payment to the plan. The amount to be paid to the plan is the present value of the remaining Principal Amounts from the date the loan is fully secured to the maturity date of the loan. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.

(iv) The principles of paragraph (d)(2) of this section are illustrated in the following examples:

Example 1: The plan made a mortgage loan, which was supposed to be secured by a Deed of Trust. The plan's Deed was not recorded for six months, but, when it was recorded, the Deed was in first position. The interest rate on the loan was the fair market interest rate for a mortgage loan secured by a first-position Deed of Trust. The loan is treated as an unsecured, below-market loan for the six months prior to the recording of the Deed of Trust.

Example 2: Assume the same facts as in Example 1, except that, as a result of the delay in recording the Deed, the plan ended up in second position behind another lender. The risk to the plan is higher and the interest rate on the note is no longer commensurate with that risk. The loan is treated as a below-

market loan (based on the lack of security) for the six months prior to the recording of the Deed of Trust and as a below-market loan (based on secondary status security) from the time the Deed is recorded until the end of the loan.

(3) *Documentation*. In addition to the documentation required by section 6, submit the following documents:

(i) A narrative describing the process used to determine the fair market interest rate for the period that the loan was unsecured and, if applicable, for the remaining term of the loan; and

(ii) A copy of the independent commercial lender's fair market interest rate determination(s).

7.3 Participant Loans

(a) Loans Failing to Comply With Plan Provisions for Amount, Duration or Level Amortization

(1) *Description of Transaction*. A plan extended a loan to a plan participant who is a party in interest with respect to the plan based solely on his or her status as an employee of any employer whose employees are covered by the plan, as defined in section 3(14)(H) of ERISA. The loan was a prohibited transaction that failed to qualify for ERISA's statutory exemption for plan loan programs because the loan terms did not comply with applicable plan provisions, which incorporated the requirements of section 72(p) of the Code concerning:

(i) The amount of the loan,

(ii) The duration of the loan, or

(iii) The level amortization of the loan repayment.

(2) *Correction of Transaction*. Plan Officials must make a voluntary correction of the loan with IRS approval under the Voluntary Correction Program of the IRS' Employee Plans Compliance Resolution System (EPCRS).

(3) *Documentation*. The applicant is not required to submit any of the supporting documentation listed in section 6(e), except that the applicant must provide (i) proof of payment, as described in paragraph (e)(6) of section 6, and (ii) a copy of the IRS compliance statement.

(b) Default Loans

(1) *Description of Transaction*. A plan extended a loan to a plan participant who is a party in interest with respect to the plan based solely on his or her status as an employee of any employer whose employees are covered by the plan, as defined in section 3(14)(H) of ERISA. At origination, the loan qualified for ERISA's statutory exemption for plan loan programs because the loan complied with applicable plan provisions, which incorporated the requirements of section 72(p) of the Code. During the loan repayment period, the Plan Official responsible for loan administration failed to properly withhold a number of loan repayments from the participant's wages and included the amount of such repayments in the participant's wages based on administrative or systems processing errors. The failure to withhold is a Breach causing the loan to become non-compliant with applicable plan provisions, which incorporated the requirements of section 72(p) of the Code.

(2) *Correction of Transaction*. Plan Officials must make a voluntary correction of the loan with IRS approval under the Voluntary Correction Program of the IRS' EPCRS.

(3) *Documentation*. The applicant is not required to submit any of the supporting documentation listed in section 6(e), except that the applicant must provide (i) proof of payment, as described in paragraph (e)(6) of section 6, and (ii) a copy of the IRS compliance statement.

7.4 Purchases, Sales and Exchanges

(a) Purchase of an Asset (Including Real Property) by a Plan From a Party in Interest

(1) *Description of Transaction*. A plan purchased an asset with cash from a party in interest with respect to the plan, in a transaction to which no prohibited transaction exemption applies.

(2) *Correction of Transaction*. (i) The plan may sell the asset back to the party in interest who originally sold the asset to the plan [17] or to a person who is not a party in interest. Whether the asset is sold to a person who is not a party in interest with respect to the plan or is sold back to the original seller, the plan must receive the higher of (A) the fair market value (FMV) of the asset at the time of resale, without a reduction for the costs of sale, plus restoration to the plan of the party in interest's investment return from the proceeds of the sale, to the extent they exceed the plan's net profits from owning the property; or (B) the Principal Amount, plus the greater of (*1*) Lost Earnings on the Principal Amount as described in section 5(b), or (*2*) the Restoration of Profits, if any, as described in section 5(b).

(ii) As an alternative to the correction described in paragraph (a)(2)(i) above, the plan may retain the asset and receive (A) the greater of (*1*) Lost Earnings or (*2*) the Restoration of Profits, if any, as described in section 5(b), on the Principal Amount, but only to the extent that such Lost Earnings or Restoration of Profits exceeds the difference between the FMV of the asset as of the Recovery Date and the original purchase price; and (B) the amount by which the Principal Amount exceeded the FMV of the asset (at the time of the original purchase), plus the greater of (*1*) Lost Earnings or (*2*) Restoration of Profits, if any, as described in section 5(b), on such excess; provided an independent fiduciary determines that the plan will realize a greater benefit from this correction than it would from the resale of the asset described in paragraph (a)(2)(i) above.

(iii) For this transaction, the Principal Amount is the plan's original purchase price.

(iv) The principles of paragraph (a)(2) of this section are illustrated in the following examples:

Example 1: A plan purchased a parcel of real property from the plan sponsor. The plan does not lease the property to any person. Instead, the plan uses the property as an office. The plan paid $120,000 for the property and $5,000 in transaction costs. As part of the correction, the Plan Official obtains two appraisals from a qualified, independent appraiser in order to determine the FMV of the property at the time of the purchase and at the time of the correction (the ''Recovery Date''). The FMV of the property at the time of purchase was $100,000 ($20,000 less than the plan paid for the property). As of the Recovery Date, the appraiser values the property at $110,000. To correct the transaction, the plan sponsor repurchases the property for $120,000 with no reduction for the costs of sale and reimburses the plan for the $5,000 in initial costs of sale. The plan sponsor also must pay the plan the greater of the plan's Lost Earnings or the sponsor's investment return on these amounts. The determination of an independent fiduciary is not required because the applicant is correcting the transaction by selling the asset back to the party in interest pursuant to paragraph (a)(2)(i) of this Section.

Example 2: On February 1, 2002, a plan purchased from a party in interest a parcel of commercial real estate for $120,000, and incurred $5,000 in costs of sale. The plan initially uses the property as an office. At the same time it is discovered that the original purchase was a prohibited transaction, the plan enters into a lucrative lease with an unrelated party for use of the property to begin January 1 of the following year. Due to commercial developments in adjacent properties, the Plan Official believes that the property will increase in value and that the plan would be able to obtain substantially increasing rental payments for the use of the property. As part of the correction, the Plan Official obtains two appraisals from a qualified, independent appraiser in order to

[17] The resale of the same property to the party in interest from whom the asset was purchased is a reversal of the original prohibited transaction. The resale is not a new prohibited transaction and therefore does not require an exemption.

determine the FMV of the asset at the time of the purchase and at the time of the correction (the ''Recovery Date''). The FMV of the property at the time of purchase was $120,000 (the same as the original purchase price). As of the Recovery Date, the property is valued at $150,000. Lost Earnings are calculated through September 30, 2005, the anticipated Recovery Date. The Online Calculator determined that Lost Earnings is $26,098.23 on the Principal Amount of $125,000 (purchase price plus transaction costs). There were no determinable profits. The increase in the FMV, $30,000, is greater than Lost Earnings or Restoration of Profits. Because the property is rapidly appreciating in value, and because the Plan Official expects to realize significant rental income from the property, the Plan Official would like to correct by retaining the property pursuant to paragraph (a)(2)(ii) of this Section rather than selling the asset back to the party in interest pursuant to paragraph (a)(2)(i) of this Section. The Plan Official must obtain a determination by an independent fiduciary that the plan will realize a greater benefit by retaining the asset than by selling the asset back to the party in interest. Because the original purchase price was the same as the FMV, and the increase in the FMV is greater than any earnings or investment return on the original purchase price, the only cash payment to the plan involved in this correction is the $5,000 in costs of sale, plus Lost Earnings.

(3) *Documentation*. In addition to the documentation required by section 6, submit the following documents:

(i) Documentation of the plan's purchase of the asset, including the date of the purchase, the plan's purchase price, and the identity of the seller;

(ii) A narrative describing the relationship between the original seller of the asset and the plan;

(iii) The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan, both at the time of the original purchase and at the recovery date; and

(iv) If applicable, a report of the independent fiduciary's determination that the plan will realize a greater benefit by receiving the correction amount described in paragraph (a)(2)(ii) of this section than by reselling the asset pursuant to paragraph (a)(2)(i) of this section.

(b) Sale of an Asset (Including Real Property) by a Plan to a Party in Interest

(1) *Description of Transaction*. A plan sold an asset for cash to a party in interest with respect to the plan, in a transaction to which no prohibited transaction exemption applies.

(2) *Correction of Transaction*. (i) The plan may repurchase the asset from the party in interest [18] at the lower of (A) the price for which it originally sold the property or (B) the FMV of the property as of the Recovery Date plus restoration to the plan of the party in interest's net profits from owning the property, to the extent they exceed the plan's investment return from the proceeds of the sale.

(ii) As an alternative to the correction described in paragraph (b)(2)(i) above, the plan may receive the Principal Amount plus the greater of (A) Lost Earnings as described in section 5(b) or (B) the Restoration of Profits, if any, as described in section 5(b), provided an independent fiduciary determines that the plan will realize a greater benefit from this correction than it would from the repurchase of the asset described in paragraph (b)(2)(i).

(iii) For this transaction, the Principal Amount is the amount by which the FMV of the asset (at the time of the original sale) exceeds the original sale price.

(iv) The principles of paragraph (b)(2) of this section are illustrated in the following examples:

Example 1: A plan sold a parcel of unimproved real property to the plan sponsor. The sponsor did not make any profit on the use of the property. As part of the correction, the Plan Official obtains an appraisal of the property reflecting the FMV of the property as of the date of sale from a qualified, independent appraiser. The appraiser values the property at $130,000, although the plan sold the property to the plan sponsor for $120,000. The plan did not incur any transaction costs during the original sale. As of the Recovery Date, the appraiser values the property at $140,000. The plan corrects the transaction by repurchasing the property at the original sale price of $120,000, with the party in interest assuming the costs of the reversal of the sale transaction. The determination of an independent fiduciary is not required because the applicant is correcting the transaction by repurchasing the property from the party in interest pursuant to paragraph (b)(2)(i) of this section.

Example 2: Assume the same facts as in Example 1, except that the appraiser values the property as of the Recovery Date at $100,000, and the plan fiduciaries believe that the property will continue to decrease in value based on environmental studies conducted in adjacent areas. Based on the determination of an independent fiduciary that the plan will realize a greater benefit by receiving the Principal Amount (FMV of the asset at the time of the original sale less the original sales price equals $10,000) plus the greater of Lost Earnings or Restoration of Profits, as described in section 5(b), the transaction is corrected by cash settlement pursuant to paragraph (b)(2)(ii) of this section, rather than by repurchasing the asset.

(3) *Documentation*. In addition to the documentation required by section 6, submit the following documents:

(i) Documentation of the plan's sale of the asset, including the date of the sale, the sales price, and the identity of the original purchaser;

(ii) A narrative describing the relationship of the purchaser to the asset and the relationship of the purchaser to the plan;

(iii) The qualified, independent appraiser's report addressing the FMV of the property at the time of the sale from the plan and as of the Recovery Date; and

(iv) If applicable, a report of the independent fiduciary's determination that the plan will realize a greater benefit by receiving the correction amount described in paragraph (b)(2)(ii) of this section than by repurchasing the asset pursuant to paragraph (b)(2)(i) of this section.

(c) Sale and Leaseback of Real Property to Employer

(1) *Description of Transaction*. The plan sponsor sold a parcel of real property to the plan, which then was leased back to the sponsor, in a transaction that is not otherwise exempt.

(2) *Correction of Transaction*. (i) The transaction must be corrected by the sale of the parcel of real property back to the plan sponsor or to a person who is not a party in interest with respect to the plan.[19] The plan must receive the higher of (A) FMV of the asset at the time of resale, without a reduction for the costs of sale; or (B) the Principal Amount, plus the greater of (*1*) Lost Earnings on the Principal Amount as described in section 5(b), or (*2*) the Restoration of Profits, if any, as described in section 5(b).

(ii) For purposes of this transaction, the Principal Amount is the plan's original purchase price.

(iii) If the plan has not been receiving rent at FMV, as determined by a qualified, independent appraisal, the sale price of the real property should not be based on the historic below-market rent that was paid to the plan.

(iv) In addition to the correction amount in subparagraph (1), if the plan was not receiving rent at FMV, as

[18] The repurchase of the same property from the party in interest to whom the asset was sold is a reversal of the original prohibited transaction. The repurchase is not a new prohibited transaction and therefore does not require an individual prohibited transaction exemption.

[19] If the plan purchased the property from the plan sponsor, the sale of the same property back to the plan sponsor is a reversal of the prohibited transaction. The sale is not a new prohibited transaction and therefore does not require an individual prohibited transaction exemption, as long as the plan did not make improvements while it owned the property.

determined by a qualified, independent appraiser, the Principal Amount also includes the difference between the rent actually paid and the rent that should have been paid at FMV. The plan sponsor must pay to the plan this additional Principal Amount, plus the greater of (A) Lost Earnings or (B) Restoration of Profits resulting from the plan sponsor's use of the Principal Amount, as described in section 5(b).

(v) The principles of paragraph (c)(2) of this section are illustrated in the following example:

Example: The plan purchased at FMV from the plan sponsor an office building that served as the sponsor's primary business site. Simultaneously, the plan sponsor leased the building from the plan at below the market rental rate. The Plan Official obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property and rent. To correct the transaction, the plan sponsor purchases the property from the plan at the higher of the appraised value at the time of the resale or the original sales price and also pays the Lost Earnings. Because the rent paid to the plan was below the market rate, the sponsor must also make up the difference between the rent paid under the terms of the lease and the amount that should have been paid, plus Lost Earnings on this amount, as described in section 5(b).

(3) *Documentation.* In addition to the documentation required by Section 6, submit the following documents:

(i) Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the original seller;

(ii) Documentation of the plan's sale of the asset, including the date of sale, the sales price, and the identity of the purchaser;

(iii) A narrative describing the relationship of the original seller to the plan and the relationship of the purchaser to the plan;

(iv) A copy of the lease;

(v) Documentation of the date and amount of each lease payment received by the plan; and

(vi) The qualified, independent appraiser's report addressing both the FMV of the property at the time of the original sale and at the Recovery Date, and the FMV of the lease payments.

(d) Purchase of an Asset (Including Real Property) by a Plan From a Person Who Is Not a Party in Interest With Respect to the Plan at a Price More Than Fair Market Value

(1) *Description of Transaction.* A plan acquired an asset from a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan paid more than it should have for the asset.

(2) *Correction of Transaction.* The Principal Amount is the difference between the actual purchase price and the asset's FMV at the time of purchase. The plan must receive the Principal Amount plus the Lost Earnings, as described in Section 5(b).

(i) The principles of paragraph (d)(2) of this Section are illustrated in the following example:

Example: A plan bought unimproved land without obtaining a qualified, independent appraisal. Upon discovering that the purchase price was $10,000 more than the appraised FMV, the Plan Official pays the plan the Principal Amount of $10,000, plus Lost Earnings as described in section 5(b).

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) Documentation of the plan's original purchase of the asset, including the date of the purchase, the purchase price, and the identity of the seller;

(ii) A narrative describing the relationship of the seller to the plan; and

(iii) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's purchase.

(e) Sale of an Asset (Including Real Property) By a Plan to a Person Who Is Not a Party in Interest With Respect to the Plan at a Price Less Than Fair Market Value

(1) *Description of Transaction.* A plan sold an asset to a person who is not a party in interest with respect to the plan, without determining the asset's FMV. As a result, the plan received less than it should have from the sale.

(2) *Correction of Transaction.* The Principal Amount is the amount by which the FMV of the asset as of the Recovery Date exceeds the price at which the plan sold the property. The plan must receive the Principal Amount plus Lost Earnings as described in section 5(b).

(i) The principles of paragraph (e)(2) of this section are illustrated in the following example:

Example: A plan sold unimproved land without taking steps to ensure that the plan received FMV. Upon discovering that the sale price was $10,000 less than the FMV, the Plan Official pays the plan the Principal Amount of $10,000 plus Lost Earnings as described in section 5(b).

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) Documentation of the plan's original sale of the asset, including the date of the sale, the sale price, and the identity of the buyer;

(ii) A narrative describing the relationship of the buyer to the plan; and

(iii) A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's sale.

(f) Holding of an Illiquid Asset Previously Purchased by a Plan

(1) *Description of Transaction.* A plan is holding an asset previously purchased from (i) a party in interest with respect to the plan in an acquisition for which relief was available under a statutory or administrative prohibited transaction exemption, (ii) a party in interest with respect to the plan at no greater than FMV at that time in an acquisition to which no prohibited transaction exemption applied, (iii) a person who was not a party in interest with respect to the plan in an acquisition in which a plan fiduciary failed to appropriately discharge his or her fiduciary duties, or (iv) a person who was not a party in interest with respect to the plan in an acquisition in which a plan fiduciary appropriately discharged his or her fiduciary duties. Currently, a plan fiduciary determines that such asset is an illiquid asset because: (A) The asset failed to appreciate, failed to provide a reasonable rate of return, or caused a loss to the plan; (B) the sale of the asset is in the best interest of the plan; and (C) following reasonable efforts to sell the asset to a person who is not a party in interest with respect to the plan, the asset cannot immediately be sold for its original purchase price, or its current FMV, if greater. Examples of assets that may meet this definition include, but are not limited to, restricted and thinly traded stock, limited partnership interests, real estate and collectibles.

(2) *Correction of Transaction.* (i) The transaction may be corrected by the sale of the asset to a party in interest, provided the plan receives the higher of (A) the FMV of the asset at the time of resale, without a reduction for the costs of sale; or (B) the Principal Amount, plus Lost Earnings as described in section 5(b). The Plan Official may cause the plan to sell the asset to a party in interest. This correction provides relief for both the original purchase of the asset, if required, and the sale of the illiquid asset by the plan to a party in interest; relief from the prohibited transaction excise tax also is provided if the Plan Official satisfies the applicable conditions of the VFC Program class exemption.

(ii) For this transaction, the Principal Amount is the plan's original purchase price.

(iii) The principles of paragraph (f)(2) of this section are illustrated in the following examples:

Example 1. A plan purchases undeveloped real property from a party in interest with respect to the plan for $60,000 in June 1999. In April 2004, Plan Officials determine that the property is an illiquid asset. A qualified, independent appraiser appraises the property at a current FMV of $20,000. The plan sponsor pays the plan the Principal Amount of $60,000 plus Lost Earnings as described in section 5(b), and Plan Officials transfer the property from the plan to the plan sponsor. The Plan Officials also comply with the applicable terms of the related exemption.

Example 2. A plan purchases a limited partnership interest for $60,000 in June 1999 from an unrelated party after plan fiduciaries properly fulfill their fiduciary duties with respect to the purchase. In April 2004, Plan Officials determine that the interest is an illiquid asset because the interest has failed to generate a reasonable rate of return. A qualified, independent appraiser appraises the interest at a current FMV of $80,000. The plan sponsor pays the plan the FMV of $80,000 without a reduction for the costs of the sale, which is greater than the Principal Amount plus Lost Earnings, and Plan Officials transfer the interest from the plan to the plan sponsor. The Plan Officials also comply with the applicable terms of the related exemption.

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) Documentation of the plan's original purchase of the asset, including the date of the purchase, the plan's purchase price, the identity of the original seller, and a description of the relationship, if any, between the original seller and the plan;

(ii) The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan at the recovery date;

(iii) A narrative describing the plan's efforts to sell the asset to persons who are not parties in interest with respect to the plan and any documentation of such efforts to sell the asset;

(iv) A statement from a Plan Official attesting that: (A) The asset failed to appreciate, failed to provide a reasonable rate of return, or caused a loss to the plan; (B) the sale of the asset is in the best interest of the plan; (C) the asset is an illiquid asset; and (D) the plan made reasonable efforts to sell the asset to persons who are not parties in interest with respect to the plan without success; and

(v) In the case of an illiquid asset that is a parcel of real estate, a statement from a Plan Official attesting that no party in interest owns real estate that is contiguous to the plan's parcel of real estate on the Recovery Date.

7.5 Benefits

(a) Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based

(1) *Description of Transaction.* A defined contribution pension plan pays benefits based on the value of the plan's assets. If one or more of the plan's assets are not valued at current value, the benefit payments are not correct. If the plan's assets are overvalued, the current benefit payments will be too high. If the plan's assets are undervalued, the current benefit payments will be too low.

(2) *Correction of Transaction.* (i) Establish the correct value of the improperly valued asset for each plan year, starting with the first plan year in which the asset was improperly valued. Restore to the plan for distribution to the affected plan participants, or restore directly to the plan participants, the amount by which all affected participants were underpaid distributions to which they were entitled under the terms of the plan, plus Lost Earnings as described in section 5(b) on the underpaid distributions. File amended Annual Report Forms 5500, as detailed below.

(ii) To correct the valuation defect, a Plan Official must determine the FMV of the improperly valued asset per section 5(a) for each year in which the asset was valued improperly.

(iii) Once the FMV has been determined, the participant account balances for each year must be adjusted accordingly.

(iv) The Annual Report Forms 5500 must be amended and refiled for (A) the last three plan years or (B) all plan years in which the value of the asset was reported improperly, whichever is less.

(v) The Plan Official or plan administrator must determine who received distributions from the plan during the time the asset was valued improperly. For distributions that were too low, the amount of the underpayment is treated as a Principal Amount for each individual who received a distribution. The Principal Amount and Lost Earnings must be paid to the affected individuals. For distributions that were too high, the total of the overpayments constitutes the Principal Amount for the plan. The Principal Amount plus the Lost Earnings, as described in section 5(b), must be restored to the plan or to any participants who received distributions that were too low.

(vi) The principles of paragraph (a)(2) of this section are illustrated in the following examples:

Example 1. On December 31, 1995, a profit sharing plan purchased a 20-acre parcel of real property for $500,000, which represented a portion of the plan's assets. The plan has carried the property on its books at cost, rather than at FMV. One participant left the company on January 1, 1997, and received a distribution, which included her portion of the value of the property. The separated participant's account balance represented 2% of the plan's assets. As part of the correction for the VFC Program, a qualified, independent appraiser has determined the FMV of the property for 1996, 1997, and 1998. The FMV as of December 31, 1996, was $400,000. Therefore, this participant was overpaid by $2,000 (($500,000 − $400,000) multiplied by 2%). The Plan Officials corrected the transaction by paying to the plan the $2,000 Principal Amount plus Lost Earnings as described in section 5(b).

The plan administrator also filed an amended Form 5500 for plan years 1996 and 1997, to reflect the proper values. The plan administrator will include the correct asset valuation in the 1998 Form 5500 when that form is filed.

Example 2. Assume the same facts as in Example 1, except that the property had appreciated in value to $600,000 as of December 31, 1996. The separated participant would have been underpaid by $2,000. The correction consists of locating the participant and distributing to her the $2,000 Principal Amount plus Lost Earnings as described in section 5(b), as well as filing the amended Forms 5500.

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) A copy of the qualified, independent appraiser's report for each plan year in which the asset was revalued;

(ii) A written statement confirming the date that amended Annual Report Forms 5500 with correct valuation data were filed;

(iii) If losses are restored to the plan, proof of payment to the plan and copies of the adjusted participant account balances; and

(iv) If supplemental distributions are made, proof of payment to the individuals entitled to receive the supplemental distributions.

7.6 Plan Expenses

(a) Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan

(1) *Description of Transaction.* A plan used plan assets to pay compensation, including commissions or fees, to a service provider (such as an attorney, accountant, recordkeeper, actuary, financial advisor, or insurance agent), and the compensation was:

(i) Excessive in amount for the services provided to the plan;

(ii) Duplicative, in that a plan paid two or more providers for the same service; or

(iii) Unnecessary for the operation of the plan, in that the services were not helpful and appropriate in carrying out the purposes for which the plan is maintained.

(2) *Correction of Transaction.* (i) Restore to the plan the Principal Amount, plus the greater of (A) Lost Earnings or (B) Restoration of Profits resulting from the use of the Principal Amount, as described in section 5(b).

(ii) (A) For the transactions described in paragraph (a)(1)(i) above, the Principal Amount is the difference between (*1*) the amount of compensation paid by the plan to the service provider and (2) the reasonable market value of such services.

(B) For the transactions described in paragraph (a)(1)(ii) above, the Principal Amount is the difference between (*1*) the total amount of compensation paid to the service providers and (*2*) the least amount of compensation paid to one of the service providers for the duplicative services.

(C) For the transactions described in paragraph (a)(1)(iii) above, the Principal Amount is the amount of compensation paid by the plan to the service provider for the unnecessary services.

(iii) The principles of paragraph (a)(2) of this section are illustrated in the following examples:

Example 1. Excessive compensation. A plan hired an investment advisor who advised the plan's trustees about how to invest the plan's entire portfolio. In accordance with the plan document, the trustees instructed the advisor to limit the plan's investments to equities and bonds. In exchange for his services, the plan paid the investment advisor 3% of the value of the portfolio's assets. If the trustees had inquired, they would have learned that comparable investment advisors charged 1% of the value of the assets for the type of portfolio that the plan maintained. To correct the transaction, the plan must be paid the Principal Amount of 2% of the value of the plan's assets, plus the higher Lost Earnings or Restoration of Profits, as described in section 5(b).

Example 2. Unnecessary Compensation. A plan paid a travel agent to arrange a fishing trip for the plan's investment advisor as a way of rewarding the advisor because the plan's investment return for the year exceeded the plan's investment goals by 10%. An internal auditor discovered the charge on the plan's record books. To correct the transaction, the plan must be paid the Principal Amount, which is the total amount paid to the travel agent, plus the higher of Lost Earnings or Restoration of Profits as described in section 5(b).

(3) *Documentation.* In addition to the documentation required by section 6, submit the following documents:

(i) For the transactions described in paragraph (a)(1)(i) above, a written estimate of the reasonable market value of the services and the estimator's qualifications; and

(ii) The cost of the services at issue during the period that such services were provided to the plan.

(b) Expenses Improperly Paid by a Plan

(1) *Description of Transaction.* A plan used plan assets to pay expenses, including commissions or fees, which should have been paid by the plan sponsor, to a service provider (such as an attorney, accountant, recordkeeper, actuary, financial advisor, or insurance agent) for:

(i) Services provided in connection with the administration and maintenance of the plan (''plan expenses'' [20]) in circumstances where a plan provision requires that such plan expenses be paid by the plan sponsor, or

(ii) Services provided in connection with the establishment, design, or termination of the plan (''settlor expenses'' [21]), which relate to the activities of the plan sponsor in its capacity as settlor.

(2) *Correction of Transaction.* (i) Restore to the plan the Principal Amount, plus the greater of (A) Lost Earnings or (B) Restoration of Profits resulting from the use of the Principal Amount, as described in section 5(b).

(ii) The Principal Amount is the entire amount improperly paid by the plan to the service provider for expenses that should have been paid by the plan sponsor.

(iii) The principles of paragraph (b)(2) of this section are illustrated in the following example:

Example. Employer X, the plan sponsor of Plan Y, is considering amending its defined contribution plan to add a 5% matching contribution. Employer X operates in a competitive industry, and a human resources consultant has recommended, among other improvements, that Employer X provide a competitive matching contribution to help attract and retain a highly qualified workforce. Employer X hired an actuary to estimate the cost of providing this matching contribution over the next ten years. In exchange for these services, the plan paid the actuary $10,000. Several months after the actuary's bill has been paid, a Plan Official realizes that one of Employer X's employees erroneously paid the bill from the defined contribution plan's assets. The bill should have been paid by Employer X, because the bill related to settlor expenses incurred by Employer X in analyzing whether to add a matching contribution to the plan. To correct the transaction, the plan must be paid the Principal Amount ($10,000), plus Lost Earnings or Restoration of Profits, as described in section 5(b).

(3) *Documentation.* In addition to the documentation required by Section 6, submit copies of the plan's accounting records which show the date and amount of expenses paid by the plan to the service provider.

(c) Payment of Dual Compensation to a Plan Fiduciary

(1) *Description of Transaction.* A plan used plan assets to pay compensation to a fiduciary for services rendered to the plan when the fiduciary already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in the plan. The plan's payments to the plan fiduciary are not reimbursements of expenses properly and actually incurred by the fiduciary in the performance of his or her fiduciary duties.

(2) *Correction of Transaction.* (i) Restore to the plan the Principal Amount, plus the greater of (A) Lost Earnings or (B) Restoration of Profits resulting from the fiduciary's use of the Principal Amount, as described in section 5(b).

(ii) The Principal Amount is the amount of compensation paid to the fiduciary by the plan.

(iii) The principles of paragraph (c)(2) of this section are illustrated in the following example:

Example. A union sponsored a health plan funded through contributions by employers. The union president receives $50,000 per year from the union in compensation for his services as union president. He is appointed as a trustee of the health plan while retaining his position as union president. In exchange for acting as plan trustee, the union president is paid a salary of $200 per week by the plan while still receiving the $50,000 salary from the union. Since $50,000 is full-time pay, the plan's weekly salary payments are improper. To correct the transaction, the plan must be paid the Principal Amount, which is the $200 weekly salary amount for each week that the salary was paid, plus the higher of Lost Earnings or Restoration of Profits, as described in section 5(b).

(3) *Documentation.* In addition to the documentation required by section 6, submit copies of the plan's accounting records which show the date and amount of compensation paid by the plan to the identified fiduciary.

Appendix A—Sample VFC Program No Action Letter

Applicant (Plan Official)
Address

Dear Applicant (Plan Official):

[20] *See* Advisory Opinion 2001–01A (Jan. 18, 2001).

[21] *See id.*

Re: VFC Program Application No. xx–xxxxxx

The Department of Labor, Employee Benefits Security Administration (EBSA), has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). EBSA has established a Voluntary Fiduciary Correction (VFC) Program to encourage the correction of breaches of fiduciary responsibility and the restoration of losses to the plan participants and beneficiaries.

In accordance with the requirements of the VFC Program, you have identified the following transactions as breaches, or potential breaches, of Part 4 of Title I of ERISA, and you have submitted documentation to EBSA that demonstrates that you have taken the corrective action indicated.

[Briefly recap the violation and correction. *Example:* Failure to deposit participant contributions to the XYZ Corp. 401(k) plan within the time frames required by ERISA, from _____(date) to _____(date). All participant contributions were deposited by _____(date) and lost earnings on the delinquent contributions were deposited and allocated to participants' plan accounts on _____(date).]

Because you have taken the above-described corrective action that is consistent with the requirements of the VFC Program, EBSA will take no civil enforcement action against you with respect to this breach. Specifically, EBSA will not recommend that the Solicitor of Labor initiate legal action against you, and EBSA will not impose the penalties in section 502(l) or section 502(i) of ERISA on the amount you have repaid to the plan.

EBSA's decision to take no further action is conditioned on the completeness and accuracy of the representations made in your application. You should note that this decision will not preclude EBSA from conducting an investigation of any potential violations of criminal law in connection with the transaction identified in the application or investigating the transaction identified in the application with a view toward seeking appropriate relief from any other person.

[If the transaction is a prohibited transaction for which no exemptive relief is available, add the following language: Please also be advised that pursuant to section 3003(c) of ERISA, 29 U.S.C. section 1203(c), the Secretary of Labor is required to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred. Accordingly, this matter will be referred to the Internal Revenue Service.]

In addition, you are cautioned that EBSA's decision to take no further action is binding on EBSA only. Any other governmental agency, and participants and beneficiaries, remain free to take whatever action they deem necessary.

If you have any questions about this letter, you may contact the Regional VFC Program Coordinator at *applicable address and telephone number.*

Appendix B—VFC Program Checklist (Required)

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate ''Yes'', ''No'' or ''N/A'' next to each item. A ''No'' answer or the failure to include a completed checklist will delay review of the application until all required items are received.

____1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?

____2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?

____3. Have you provided the EIN, Plan Number, and address of the plan sponsor and plan administrator?

____4. Have you provided the date that the most recent Form 5500 was filed by the plan?

____5. Have you enclosed a signed and dated certification under penalty of perjury for the plan fiduciary with knowledge of the transactions and for each applicant and the applicant's representative, if any?

____6. Have you enclosed relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?

____7. If applicable, have you provided written notification to EBSA of any current investigation or examination of the plan, or of the applicant or plan sponsor in connection with an act or transaction directly related to the plan by the PBGC, any state attorney general, or any state insurance commissioner?

____8. Where applicable, have you enclosed a copy of an appraiser's report?

____9. Have you enclosed supporting documentation, including:

____a. A detailed narrative of the Breach, including the date it occurred;

____b. Documentation that supports the narrative description of the transaction;

____c. An explanation of how the Breach was corrected, by whom and when, with supporting documentation;

____d. A list of all persons materially involved in the Breach and its correction (*e.g.*, fiduciaries, service providers, borrowers, lenders);

____e. Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed, or, if the Online Calculator was used, a copy of the ''Print Viewable Results'' page(s) after completing use of the Online Calculator;

____f. Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits; and

____g. If application concerns delinquent employee contributions or loan repayments, a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer's general assets and supporting documentation on which the Plan Official relied?

____10. If you are an eligible applicant and wish to avail yourself of excise tax relief under the VFC Program Class Exemption:

____a. Have you made proper arrangements to provide within 60 calendar days after submission of this application a copy of the Class Exemption notice to all interested persons and to the EBSA Regional Office to which the application is filed; or

____b. If you are relying on the exception to the notice requirement in section IV.C. of the Class Exemption because the amount of the excise tax otherwise due would be less than or equal to $100.00, have you provided to the appropriate EBSA Regional Office a copy of a completed IRS Form 5330 or other written documentation containing the information required by IRS Form 5330 and proof of payment?

____11. In calculating Lost Earnings, have you elected to use:

____a. The Online Calculator; or

____b. A manual calculation performed in accordance with Section 5(b)?

____12. Where applicable, have you enclosed a description demonstrating proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant, and for individuals who need to be located, have you demonstrated how adequate funds have been segregated to pay missing individuals and commenced the process of locating the missing individuals using either the IRS and SSA locator services, or other comparable means?

____13. For purposes of the three transactions covered under Section 7.1, has the plan implemented measures to ensure that such transactions do not recur?

Signature of Applicant and Date Signed:

_____

Name of Applicant: _____

Title/Relationship to the Plan: _____

Name of Plan, EIN and Plan Number:

_____

Paperwork Reduction Act Notice

The information identified on this form is required for a valid application for the Voluntary Fiduciary Correction Program of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). You must complete this form and submit it as part of the application in order to receive the relief offered under the Program with respect to a breach of fiduciary responsibility under Part 4 of Title I of ERISA. EBSA will use this information to determine that you have satisfied the requirements of the Program. EBSA estimates that completing and submitting this form will require an average of 2 to 4 minutes. This collection of information is currently approved under OMB Control Number 1210–0118. You are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

Appendix C—EBSA Regional Offices

Submit your VFC Program application to the appropriate EBSA Regional Office:

Atlanta Regional Office, 61 Forsyth Street, SW, Suite 7B54, Atlanta, GA 30303, telephone (404) 562–2156, fax (404) 562–2168; jurisdiction: Alabama, Florida,

Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.

Boston Regional Office, J.F.K. Building, Room 575, Boston, MA 02203, telephone (617) 565–9600, fax: (617) 565–9666; jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, central and western New York, Rhode Island, Vermont.

Chicago Regional Office, 200 West Adams Street, Suite 1600, Chicago, IL 60606, telephone (312) 353–0900, fax (312) 353–1023; jurisdiction: northern Illinois, northern Indiana, Wisconsin.

Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, KY 41011–2664, telephone (859) 578–4680, fax (859) 578–4688; jurisdiction: southern Indiana, Kentucky, Michigan, Ohio.

Dallas Regional Office, 525 Griffin Street, Rm. 900, Dallas, TX 75202–5025, telephone (214) 767–6831, fax (214) 767–1055; jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Kansas City Regional Office, 1100 Main Street, Suite 1200, Kansas City, MO 64105, telephone (816) 426–5131, fax (816) 426–5511; jurisdiction: Colorado, southern Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wyoming.

Los Angeles Regional Office, 1055 E. Colorado Boulevard, Suite 200, Pasadena, CA 91106–2341, telephone (626) 229–1000, fax (626) 229–1097; jurisdiction: 10 southern counties of California, Arizona, Hawaii, American Samoa, Guam, Wake Island.

New York Regional Office, 33 Whitehall Street, Suite 1200, New York, NY 10004, telephone (212) 607–8600, fax (212) 607–8681; jurisdiction: southeastern New York, northern New Jersey.

Philadelphia Regional Office, The Curtis Center, 170 S. Independence Mall West, Suite 870 West, Philadelphia, PA 19106–3317, telephone (215) 861–5300, fax (215) 861–5347; jurisdiction: Delaware, Maryland, southern New Jersey, Pennsylvania, Virginia, Washington, DC, West Virginia.

San Francisco Regional Office, 71 Stevenson St., Suite 915, San Francisco, CA 94105, telephone (415) 975–4600, fax (415) 975–4589; jurisdiction: Alaska, 48 northern counties of California, Idaho, Nevada, Oregon, Utah, Washington.

Please verify current telephone numbers and addresses on EBSA's Web site, *http://www.dol.gov/ebsa/.*

Appendix D—Lost Earnings Example (Manual Calculation)

Delinquent Participant Contributions

Company A's pay periods end every other Friday. Each pay period, participant contributions total $10,000, which reasonably can be segregated from Company A's general assets by ten business days following the end of each pay period. Company A should have remitted participant contributions for the pay period ending March 2, 2001 to the plan by March 16, 2001, the Loss Date, but actually remitted them on April 13, 2001, the Recovery Date. In early 2004, a Plan Official discovers that participant contributions for this pay period were not remitted on a timely basis. To comply with the Program, the Plan Official determined that she would repay all Lost Earnings on January 30, 2004.

Based on the above facts:

- Principal Amount is $10,000.
- Loss Date is March 16, 2001.
- Recovery Date is April 13, 2001.
- Number of Days Late is 28 (Recovery Date less Loss Date).

The basic formula for computing earnings using the applicable factors under IRS Revenue Procedure 95–17 is: Dollar Amount * IRS factor

Step 1. The Plan Official must calculate Lost Earnings, based on the Principal Amount, that should have been paid on the Recovery Date.

The first period of time is from March 16, 2001 to March 31, 2001 (15 days). The Code underpayment rate is 9%. Using Revenue Procedure 95–17, the factor for 15 days at 9% is 0.003705021 from table 23.

$10,000 * 0.003705021 = $37.05

The plan is due $10,037.05 as of March 31, 2001. The second period of time is April 1, 2001 through April 13, 2001 (13 days). The Code underpayment rate is 8%. Using Revenue Procedure 95–17, the factor for 13 days at 8% is 0.002853065 from table 21.

$10,037.05 * 0.002853065 = $28.64

Therefore, Lost Earnings of $65.69 ($37.05 plus $28.64) must be paid to the plan.

Step 2. If Lost Earnings are paid to the plan after the Recovery Date, the Plan Official must calculate the amount of interest on the Lost Earnings (determined in Step 1) that must also be paid to the plan. This calculation is shown by the following chart: (The ''Interest'' column is the previous time period's ''Amnt. Due'' multiplied by the Factor. ''Amnt. Due'' is the previous ''Amnt. Due'' plus ''Interest''. The calculation in the first row is based on the $65.69 Lost Earnings.)

1st day	To	Days	Underpmnt. rate (percent)	Rev. proc. table	Factor	Interest	Amnt. due
14/14/01	6/30/01	78	8	21	.017240956	1.132558	66.82256
7/1/01	9/30/01	92	7	19	.017798686	1.189354	68.01191
10/1/01	12/31/01	92	7	19	.017798686	1.210523	69.22243
1/1/02	3/31/02	90	6	17	.014903267	1.031640	70.25408
4/1/02	6/30/02	91	6	17	.015070101	1.058736	71.31281
7/1/02	9/30/02	92	6	17	.015236961	1.086591	72.39940
10/1/02	12/31/02	92	6	17	.015236961	1.103147	73.50255
1/1/03	3/31/02	90	5	15	.012404225	0.911742	74.41429
4/1/03	6/30/03	91	5	15	.012542910	0.933372	75.34766
7/1/03	9/30/03	92	5	15	.012681615	0.955530	76.30319
10/1/03	12/31/03	92	4	13	.010132630	0.773152	77.07634
1/1/04	1/30/04	30	4	61	.003283890	0.253110	77.32945
Total Interest						11.64	

Note that the last factor comes from the Revenue Procedure 95–17 tables for leap years.

The plan is also owed $11.64. This is the amount of interest on $65.69 (Lost Earnings on the Principal Amount) accrued between April 13, 2001, the Recovery Date, when the Principal Amount $10,000 was paid to the plan, and January 30, 2004, the date chosen to repay Lost Earnings.

Therefore, the Plan Official must pay $77.33 to the plan on January 30, 2004, as Lost Earnings ($65.69) plus interest on Lost Earnings ($11.64) for the pay period ending March 2, 2001, in addition to the Principal Amount ($10,000) that was paid on April 13, 2001. This total corresponds with the final Total Due in the above chart (emphasized).

Appendix E—Model Application Form (Optional)

Voluntary Fiduciary Correction Program Application Form

This application form provides a recommended format for your VFC Program application. Please make sure you have attached all documents identified on the VFC Program Checklist (for example, proof of payment). Submit your application to the appropriate EBSA field office. For full application procedures, consult www.dol.gov/ebsa/.

Applicant Name(s) and Address(es)

List separately: _____

_____

List Transaction(s) Corrected

Check which transaction(s) listed in the VFC Program you have corrected:

____Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans
____Delinquent Participant Contributions to Insured Welfare Plans
____Delinquent Participant Contributions to Welfare Plan Trusts
____Loan at Fair Market Interest Rate to a Party in Interest
____Loan at Below-Market Interest Rate to a Party in Interest
____Loan at Below-Market Interest Rate to a Non-Party in Interest
____Loan at Below-Market Interest Rate Due to Delay in Perfecting Plan's Security Interest
____Loans Failing to Comply with Plan Provisions for Amount, Duration or Level Amortization
____Default Loans
____Purchase of an Asset by a Plan from a Party in Interest
____Sale of an Asset by a Plan to a Party in Interest
____Sale and Leaseback of Real Property to Employer
____Purchase of Asset by a Plan from a Non-Party in Interest at More Than Fair Market Value
____Sale of an Asset by a Plan to a Non-Party in Interest at Less Than Fair Market Value
____Holding of an Illiquid Asset Previously Purchased by a Plan
____Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based
____Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan
____Expenses Improperly Paid by a Plan
____Payment of Dual Compensation to a Plan Fiduciary

Correction Amount

Principal Amount: $ _____
Date Paid ____ /____ /____
Lost Earnings/Restoration of Profit: $ _____
Date Paid ____/____ /____

Narrative and Calculations

List:

(1) All persons materially involved in the Breach and its correction (e.g., fiduciaries, service providers):

_____
_____
_____

(2) An explanation of the Breach, including the date(s) it occurred (attach separate sheets if necessary):

_____
_____
_____

(3) An explanation of how the Breach was corrected, by whom, and when (attach separate sheets if necessary):

_____
_____
_____
_____

(4) For correction of Delinquent Remittance of Participant Funds, provide a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer's general assets (attach supporting documentation on which Plan Official relied):

Number of days used to determine the date on which participant contributions/loan repayments withheld from employees' pay could reasonably have been segregated from the employer's general assets: ____

Description of how this was determined:

_____

(5) For correction of Delinquent Remittance of Participant Funds, provide a narrative describing the applicant's contribution and/or repayment remittance practices before and after the period of unpaid or late contributions and/or repayments: (attach separate sheets if necessary)

_____
_____
_____
_____

(6) Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were calculated (attach separate sheets if necessary): If the Online Calculator was used, you only need to indicate this and attach a copy of the ''Printable Results'' page.

____ Online Calculator—''Printable Results'' page attached
____ Manual calculation—see attached calculations

Supplemental Information

(1) Plan Sponsor Name:

_____
EIN: _____
Address: _____

(2) Plan Name:

_____
Plan Number: _____

(3) Plan Administrator Name:

_____
EIN: _____
Address: _____

(4) Name of Authorized Representative: (Submit written authorization signed by the Plan Official.)

_____
Address: _____
Telephone: _____

(5) Name of Contact Person:
Address: _____
Telephone: _____

(6) Date of Most Recent Annual Report Form 5500 Filing: __/__/ __ for Plan Year Ending: __/__ /__

(7) Is Applicant Seeking Relief Under PTE 2002–51?

____Yes—Either:
____Submit a copy of the notice to interested parties within 60 calendar days of this application and indicate date of the notice if not on the notice itself; or __If you are relying on the exception to the notice requirement contained in section IV.C. of PTE 2002–51, provide a copy of a completed IRS Form 5330 or other written documentation and proof of payment.
____No

(8) Proof of Payment
____Canceled check
____Executed wire transfer
____Signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution)
____Bank statements for the plan's account
____Other:

_____

(9) Disclosure of a current investigation or examination of the plan by an agency, to comply with Section 3(b)(3)(v):
____PBGC
____Any state attorney general
State:

_____
Any state insurance commissioner
State:

_____
Contact person for the agency identified:

_____

(10) In order to help us improve our service, please indicate how you learned about the VFC Program:

_____

Authorization of Preparer

I have authorized (insert name of authorized representative) to represent me concerning this VFC Program application.

Name of Plan Official

_____
Signature of Plan Official

_____

Penalty of Perjury Statement

The following statement must be signed and dated by a plan fiduciary with knowledge of the transaction that is the subject of the application and by the authorized representative, if any. Each Plan Official applying under the VFC Program must also sign and date the statement, which must accompany any subsequent additions to the application.

''Under penalties of perjury I certify that I am not Under Investigation (as defined in VFC Program Section 3(b)(3)) and that I have reviewed this application, including all supporting documentation, and to the best of my knowledge and belief the contents are true, correct, and complete.''

_____
Name and Title
Signature

_____
Date _____

_____
Name and Title _____
Signature

_____
Date _____

Paperwork Reduction Act Notice

The information identified on this form is required for a valid application for the Voluntary Fiduciary Correction Program of the U.S. Department of Labor's Employee

Benefits Security Administration (EBSA). You are not required to use this form; however, you must supply the information identified in order to receive the relief offered under the Program with respect to a breach of fiduciary responsibility under Part 4 of Title I of ERISA. EBSA will use this information to determine whether you have satisfied the requirements of the Program. EBSA estimates that assembling and submitting this information will require an average of 6 to 8 hours. This collection of information is currently approved under OMB Control Number 1210–0118. You are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

VFC Program Checklist

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate ''Yes'', ''No'' or ''N/A'' next to each item. A ''No'' answer or the failure to include a completed checklist will delay review of the application until all required items are received.

____1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?

____2. Have you included the name, address and telephone number of a contact person familiar with the contents of the application?

____3. Have you provided the EIN, Plan Number, and address of the plan sponsor and plan administrator?

____4. Have you provided the date that the most recent Form 5500 was filed by the plan?

____5. Have you enclosed a signed and dated certification under penalty of perjury for the plan fiduciary with knowledge of the transactions and for each applicant and the applicant's representative, if any?

____6. Have you enclosed relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?

____7. If applicable, have you provided written notification to EBSA of any current investigation or examination of the plan, or of the applicant or plan sponsor in connection with an act or transaction directly related to the plan by the PBGC, any state attorney general, or any state insurance commissioner?

____8. Where applicable, have you enclosed a copy of an appraiser's report?

____9. Have you enclosed supporting documentation, including:

____a. A detailed narrative of the Breach, including the date it occurred;

____b. Documentation that supports the narrative description of the transaction;

____c. An explanation of how the Breach was corrected, by whom and when, with supporting documentation;

____d. A list of all persons materially involved in the Breach and its correction (e.g., fiduciaries, service providers, borrowers, lenders);

____e. Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed, or, if the Online Calculator was used, a copy of the ''Print Viewable Results'' page(s) after completing use of the Online Calculator;

____f. Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits; and

____g. If application concerns delinquent employee contributions or loan repayments, a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer's general assets and supporting documentation on which the Plan Official relied?

____10. If you are an eligible applicant and wish to avail yourself of excise tax relief under the VFC Program Class Exemption:

____a. Have you made proper arrangements to provide within 60 calendar days after submission of this application a copy of the Class Exemption notice to all interested persons and to the EBSA Regional Office to which the application is filed; or

____b. If you are relying on the exception to the notice requirement in section IV.C. of the Class Exemption because the amount of the excise tax otherwise due would be less than or equal to $100.00, have you provided to the appropriate EBSA Regional Office a copy of a completed IRS Form 5330 or other written documentation containing the information required by IRS Form 5330 and proof of payment?

____11. In calculating Lost Earnings, have you elected to use:

____a. The Online Calculator; or

____b. A manual calculation performed in accordance with Section 5(b)?

____12. Where applicable, have you enclosed a description demonstrating proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant, and for individuals who need to be located, have you demonstrated how adequate funds have been segregated to pay missing individuals and commenced the process of locating the missing individuals using either the IRS and SSA locator services, or other comparable means?

____13. For purposes of the three transactions covered under Section 7.1 has the plan implemented measures to ensure that such transactions do not recur?

Signature of Applicant and Date Signed:

_____

Name of Applicant: _____

Title/Relationship to the Plan: _____

Name of Plan, EIN and Plan Number:

_____

Signed at Washington, DC, this 12th day of April, 2006.

Ann L. Combs,

Assistant Secretary for Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 06–3674 Filed 4–18–06; 8:45 am]

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Federal Register

Wednesday,
April 19, 2006

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 56

Eligibility Requirements for USDA Graded Shell Eggs; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–98–006]

RIN 0581–AC50

Eligibility Requirements for USDA Graded Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) amends the voluntary shell egg grading rules by providing that shell eggs must not have been previously shipped for retail sale in order to be officially identified with a USDA consumer grademark; by changing the definition of the term *eggs of current production* from 30 days to 21 days, thereby making eggs that were laid more than 21 days before the date of packing ineligible to be officially identified with a USDA-consumer grademark; and by adding a definition for the term *shipped for retail sale*. On April 27, 1998, USDA prohibited the repackaging of eggs packed under USDA's voluntary grading program until the Department could review its policies regarding the repackaging and dating of eggs. Making certain types of eggs ineligible for grading will strengthen the integrity of the USDA grade shield.

DATES: This rule is effective June 19, 2006.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Background

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). Any interested person, commercial firm, or government agency that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the grade and size of eggs packaged into packages bearing the USDA-grade shield. Plants in which these grading services are performed are called official plants. Currently, about one-third of the nation's shell egg processors, that operate under the voluntary grading program, produce three-fourths of the nation's table eggs.

Shell egg producers either pack their eggs at the site where the eggs are produced (an ''in-line'' operation), or ship their eggs to a processing facility or egg processor located elsewhere (an ''off-line'' operation). Egg processors also sell and ship eggs among themselves to accommodate imbalances in supply. Once eggs are washed, sized, and packaged for retail sale, they are shipped to retailers for distribution to the ultimate consumer.

Occasionally, a retail store may have an excess inventory of eggs. They may have overstocked for a seasonal promotion (e.g., Easter or Christmas) or the expiration date printed on the cartons may be approaching. Retailers dispose of these eggs, give the eggs to local charitable feeding operations before the expiration date, or return the eggs to the processor. The processor may, in turn, repackage the eggs or process them into liquid, frozen, or dried egg products. If repackaged, the eggs are removed from their original package, such as a carton or open tray (known as a ''flat''). They are usually, but not always, intermixed with other unprocessed eggs. Then they are rewashed, regraded, and placed into a new package. The option of repackaging eggs has always been available to egg processors, there are no Federal regulations addressing the practice, and Agency personnel have observed very little of it in official plants.

Four dates are associated with the marketing of shell eggs. They are, in order of occurrence, the date of lay, the date of packaging, the expiration or ''Sell by'' date, and the ''Use by'' date. Federal law does not require any of these dates to be present on shell egg packaging materials. However, if the processor uses the USDA grading program and places the USDA grade shield on packaging materials, the date of packaging is required and the expiration (''Sell by'') and ''Use by'' dates have required time limits. If the expiration (''Sell by'') date is present, denoting stock rotation, it must be calculated from the date of packaging and may not exceed 30 days including the date of pack. If the ''Use by'' date is present, indicating the maximum time frame for expected quality, it must also be calculated from the date of packaging and may not exceed 45 days including the date of pack. Thus, repackaged eggs could either retain the original pack date and expiration (''Use by'') dates, or they could have the new date of repackaging and a new, extended expiration date. After April 27, 1998, however, repackaged eggs became ineligible for USDA-grade identification.

On April 7, 1998, a report was televised about an egg processor's practice of repackaging eggs. The report questioned the food safety and quality implications of this practice. To address the quality aspect, USDA issued a written notice to the industry on April 17, 1998, announcing suspension of the repackaging of eggs packed under the voluntary grading program while the Department reviewed its policies on egg repackaging. The suspension, effective April 27, 1998, ensured that eggs previously shipped for retail sale and returned to the processor were specifically ineligible for USDA-grade identification. The Agency believed that this would strengthen the integrity of the USDA-grade shield by reducing unwanted variation in egg quality caused by the occasional blending of older, lower-quality eggs with more recently laid, higher-quality eggs.

While reviewing egg repackaging, the Agency also looked at its definition of *eggs of current production*. Eggs are at their peak of quality when they are laid. Over time, quality will decline. The rate of decline varies according to a variety of factors, with the most important being elapsed time since lay, storage temperature, and storage humidity. To maintain the integrity of the quality standards and the grade shield, only *eggs of current production* may be officially graded. AMS has defined those eggs to be shell eggs that have moved through usual marketing channels since the time they were laid and have not been held in refrigerated storage in excess of 30 days. In practice, AMS requires eggs being officially identified with the USDA-grade shield to be no older than 30 days on the day of packaging.

The first definition for *eggs of current production* was added to the regulations March 1, 1955, and included a 60-day requirement. At that time, the definition allowed buyers and sellers to differentiate between relatively fresh eggs and cold storage or storage eggs. The commercial cold storage of eggs began in the U.S. around 1890, when egg production was seasonal. Cold storage could hold the spring and summer production surplus (about 50 percent of the annual production) for release during periods of relative scarcity in autumn and winter, thus avoiding drastic supply and price fluctuation. Until the 1950s, it was common for eggs to be held in refrigerated storage for up to 6 months. Modern breeding and flock management practices have virtually eliminated seasonal differences in egg production, so cold storage is no longer necessary or even practical. In addition, technological advances in the handling and marketing of shell eggs have reduced the time it takes for eggs to move through normal marketing

channels and provide optimum conditions for maintaining egg quality. The time requirement was reduced to 30 days August 1, 1963.

Proposed Rule and Comments

Following a review of the repackaging issue and the definition for *eggs of current production*, a proposed rule was published in the **Federal Register** (64 FR 40522, July 27, 1999). It prohibited the USDA grade identification of eggs previously shipped for retail sale or eggs laid more than 15 days before date of packing. Comments were specifically requested regarding periods of time that might be more appropriate than 15 days. During the 60-day comment period that ended September 27, 1999, the Agency received three comments; one each from organizations representing egg producers, State departments of agriculture, and consumers.

All three organizations supported the decision to make retail-returned eggs ineligible for official identification. They also supported changing the definition of *eggs of current production*, but had differing recommendations.

The organization representing consumers supported the 15-day definition because it would increase the overall quality of USDA-graded eggs, would increase consumer confidence in the USDA grademark, and would be commercially feasible.

The organization representing egg producers recommended 21 days to allow for disruptions that could occur during distribution, such as the additional time required to transfer eggs between processors trying to balance overall supply and demand. Producers unable to meet the 15-day requirement would only recoup approximately 50 percent of the products' original value if the eggs were diverted to the production of egg products, a loss that could cause some official plants to drop grading service altogether.

The organization representing State departments of agriculture questioned the feasibility of the resident grader monitoring the date of lay as well as preventing the repackaging of store returns. This organization did suggest an alternative action to prevent repackaging and to control the quality of officially-identified eggs: Change the tolerance for B quality interiors allowed in eggs identified with the Grade A or AA shield. Currently processors can have 13 percent B quality in eggs identified with the Grade A or AA shield.

The Agency does not share the concerns about monitoring and verifying the age of shell eggs processed in official plants. The Agency has procedures to ensure compliance with the current definition for *eggs of current production* with its 30-day requirement. These procedures were strengthened in December 1999 and would be applicable if that requirement was reduced. Field personnel indicate that these procedures are adequate and verifiable. In regard to changing the tolerance for B quality interiors allowed in eggs identified with the Grade A or AA shield, the Agency does not feel that this would be an appropriate method for monitoring the age of the shell eggs. While research has demonstrated that there is a decrease in quality over time, it has also shown that there is no significant corresponding increase in the amount of B quality eggs within the first 21 days after lay when the eggs are properly processed, handled, and stored. The last major change in shell egg standards and grades occurred in 1981, while the egg industry has undergone major changes in production and processing since then. AMS believes that a continuing comprehensive nationwide review of the egg standards is appropriate. AMS continues to make changes to reflect current production and marketing practices. However, AMS believes that a monitoring and verification process to ensure compliance with any current production requirement would still be needed.

AMS agrees with the egg producer organization that the proposed 15-day requirement might be a burden in certain situations. Therefore, the Agency has decided to adopt the 21 days recommended by the industry organization.

Comments received suggesting that these requirements should apply to all eggs and comments relating to food safety issues are beyond the scope of this rulemaking and/or the authority under the Act.

Summary of Changes

The definition for *Eggs of current production* (§ 56.1) is changed. It will specify that the term denotes eggs that are no more than 21 days old on the day of packaging instead of the present 30-day limit. Additionally, the reference to ''Refrigerator or storage eggs'' is removed because it is obsolete.

A definition for the term *Shipped for retail sale* (§ 56.1) is added. This term would mean shell eggs that are forwarded from the processing facility for distribution to the ultimate consumer. This includes eggs forwarded for retail sale to wholesalers, brokers, retailer warehouses, retailer stores, or other distribution points in the retail marketing chain.

Another requirement for shell eggs to be identified with consumer grademarks (§ 56.40) is added. It specifies that these eggs must not have previously been shipped for retail sale.

Executive Order 12866

Although not economically significant, this rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs.

Need for Proposed Action. As stated in the background section, on April 7, 1998, a report was televised about an egg processor's practice of repackaging eggs. The report questioned the food safety and quality implications of this practice. However, there was no evidence that repackaged eggs posed a food safety risk.

To address the quality aspect, and to ensure the strong brand image of graded eggs, USDA issued a written notice to the industry on April 17, 1998, announcing suspension of the repackaging of eggs packed under the voluntary grading program while the Department reviewed its policies on egg repackaging. The suspension, effective April 27, 1998, ensured that eggs previously shipped for retail sale and returned to the processor were specifically ineligible for USDA-grade identification. AMS believes that the occasional blending of older, lower-quality eggs with more recently laid, higher-quality eggs could result in unwanted variation in egg quality. Prohibiting the repackaging of eggs packed under USDA's voluntary grading program would reduce this possibility and would strengthen the integrity of the USDA-grade shield.

Currently, the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Shell egg processors are entitled to pack their eggs in packages bearing the USDA-grade shield when AMS graders are present to certify that the eggs meet the grade requirements as labeled. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's

grading service may not use the USDA-grade shield.

Shell egg processors with 3,000 or more laying hens are required by the Egg Products Inspection Act (EPIA) to register with the Department. Currently, there are about 533 such processors, of which 185 (34.7 percent) are official plants that are responsible for 74 percent of total shell egg production. Most official plants have resident service, where graders work a regular tour of duty. In the remaining plants, graders work on an intermittent, as needed, basis. Official plants that use USDA's grading service and identify their egg cartons with the official USDA-grade shield are affected by this rule. Plants that do not use USDA's grading service or identify their egg cartons with the USDA-grade shield are not affected by this rule.

Alternatives. The repackaging of eggs packed under USDA's voluntary grading program was suspended by the Department. The only alternative would be to rescind the suspension. The Department continues to support the suspension. All commenters supported the suspension. AMS agrees.

The proposed rule called for changing the definition of *eggs of current production* from 30 days to 15 days. Comments were specifically requested regarding other periods of time that might be more appropriate. A comment received from an organization representing egg producers supported 21 days to allow for occasional disruptions that occur during distribution, such as the additional time required to transfer eggs between processors trying to balance their supply with demand. AMS agrees that this alternative has merit and would change the definition from 30 days to 21 days.

Summary of Benefits. This rule would potentially enhance the quality and marketability of USDA graded eggs by strengthening the integrity of the USDA grade shield. It would provide consumers with even greater assurance of receiving high quality shell eggs reliably and consistently, regardless of supplier.

Summary of Costs. It should be noted that there are negligible, if any, additional costs associated with this final rule since USDA suspended repackaging in April 1998, and this rule only codifies that decision. The costs associated with changing repackaging policies have already been borne by the industry and are now common industry practice. Table 1 shows the current estimated production of the 533 registered plants, both official and non-official, and the estimated value of eggs produced by these plants. Prices are the average annual daily New York wholesale price of Grade A, large eggs for 2004 as reported by the World Agricultural Outlook Board (WAOB). There is also a one cent differential between the price of eggs at official plants which use the shield versus non-official plants which do not use the shield. The difference covers the cost of grading.

TABLE I.—CURRENT ESTIMATED ANNUAL PRODUCTION OF PLANTS REGISTERED UNDER THE EPIA

	Plants registered		Estimated annual production		Estimated value	
	Number of plants	Percentage of total plants	Dozen eggs (billion)	Percentage of total dozen	Value per dozen	Total value
Total plants	533	.....	4.27	.....	.....	[2] $3.49
Official plants with shield	185	35	3.16	74	[1] 82	[2] 2.59
Non-official plants without shield	348	65	1.11	26	[1] 81	899,10

[1] Cents.
[2] In billions.

The egg market changes daily due to changes in the supply, demand, and other factors. Egg markets are also cyclical with increases in demand occurring during some holiday periods. As long as these cycles continue, retailers will continue to return eggs to processors. In turn, processors will continue to repackage eggs into cartons without the official-grade shield, divert them to egg breakers, or use them in products other than human food. When there is a favorable market for table eggs, most will be repackaged into cartons without the official grade shield. Processors usually receive a greater return for cartoned eggs than eggs sent to breakers.

When this rule was originally proposed, there were 169 official plants with resident grading service. The estimated number of eggs returned to them annually was 6.2 million dozen with an estimated value of $4.712 million. AMS surveyed those 169 plants to determine the extent to which they had previously repackaged eggs into USDA-grade-shielded cartons.

Only eight of the 169 official plants reported having repackaged small quantities of eggs in USDA-shielded cartons at least weekly. Table II shows the estimated value of eggs returned to those eight surveyed plants before 1998 (when repackaging in USDA-shielded cartons was suspended) and 2004. At that time, the projected value of the eggs returned following suspension of repackaging was less than the projected value before suspension. This was due in part because of the increased value of eggs marketed with the USDA shield.

TABLE II.—ANNUAL ESTIMATED NUMBER AND VALUE OF EGGS RETURNED TO EIGHT OFFICIAL SURVEYED PLANTS BEFORE 1998 (WHEN REPACKAGING IN USDA-GRADE-SHIELDED CARTONS WAS SUSPENDED) AND 2004

	Value per dozen	Before repackaging was suspended			After repackaging was suspended		
		Percent of total	Dozen eggs	Total value	Percentage of total	Dozen eggs	Total value
Eggs returned to 8 surveyed plants that repackaged	Yr 98	.....	669,300	483,034	.....	669,300	$477,680
	Yr 04	.....	669,300	522,790	.....	669,300	517,436

TABLE II.—ANNUAL ESTIMATED NUMBER AND VALUE OF EGGS RETURNED TO EIGHT OFFICIAL SURVEYED PLANTS BEFORE 1998 (WHEN REPACKAGING IN USDA-GRADE-SHIELDED CARTONS WAS SUSPENDED) AND 2004—Continued

	Value per dozen	Before repackaging was suspended			After repackaging was suspended		
		Percent of total	Dozen eggs	Total value	Percentage of total	Dozen eggs	Total value
Repackaged in USDA shielded carton	76¢	80	535,440	406,934	.....	.....	.....
	82¢	80	535,440	439,061	.....	.....	.....
Repackaged in non-shielded carton	75¢	10	66,930	50,198	90	602,370	451,778
	81¢	10	66,930	54,213	90	602,370	487,920
Diverted to egg breaker [1]	43¢	9	60,237	25,902	9	60,237	25,902
	49¢	9	60,237	29,516	9	60,237	29,516
Other [2]	.....	1	6,693	.....	1	6,693	.....

[1] Value per dozen may be less to reflect additional handling cost.
[2] Diverted to use other than human food.

Table II uses two sets of carton egg prices—the annual average Daily New York Wholesale Price of Grade A, Large Eggs for 1998 and 2004 as reported by USDA's World Agricultural Outlook Board. At both price levels, the total economic impact (revenue loss) on the eight processors was approximately $5,354 ($483,034–$477,680 or $522,790–$517,436) or approximately $670 per processor who repackaged eggs using a USDA shielded carton.

The following assumptions were used to calculate this impact. First, there is a one cent value differential between the value of a dozen eggs packed in a USDA shielded carton versus an unshielded carton which reflects the cost of grading eggs. This is based on a report, the ''Estimated Cost to Produce, Process, and Market One Dozen Grade A Large White Eggs,'' developed by AMS Poultry Market News. Second, all the returned eggs that had been packed in USDA shielded cartons were above the minimum quality standards for the cartoned egg market, thus all are repacked in non-shielded cartons. Third, no total value for the ''Other'' category was calculated because prices and quantities did not change after repackaging was suspended.

As noted above, there is very little economic impact as a result of the repackaging suspension given these assumptions. Relaxing these assumptions increases the impact at various levels of significance. Increasing the one cent differential between a shielded and non-shielded carton (cost of the grading function) will result in a proportional increase in the economic impact. For example, if the differential is doubled to two cents, the economic impact will double from $5,354 to $10,708. If the differential is tripled to three cents, the economic impact triples to $16,062. (**Note:** These results are the same using either the 1998 price data or the 2004 price data.)

A slightly larger impact results when the second assumption is relaxed. If 10 percent of the eggs that were being repacked in USDA shielded cartons before suspension were diverted to the breaker market after suspension, rather than to the fresh market in non-shielded cartons, the revenue loss to the eight egg processors would increase to $24,630 (using the 1998 carton price). (The change in the second assumption is that after repackaging was suspended, 81 percent (instead of 90 percent) is repacked in non-shielded cartons and 18 percent (instead of 9 percent) is diverted to the breaker market.) A yet larger impact would be expected to occur if the third assumption is relaxed and additional eggs were to move into the ''Other'' market which has much lower prices.

However, it is most reasonable to expect that the eight processors will continue to move table quality returned eggs in non-shielded cartons after the suspension if they were moving returned eggs in shielded cartons before the suspension.

While the benefits of prohibiting the repackaging of eggs in shielded cartons are difficult to quantify, this action will better facilitate the marketing of eggs under the voluntary grading program. Consumers will benefit with even greater assurance of receiving high quality shell eggs reliably and consistently, regardless of supplier. More generally, this action will enhance the consistent quality and marketability of USDA graded eggs and strengthen the integrity of the USDA grade shield.

An April 7, 1998, televised report also raised questions about the related issue of egg dating. Processors using the USDA grading service must put the date of packaging on the carton. Eggs laid more than 30 days before the date of packaging are currently ineligible to be officially identified with a USDA grade shield. This is the definition of *eggs of current production* that has been in effect since August 1963.

Technological advances in the handling and marketing of shell eggs have reduced the time it takes for eggs to move through normal marketing channels and provide optimum conditions for maintaining egg quality. The 21-day period implemented by this rule would still allow for normal disruptions in the marketplace, such as transfers to balance supplies, without a significant impact on quality. Reducing the time between date of lay and date of packaging from 30 days to 21 days would also enhance quality consistency of USDA-consumer-graded eggs and would strengthen the integrity of the USDA-grade shield.

AMS expects the 21-day limit to have little or no economic impact on shell egg producers or processors. Processors supported, through a comment on the proposed rule, a 21-day after-lay period. Most of the shell egg processors that participate in the grade labeling program operate in-line facilities with eggs moving directly from laying houses to packaging. Shell egg processors can also market eggs that are not of current production by packaging them without USDA-grade identification. Because the difference in economic return to processors between USDA graded versus non-USDA graded eggs is about one cent per dozen, the economic impact is minimal, as discussed above.

If as many as 5 percent of the 3.16 billion shell eggs processed in official plants (see Table I) had to be diverted to non-shield cartons because of handling problems, the loss in revenue would only be $1,580,000. (0.05 * 3,160,000,000 dozen = 158,000,000 dozen * $0.01 = $1,580,000.) This is approximately 0.06 percent of the total value of eggs ($2.59 billion) handled by official plants. (See table 1.) If there was a two cent differential between the values of a shielded carton versus a non-

shielded carton, the impact would be $3,160,000.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) (13 CFR 121.201) defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 550,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Of the 185 official plants that would be subject to the rule, only 14 meet the small business definition.

Two of the 14 official plants that meet the definition for small businesses repackaged retail-returned eggs into USDA-grade-shielded cartons. The impact of making the repackaging suspension permanent will be the same as described above in the Regulatory Impact Assessment. Thus, average revenue loss of $670 calculated for the eight processors involved in repackaging would apply to the small businesses. This would not impose an undue or disproportionate burden on the two small businesses that had engaged in repackaging.

Changing the definition of *eggs of current production* to eggs that were laid 21 or less days prior to packing is also not estimated to have a significant impact on the 14 official plants currently classified as small businesses. As noted above, even if 5 percent of shell eggs had to be diverted to non-shielded cartons, it would result in a relatively small loss in revenue on a percentage basis. Again, this would not be an undue or disproportionate burden on the two small businesses.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 12898

Pursuant to Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations,'' AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. This includes those persons who are employees, program beneficiaries, or applicants for employment or program benefits in the voluntary shell egg grading program. Adoption of the rule would not require official plants to relocate or alter their operations in ways that could adversely affect such persons or groups. Nor would it exclude any persons or groups from participation in the voluntary shell egg grading program, deny any persons or groups the benefits of the grading program, or subject any persons or groups to discrimination.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control number is 0581–0128.

AMS is committed to compliance with the GPEA, which require Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, Title 7, Code of Federal Regulations, part 56 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Amend § 56.1 by revising the term *Eggs of current production* and adding a definition for the term *Shipped for retail sale* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Eggs of current production means shell eggs that are no more than 21 days old.

* * * * *

Shipped for retail sale means shell eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

* * * * *

■ 3. Amend § 56.40 by revising paragraph (c) to read as follows:

§ 56.40 Grading requirements of shell eggs identified with consumer grademarks.

* * * * *

(c) In order to be officially identified with a USDA consumer grademark, shell eggs shall:

(1) Be eggs of current production;

(2) Not possess any undesirable odors or flavors; and

(3) Not have previously been shipped for retail sale.

Dated: April 13, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–3693 Filed 4–18–06; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Wednesday,
April 19, 2006

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 2, 5 et al.
Federal Acquisition Regulations; Final Rules and Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2006–0023]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–09; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–09. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–09 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acqnet.gov/far*. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

Item	Subject	FAR case	FAR Analyst
I	Federal Technical Data Solution (FedTeDS)	2004–007	Zaffos.
II	Definition of Information Technology	2004–030	Davis.
III	OMB Circular A–76	2004–021	Zaffos.
IV	Combating Trafficking in Persons (Interim)	2005–012	Clark.
V	Confirmation of HUBZone Certification	2005–009	Cundiff.
VI	Expiration of the Price Evaluation Adjustment	2005–002	Cundiff.
VII	Removal of Sanctions Against Certain European Union Member States (Interim)	2005–045	Clark.
VIII	Free Trade Agreements Morocco (Interim)	2006–001	Clark.
IX	Fast Payment Procedures	2004–031	Olson.
X	Technical Amendment.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–09 amends the FAR as specified below:

Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2004–007)

This final rule amends the FAR to require contracting officers to make solicitation-related information that requires limited availability or distribution available to offerors electronically via the Federal Technical Data Solution (FedTeDS), unless certain exceptions apply. FedTeDS provides secure, user identification and password protected access to solicitation-related data that should not be made available to the public on the Governmentwide Point of Entry (GPE) Web site.

Item II—Definition of Information Technology (FAR Case 2004–030)

This final rule adopts without change the interim rule which amended FAR 2.101(b) by revising the definition for ''information technology'' to reflect changes to the definition resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108–199 permanently revises the term ''information technology,'' which is defined at 40 U.S.C. 11101, to add ''analysis'' and ''evaluation'' and to clarify the term ''ancillary equipment.''

Item III—OMB Circular A–76 (FAR Case 2004–021)

This final rule amends FAR Subpart 7.3 to provide language that is consistent with OMB Circular A–76 (Revised), *Performance of Commercial Activities*, dated May 29, 2003. In addition, it provides two new provisions that inform potential offerors of the procedures the Government will follow for streamlined and standard competitions, as they are defined in the Circular.

Item IV—Combating Trafficking in Persons (FAR Case 2005–012)

This interim rule amends FAR Parts 12, 22 and 52 to implement the Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005. The statute (22 U.S.C. 7104(g)) requires that the contract contain a clause allowing the agency to terminate the contract without penalty if the contractor or subcontractor engage in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. The interim rule applies to contractors awarded service contracts (other than commercial service contracts under Part 12). Such contractors must develop policies to combat trafficking in persons and notify the contracting officer immediately of any information it received from any source that alleges a contract employee has engaged in conduct that violates this policy, and any actions taken against the employee pursuant to the clause.

Item V—Confirmation of HUBZone Certification (FAR Case 2005–009)

The interim rule published at 70 FR 43581, July 27, 2005 is converted to a final rule without change. The interim rule amended FAR 19.703 and the clause at 52.219–9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of subcontract awards to HUBZone small business concerns under Government contracts.

Item VI—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)

This final rule adopts, without change, an interim rule that amended the FAR to cancel the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change was required because the statutory authority for the adjustments had expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item VII—Removal of Sanctions Against Certain European Union Member States (FAR Case 2005–045)

This interim rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement (WTO GPA). These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

Item VIII—Free Trade Agreements - Morocco (FAR Case 2006–001)

This interim rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreement. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is $193,000 for supplies and services, $7,407,000 for construction.

Item IX—Fast Payment Procedures (FAR Case 2004–031)

This amendment permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked ''Fast Pay'', provided the contract includes the ''Fast Payment Procedure'' clause. If the Fast Payment clause is in the contract, such unmarked invoices will no longer be rejected. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices ''No Receiving Report Prepared.''

X—Technical Amendment

An editorial change is made at FAR 19.1005(a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry ''541310'' the word ''or''.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–09 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–09 is effective May 19, 2006, except for Items II, IV, V, VI, VII, VIII, and X which are effective April 19, 2006.

Dated: April 8, 2006.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: April 12, 2006.

Roger D. Waldron,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: April 5, 2006.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 06–3677 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, and 7

[FAC 2005–09; FAR Case 2004–007; Item I; Docket FAR–2006–0020]

RIN 9000–AK08

Federal Acquisition Regulation; FAR Case 2004–007, Federal Technical Data Solution (FedTeDS)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require contracting officers to use the Federal Technical Data Solution (FedTeDS) for electronic posting of solicitation-related materials that require control over availability or distribution unless certain exceptions apply.

DATES: Effective Date: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2005–09, FAR case 2004–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 63436 on November 1, 2004. The 60-day comment period for the proposed rule ended January 3, 2005. Sixteen comments were received from seven commenters. Some of the comments merely agreed with the concept of FedTeDS, others pointed out areas of concern. The substantive comments are discussed below.

Public Comments

1. *Comment:* FedTeDS will reduce competition on typical large construction projects. By restricting document access to those who are registered in CCR and have an access code, the use of FedTeDS will result in

reduced interest in the project and reduced competition.

Council's response: In keeping with the President's Management Agenda and the eGov initiative, making FedTeDS use mandatory for solicitation-related documents that require limited availability or distribution will better secure that information and eliminate the use of duplicative and less secure document hosting systems. There has been no noticeable reduction in interest or competition where vendors have been required to register and use FedTeDS to access solicitation information. FedTeDS provides tools for vendors to customize their environment, track information, and reduce unnecessary paper handling.

2. *Comment:* The construction industry standard is for plans and specifications to be viewable in plan rooms and on the internet. Others, such as plan rooms and printing companies, are likely to distribute FedTeDS materials publicly without the Government's knowledge.

Council's response: Those who access and download FedTeDS information have an obligation to assure continued control over that information. The FedTeDS program staff is working with plan rooms to explore ways that the security provided by FedTeDS can be applied in a similar manner by plan rooms wishing to distribute the information outside FedTeDS.

3. *Comment:* The use of FedTeDS should be optional, not mandatory. Optional use will allow agencies to maintain and develop similar websites. Agencies should be free to use or develop any mechanism they choose to secure solicitation related information.

Council's response: As part of the Integrated Acquisition Environment, the objective of FedTeDS is to carry out the President's Management Agenda and the eGov initiative to eliminate duplicative and redundant systems. Agencies should not be compelled to choose among multiple mechanisms for securing solicitation-related data. Vendors and other interested parties should not be compelled to understand and adapt to an array of mechanisms and Web site addresses used to secure solicitation-related information. FedTeDS provides a single, secure system and Web site for Governmentwide use in controlling access and distribution of solicitation-related documents.

4. *Comment:* FedTeDS functionality will be included in the Governmentwide Point of Entry (GPE) FedBizOpps system. This will eliminate the need for FedTeDS as a separate system.

Council's response: The inclusion of FedTeDS functionality in FedBizOpps is an optional requirement in the solicitation for replacement of FedBizOpps. Once the contract has been awarded, the expectations, plans and anticipated deliverable dates for inclusion of FedTeDS functionality in FedBizOpps will be known. Until the new FedBizOpps system and its FedTeDS-like functionality become operational, FedTeDS remains a proven and useful system for Governmentwide use.

5. *Comment:* The FAR amendment to mandate the use of FedTeDS will limit the Government's ability to enhance systems and leverage new technologies.

Council's response: The comment is too vague to adequately address the real concern.

6. *Comment:* The language proposed for FAR 5.102 is confusing and redundant. The language should be changed to be more clear and concise.

Council's response: We concur that the proposed language for FAR 5.102 is confusing and contains redundancies. We have revised the applicable language accordingly.

7. *Comment:* The amendment should contain a definition for ''sensitive but unclassified information.'' This term is in wide use among agencies and may be useful in determining what information should be posted on FedTeDS.

Council's response: The industry terminology for ''sensitive but unclassified information'' is changing to unclassified, sensitive information. This term is consistent with the Computer Security Act of 1987, where ''sensitive information'' refers to any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy. Furthermore, the Act states that the head of a Federal agency may employ standards for the cost effective security and privacy of sensitive information in a Federal computer system within or under the supervision of that agency. FedTeds has ''Sensitive but Unclassified'' compliance requirements as part of accessing any information in the system. The Councils will work with program officials to have the terminology reviewed and updated as appropriate.

8.*Comment:* The Governmentwide Point of Entry (GPE), not FedTeDS, should be used to distribute all solicitation related materials.

Council's response: Currently, the GPE does not contain the functionality needed to control the availability or distribution of solicitation-related documents. Until the GPE is upgraded to provide the required functionality, FedTeDS will be used to provide the required functionality.

9. *Comment:* Use of FedTeDS should be made mandatory, not optional. Mandatory use will reduce the need for agencies to maintain similar websites.

Council's response: We agree. The use of FedTeDS is being made mandatory with a few necessary exceptions. Those exceptions are the same used to advertise and distribute solicitations on the GPE.

10. *Comment:* The proposed amendment does not cover vendors that are exempt from registering in CCR, such as foreign vendors who may be interested in work to be performed outside the U.S.

Council's Response: FedTeDS requires all vendors to be registered in CCR and FedTeDS in order to gain access to FedTeDS. Vendors who are unable to register, or who are exempt from registration in CCR, may contact the contracting officer directly to receive the solicitation-related documents.

11. *Comment:* Are the exceptions at FAR 5.102 meant to address all of the exceptions to CCR registration found at FAR 4.1102?

Council's response: No. FAR 4.1102 addresses exceptions to the requirement for prospective vendors to register in CCR. Vendors who are excepted from CCR registration under FAR 4.1102 may contact the contracting officer directly to obtain the solicitation-related documents posted on FedTeDS. The FAR 5.102 exceptions address the requirement to post on FedTeDS solicitation-related documents that require control over access and distribution as opposed to posting those documents on the GPE.

12. *Comment:* The use of the MPIN (unique CCR vendor identification) for FedTeDS access poses a security risk for vendors. A company may not wish to share their MPIN with individual employees because the MPIN is also used to access competitively sensitive past performance information contained in the Past Performance Information Retrieval System (PPIRS) or other Government systems that may require the MPIN for access. While individual employees may be assigned individual FedTeDS accounts, those individuals may then distribute or otherwise handle FedTeDS information in a manner that is inconsistent with company policy.

Council's response: Under both CCR and FedTeDS, only the company point

of contact knows the MPIN. The point of contact uses the MPIN to register one or more employees in FedTeDS. Registration consists of identifying each employee designated to have FedTeDS access and assigning them a unique user identification and password for use in accessing FedTeDS. The employees then use their assigned user identification and password to log into FedTeDS. Thus, only the company point of contact has access to the MPIN.

13. *Comment:* Contracting officers may use FedTeDS registration inappropriately. In at least one case, oral proposal presenters were required to be registered in FedTeDS in order to be assigned an orals appointment time. Some solicitations and materials are posted on FedTeDS that are in no way sensitive.

Council's response: The Government may use its discretion in determining what needs to be included in any procurement and posted on FedBizOpps and in FedTeDS.

FedTeDS has proved to be a useful tool to control access and distribution of solicitation-related documents where control is deemed necessary by the Government. Training materials will be developed for contracting officers to assure proper use of FedTeDS.

14. *Comment:* Granting employees access to FedTeDS using the MPIN may inadvertently violate International Traffic in Arms (ITAR) regulations by weakening central control over access and distribution of export controlled materials.

Council's response: The Councils share the commenter's concern and have revised the proposed rule to address the export control issue. As indicated in our response to Comment 12, the company point of contact does not have to disclose the company MPIN to other employees to register them in FedTeDS. As indicated the company point of contact controls which employees receive a user identification and password.

15. *Comment:* Once an individual is registered in FedTeDS, they start getting notices of other solicitations that are only posted in FedTeDS. These employees may download these solicitations and distribute or otherwise mishandle them without the company knowing.

Council's response: This comment is similar to comment 12 and 14. Anyone who gains access to FedTeDS information may then redistribute that information in an uncontrolled manner. Control of employee behavior and potential liability for employee actions is a matter for internal company management and concern.

Therefore, this final rule amends FAR Parts 2, 5 and 7 to require contracting officers to provide solicitation-related information that requires limited availability or distribution to offerors electronically via the FedTeDS system unless certain exceptions apply.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses; therefore, an Initial Regulatory Flexibility Analysis has not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 5, and 7 in accordance with 5. U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–09, FAR case 2004–007), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 5, and 7

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 5, and 7 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 5, and 7 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITION OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order the definition ''Federal Technical Data Solution (FedTeDS)'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Federal Technical Data Solution (FedTeDS) is a web application integrated with the Governmentwide Point of Entry (GPE) and the Central Contractor Registration (CCR) system for distribution of information related to contract opportunities. It is designed to enhance controls on the access and distribution of solicitation requirements or other documents when controls are necessary according to agency procedures. FedTeDS may be found on the Internet at *https://www.fedteds.gov*.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.102 by revising paragraph (a)(1); redesignating paragraph (a)(4) as (a)(5), and adding new paragraph (a)(4); revising newly redesignated (a)(5); and by removing from paragraph (b) introductory text ''(a)(4)'' and adding ''(a)(5)'' in its place. The revised text reads as follows:

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(5) of this section, the contracting officer must make available through the GPE solicitations synopsized through the GPE, including specifications, technical data, and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at *http://www.fedbizopps.gov.*

* * * * *

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (*e.g.*, technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the Federal Technical Data Solution (FedTeDS) unless an exception in paragraph (a)(5) of this section applies. When FedTeDS is used, it shall be used in conjunction with the GPE to meet the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE, or make other information available through FedTeDS as required in paragraph (a)(4) of this section, when—

(i) Disclosure would compromise the national security (e.g., would result in

disclosure of classified information, or information subject to export controls) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access to the solicitation through the GPE;

(iii) Agency procedures specify that the use of FedTeDS does not provide sufficient controls for the information to be made available and an alternative means of distributing the information is more appropriate; or

(iv) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

* * * * *

■ 4. Amend section 5.207 by revising paragraph (c)(18) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(18) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, such as FedTeDS (*https://www.fedteds.gov*), from which the technical data may be obtained.

* * * * *

PART 7—ACQUISITION PLANNING

■ 5. Amend section 7.105 by revising paragraph (b)(15) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(15) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors. Indicate which information that requires additional controls to monitor access and distribution (*e.g.*, technical specifications, maps, building designs, schedules, etc.), as determined by the agency, is to be posted via the Federal Technical Data Solution (FedTeDS) (see 5.102(a)).

* * * * *

[FR Doc. 06–3678 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005–09; FAR Case 2004–030; Item II; Docket FAR–2006–0020]

RIN 9000–AK21

Federal Acquisition Regulation; FAR Case 2004–030, Definition of Information Technology

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert to a final rule without change, an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of ''Information technology'' to reflect the changes to the definition resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108–199 permanently revises the term ''Information technology'', which is defined at 40 U.S.C. 11101, to add ''analysis and evaluation'' and to clarify the term ''ancillary equipment.''

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–09, FAR case 2004–030. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 43577 on July 27, 2005. The interim rule revised the definition of ''Information technology'' to reflect the changes to the definition resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004. The new language at Section 535(b) of Division F of Public Law 108–199 permanently revises the term ''Information technology'', which is defined at 40 U.S.C. 11101, to add ''analysis and evaluation'' and to clarify the term ''ancillary equipment.''

The Councils received one public comment in response to the interim rule. The commenter indicated that the addition of the words ''analysis, evaluation'' was omitted from the changes to the definition of information technology in FAR 2.101(b) in the **Federal Register** on page 43578. Although not reprinted in full FAR text of the definition of information technology, change instruction 2 of the **Federal Register** notice added ''analysis, evaluation'' to the two appropriate portions of the definition. The Code of Federal Regulations text was changed in accordance with this instruction, and no further changes are required.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only revises and clarifies the definition for information technology resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004. This is a minor technical change to the definition. We did not receive any comments on this issue from small business concerns or other interested parties.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 2

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 2, which was published in the **Federal Register** at 70

FR 43577, July 27, 2005, is adopted as a final rule without change.

[FR Doc. 06–3679 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 14, 37, and 52

[FAC 2005–09; FAR Case 2004–021; Item III; Docket FAR–2006–0020]

RIN 9000–AK25

Federal Acquisition Regulation; FAR Case 2004–021, OMB Circular A–76

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide language that is consistent with OMB Circular A–76 (Revised), *Performance of Commercial Activities*, dated May 29, 2003.

DATES: *Effective Date:* May 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2005–09, FAR case 2004–021. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 43107, July 26, 2005. One commenter submitted two comments in response. The first comment is that ''7.302(a)(4) [sic] and 52.207–1(d) reference 'contest(s)'... Should that be protests?'' The word ''contest'' was meant, not ''protest.'' The A–76 Circular created an additional procedure called a ''contest'', discussed at Attachment B, paragraph F.

The second comment says that there is a conflict between the language in paragraph (c) of the provision at FAR 52.207–1 which states that, if a performance decision resulting from standard competition favors a private sector offeror, a contract will be awarded, and paragraph (c) of the provision at FAR 52.207–2 which states that, if a performance decision resulting from a streamlined competition favors private sector performance, the contracting officer will either award a contract or issue a competitive solicitation. The Councils see no conflict and note that the language is consistent with the Circular. In a streamlined competition, an agency may estimate the cost of private sector performance by conducting market research or by soliciting cost proposals in accordance with the FAR (OMB Circ. A–76, Att. B, para. C.1.b.). If the performance decision favors private sector performance, the contracting officer may either award a contract resulting from the solicitation of cost proposals or issue a competitive solicitation to determine a private sector provider (OMB Cir. A–76, Att. B, para. C.3.d.(1).) Therefore, the final rule adopts the proposed rule language without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 5, 7, 14, 37, and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 5, 7, 14, 37, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 5, 7, 14, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b), in the definition ''Inherently governmental function'', by removing the last sentence in paragraph (2).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.205 by revising paragraph (e) to read as follows:

5.205 Special situations.

* * * * *

(e) *Public-private competitions under OMB Circular A–76.* (1) The contracting officer shall make a formal public announcement for each streamlined or standard competition. The public announcement shall include, at a minimum, the agency, agency component, location, type of competition (streamlined or standard), activity being competed, incumbent service providers, number of Government personnel performing the activity, name of the Competitive Sourcing Official, name of the contracting officer, name of the Agency Tender Official, and projected end date of the competition.

(2) The contracting officer shall announce the end of the streamlined or standard competition by making a formal public announcement of the performance decision. (See OMB Circular A–76.)

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.105 by revising paragraph (b)(9) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b)* * *

(9) *Inherently governmental functions.* Address the consideration given to Subpart 7.5.

* * * * *

■ 5. Revise Subpart 7.3 to read as follows:

Subpart 7.3—Contractor Versus Government Performance

Sec.

7.300 [Reserved]

7.301 Definitions.

7.302 Policy.

7.303 [Reserved]
7.304 [Reserved]
7.305 Solicitation provisions and contract clause.

7.300 [Reserved]

7.301 Definitions.

Definitions of ''inherently governmental activity'' and other terms applicable to this subpart are set forth at Attachment D of the Office of Management and Budget Circular No. A–76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (the Circular).

7.302 Policy.

(a) The Circular provides that it is the policy of the Government to—

(1) Perform inherently governmental activities with Government personnel; and

(2) Subject commercial activities to the forces of competition.

(b) As provided in the Circular, agencies shall—

(1) Not use contractors to perform inherently governmental activities;

(2) Conduct public-private competitions in accordance with the provisions of the Circular and, as applicable, these regulations;

(3) Give appropriate consideration relative to cost when making performance decisions between agency and contractor performance in public-private competitions;

(4) Consider the Agency Tender Official an interested party in accordance with 31 U.S.C. 3551 to 3553 for purposes of filing a protest at the Government Accountability Office; and

(5) Hear contests in accordance with OMB Circular A–76, Attachment B, Paragraph F.

(c) When using sealed bidding in public-private competitions under OMB Circular A–76, contracting officers shall not hold discussions to correct deficiencies.

7.303 [Reserved]

7.304 [Reserved]

7.305 Solicitation provisions and contract clause.

(a) The contracting officer shall, when soliciting offers and tenders, insert in solicitations issued for standard competitions the provision at 52.207–1, Notice of Standard Competition.

(b) The contracting officer shall, when soliciting offers, insert in solicitations issued for streamlined competitions the provision at 52.207–2, Notice of Streamlined Competition.

(c) The contracting officer shall insert the clause at 52.207–3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a public-private competition is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

7.500 [Amended]

■ 6. Amend section 7.500 by removing the last sentence.

PART 14—SEALED BIDDING

14.203–2 [Amended]

■ 7. Amend section 14.203–2 by removing the paragraph designation ''(a)'' and by removing paragraph (b).

PART 37—SERVICE CONTRACTING

■ 8. Amend section 37.503 by revising paragraph (c) to read as follows:

37.503 Agency-head responsibilities.

* * * * *

(c) Specific procedures are in place before contracting for services to ensure that inherently governmental functions are performed by Government personnel; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Revise section 52.207–1 to read as follows:

52.207–1 Notice of Standard Competition.

As prescribed in 7.305(a), insert the following provision:

NOTICE OF STANDARD COMPETITION (MAY 2006)

(a) This solicitation is part of a standard competition under Office of Management and Budget Circular No. A–76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter ''the Circular''), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate private sector offers, the agency tender, and public reimbursable tenders, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this standard competition will be publicly announced in accordance with the Circular. If the performance decision favors a private sector offeror, a contract will be awarded. If the performance decision favors an agency or a public reimbursable tender, the Contracting Officer shall establish, respectively, either a Most Efficient Organization letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(d) As provided in the Circular, directly interested parties may file contests, which are governed by the procedures in Federal Acquisition Regulation 33.103. Until resolution of any contest, or the expiration of the time for filing a contest, only legal agents for directly interested parties shall have access to the certified standard competition form, the agency tender, and public reimbursable tenders.

(End of provision)

■ 10. Revise section 52.207–2 to read as follows:

52.207–2 Notice of Streamlined Competition.

As prescribed in 7.305(b), insert the following provision:

NOTICE OF STREAMLINED COMPETITION (MAY 2006)

(a) This solicitation is part of a streamlined competition under Office of Management and Budget Circular No. A–76 (Revised), Performance of Commercial Activities, dated May 29, 2003 (hereafter ''the Circular''), to determine whether to accomplish the specified work under contract or by Government performance.

(b) The Government will evaluate the cost of private sector and Agency or public reimbursable performance, as provided in this solicitation and the Circular.

(c) A performance decision resulting from this streamlined competition will be publicly announced in accordance with the Circular. If the performance decision favors private sector performance, the Contracting Officer shall either award a contract or issue a competitive solicitation for private sector offers. If the performance decision favors Agency or public reimbursable performance, the Agency shall establish, respectively, either a letter of obligation or a fee-for-service agreement, as those terms are defined in the Circular.

(End of provision)

52.207–3 [Amended]

■ 11. Amend section 52.207–3 by revising the date of the clause to read ''(MAY 2006)''; and by removing from paragraphs (a) and (b) of the clause the word ''employees'' and adding ''personnel'' in its place.

[FR Doc. 06–3689 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 22, and 52

[FAC 2005–09; FAR Case 2005–012; Item IV; Docket FAR–2006–0020]

RIN 9000–AK31

Federal Acquisition Regulation; FAR Case 2005–012, Combating Trafficking in Persons

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts must include a provision that authorizes the department or agency to terminate the contract, if the Contractor or any subcontractor engages in trafficking in persons.

DATES: *Effective Date:* April 19, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 19, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–09, FAR case 2005–012, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2005–012@gsa.gov*. Include FAC 2005–09, FAR case 2005–012 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–09, FAR case 2005–012, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219–1813. Please cite FAC 2005–09, FAR case 2005–012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005, addresses the victimization of countless men, women, and children in the United States and abroad. The United States believes that its contractors can help combat trafficking in persons. 22 U.S.C. 7104(g) requires that the contract contain a clause allowing the agency to terminate the contract if the contractor or subcontractor engages in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. For this purpose, ''contractors'' includes the contractor employees.

In order to implement the law, the Councils have added FAR Subpart 22.17 with an associated clause at 52.222–50 which address combating trafficking in persons.

The interim rule applies to contractors awarded service contracts (other than commercial service contracts under FAR Part 12). Such contractors must develop policies to combat trafficking in persons. The clause lists remedies, including termination, that may be imposed on contractors that support or promote or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking in persons, the procurement of commercial sex acts, or use of forced labor.

This is a significant regulatory action and, therefore, is subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to the acquisition of services (except commercial services under FAR Part 12). Furthermore, the impact will be minimal unless the contractor or its employees engage in forms of trafficking in persons or commercial sex acts that are illegal within the U.S. Although not considered significant, additional impact may be associated with contract performance in counties/states where certain commercial sex acts are legal. However, the termination authorities at 22 U.S.C. 7104(g) apply to Government contracts performed in these areas. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 12, 22, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–09, FAR case 2005–012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, the FAR Secretariat has forwarded a request for approval of a new information collection requirement concerning OMB Number 9000–00XX to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The clause at 52.222–50 requires the contractor to notify the contracting officer of any information alleging employee misconduct under the clause, and any actions taken against employees pursuant to the clause.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 250
Responses per respondent: 1
Total annual responses: 250
Preparation hours per response: 1
Total response burden hours: 250

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 19, 2006 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street,

NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–00XX, Combating Trafficking in Persons (FAR Case 2005–012), in all correspondence.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, Combating Trafficking in Persons (FAR Case 2005–012), in all correspondence.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108–193), and the Trafficking Victims Protection Reauthorization Act of 2005 (Pub. L. 109–164) were effective upon enactment. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12, 22, and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 12.503 by revising the section heading and adding paragraph (a)(6) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial services.

(a)* * *

(6) 22 U.S.C. 7104, Trafficking Victims Protection Reauthorization Act of 2003 (see 22.1705).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Add Subpart 22.17 to read as follows:

Subpart 22.17—Combating Trafficking in Persons

Sec.

22.1700 Scope of subpart.
22.1701 Applicability.
22.1702 Definitions.
22.1703 Policy.
22.1704 Violations and remedies.
22.1705 Contract clause.

22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. 7104 as amended by Pub. L. No. 108–193 and 109–164.

22.1701 Applicability.

This subpart applies to acquisitions of all services except for commercial services under Part 12.

22.1702 Definitions.

As used in this subpart—

Coercion means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of a contractor directly engaged in the performance of work under a Government contract, including all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

22.1703 Policy.

Contracts for services (except commercial services under Part 12) shall—

(a) Prohibit any activities on the part of the contractor or contractor employees that support or promote—

(1) Severe forms of trafficking in persons;

(2) The procurement of commercial sex acts; or

(3) The use of forced labor in the performance of the contract;

(b) Require contractors to develop policies to combat severe forms of trafficking in persons, the procurement of commercial sex acts, and use of forced labor; and

(c) Impose suitable remedies, including termination, on contractors that support or promote or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking in persons, the procurement of commercial sex acts, and use of forced labor.

22.1704 Violations and remedies.

(a) *Violations.* The Government may impose the remedies set forth in paragraph (b) of this section if—

(1) The contractor or any contractor employee engages in severe forms of trafficking in persons;

(2) Any contractor employee procures a commercial sex act during the period of performance of the contract;

(3) The contractor or any contractor employee uses forced labor in the performance of the contract; or

(4) The contractor fails to comply with the requirements of the clause at 52.222–50, Combating Trafficking in Persons.

(b) *Remedies.* After determining in writing that adequate evidence exists to suspect any of the violations at paragraph (a) of this section, the contracting officer may pursue any of the remedies specified in paragraph (e) of the clause at 52.222–50, Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the Government.

22.1705 Contract clause.

Insert the clause at 52.222–50, Combating Trafficking in Persons, in all solicitations and contracts for the acquisition of services (except commercial services under Part 12).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 52.222–50 to read as follows:

52.222–50 Combating Trafficking in Persons.

As prescribed in 22.1705, insert the following clause:

COMBATING TRAFFICKING IN PERSONS (APR 2006)

(a) *Definitions.* As used in this clause—

Coercion means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of a Contractor directly engaged in the performance of work under a Government contract, including all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means a Contractor that has no more than one employee including the Contractor.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding Contractors and Contractor employees that engage in or support severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor. During the performance of this contract, the Contractor shall ensure that its employees do not violate this policy.

(c) *Contractor requirements.* The Contractor, if other than an individual, shall establish policies and procedures for ensuring that its employees do not engage in or support severe forms of trafficking in persons, procure commercial sex acts, or use forced labor in the performance of this contract. At a minimum, the Contractor shall—

(1) Publish a statement notifying its employees of the United States Government's zero tolerance policy described in paragraph (b) of this clause and specifying the actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment;

(2) Establish an awareness program to inform employees about—

(i) The Contractor's policy of ensuring that employees do not engage in severe forms of trafficking in persons, procure commercial sex acts, or use forced labor;

(ii) The actions that will be taken against employees for violation of such policy;

(iii) Regulations applying to conduct if performance of the contract is outside the U.S., including—

(A) All host country Government laws and regulations relating to severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor; and

(B) All United States laws and regulations on severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor which may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261–3267), and 18 U.S.C 3271, Trafficking in Persons Offenses Committed by Persons Employed by or Accompanying the Federal Government Outside the United States;

(3) Provide all employees directly engaged in performance of the contract with a copy of the statement required by paragraph (c)(1) of this clause and obtain written agreement from the employee that the employee shall abide by the terms of the statement; and

(4) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the contracting officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a contract employee has engaged in conduct that violates this policy; and

(2) Any actions taken against employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c) or (d) of this clause may render the Contractor subject to—

(1) Required removal of a Contractor employee or employees from the performance of the contract;

(2) Required subcontractor termination;

(3) Suspension of contract payments;

(4) Loss of award fee for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts for the acquisition of services.

[FR Doc. 06–3681 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–09; FAR Case 2005–009; Item V; Docket FAR–2006–0020]

RIN 9000–AK22

Federal Acquisition Regulation; FAR Case 2005–009, Confirmation of HUBZone Certification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt as final without change, the interim rule amending the Federal Acquisition Regulation (FAR) to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et. seq.*, as amended.

DATES: *Effective Date*: April 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–09, FAR case 2005–009. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 43581, July 27, 2005, with request for comments. No public comments were received on the interim rule. The Councils agreed to convert the interim rule to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this final rule will have a positive effect on small businesses who are certified HUBZone small business concerns and are losing subcontracting opportunities taken by another company falsely claiming to be a certified HUBZone small business concern.

The FAR Secretariat has submitted a copy of the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

Final Regulatory Flexibility Analysis

A Department of Defense Inspector General report D–2003–019 ''DoD Contractor Subcontracting With Historically Underutilized Business Zones (HUBZones) Small Businesses'' found that prime contractors were overstating their HUBZone accomplishments because subcontractor's representations were not being verified. This final rule revises the Federal Acquisition Regulation to require a prime contractor to verify that its HUBZone subcontractors are certified as required by 15 U.S.C. 632 *et seq.*, as amended.

Interested parties may obtain a copy from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director,Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 19 and 52, which was published at 70 FR 43581, July 27, 2005, is adopted as a final rule without change.

[FR Doc. 06–3682 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–09; FAR Case 2005–002; Item VI; Docket FAR–2006–0020]

RIN 9000–AK28

Federal Acquisition Regulation; FAR Case 2005–002; Expiration of the Price Evaluation Adjustment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt as final, without change, the interim rule published in the **Federal Register** at 70 FR 57462, September 30, 2005, to cancel for civilian agencies (except NASA and Coast Guard) the Small Disadvantaged Business (SDB) price evaluation adjustment which was originally authorized under the Federal Acquisition Streamlining Act of 1994. Civilian agencies (except NASA and Coast Guard) are not authorized to apply the price evaluation adjustment to their acquisitions.

DATES: *Effective Date*: April 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAC 2005–09, FAR case 2005–002. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule at 70 FR 57462 on September 30, 2005, to cancel for civilian agencies (except NASA and Coast Guard) the Small Disadvantaged Business (SDB) price evaluation adjustment which was originally authorized under the Federal Acquisition Streamlining Act of 1994. The Councils received no comments on the interim rule. Therefore, the Councils have adopted the interim rule as a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

Final Regulatory Flexibility Analysis

The small disadvantaged business price evaluation adjustment for civilian agencies other than National Aeronautics and Space Administration (NASA) and Coast Guard, originally authorized under the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, Sec. 7102) expired. This provision, as implemented in Federal Acquisition Regulation, authorized agencies to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. As a result of its expiration for civilian agencies with the exception of NASA and Coast Guard, these agencies have no statutory authority to apply the small disadvantaged business price evaluation adjustment to their acquisitions.

This change will have a significant economic impact on a substantial number of

small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* because civilian agencies (excluding NASA and Coast Guard) will no longer have the authority to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. However, not all of these small disadvantaged businesses will be affected because the price evaluation adjustment is authorized only for specific NAICs codes. The price evaluation adjustment is still authorized for the Department of Defense, U.S. Coast Guard, and National Aeronautics and Space Administration. The rule will positively impact certain large and small entities in specific NAICS codes competing with certain small disadvantaged business concerns in competitive acquisitions wherein the price evaluation adjustment could have applied if the authority had not expired. There will be a negative impact on a number of small disadvantaged businesses in competitive acquisitions for certain NAICS codes wherein the price evaluation adjustment authority could have applied.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director,Contract Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 19 and 52, which was published at 70 FR 57462, September 30, 2005, is adopted as a final rule without change.

[FR Doc. 06–3683 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-09; FAR Case 2005-045; Item VII Docket FAR–2006–0020]

RIN 9000–AK43

Federal Acquisition Regulation; Removal of Sanctions Against Certain European Union Member States

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to remove the sanctions against certain European Union (EU) countries.

DATES: *Effective Date:* April 19, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 19, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–09, FAR case 2005–045, by any of the following methods:

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

• Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: *farcase.2005–045@gsa.gov*. Include FAC 2005–09, FAR case 2005–045 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–09, FAR case 2005–045, in all correspondence related to this case. All comments received will be posted without change to*http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219–1813. Please cite FAC 2005–09, FAR case 2005–045. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The USTR has issued a determination removing the sanctions against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom (71 FR 10093). These sanctions were put in place in 1993 and apply only to acquisitions not covered by the WTO GPA (*i.e.*, end products with an estimated acquisition value less than $193,000, construction with an estimated acquisition value less than $7,407,000, or services that are excluded from coverage by the WTO GPA). These sanctions did not apply to acquisitions by the Department of Defense.

This interim rule removes FAR Subpart 25.6, Trade Sanctions, and the clauses at FAR 52.225–15, Sanctioned European Union Country End Products, and 52.225–16, Sanctioned European Union Country Services, and other associated references in FAR Part 25.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.*, because this rule only removes sanctions from end products from sanctioned EU countries with an estimated acquisition value less than $193,000, sanctioned EU country construction with an estimated acquisition value less than $7,407,000, or sanctioned EU country services that are excluded from coverage by the World Trade Organization Government Procurement Agreement. These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense.Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must

submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–09, FAR case 2005–045), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the removal of these sanctions went into effect March 1, 2006. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.001 [Amended]

■ 2. Amend section 25.001 by removing paragraph (d).

25.002 [Amended]

■ 3. Amend section 25.002 in the table following the introductory paragraph by removing the entry ''25.6 Trade Sanctions'' and its corresponding line item entries and adding ''25.6 [Reserved]'' in its place.

25.003 [Amended]

■ 4. Amend section 25.003 by removing the definitions ''Sanctioned European Union country construction'', ''Sanctioned European Union country end product'', ''Sanctioned European Union country services'', and ''Sanctioned European Union member state''.

■ 5. Amend section 25.501 by revising paragraph (c) to read as follows:

25.501 General.

* * * * *

(c) Must identify and reject offers of end products that are prohibited in accordance with Subpart 25.7; and

* * * * *

25.502 [Amended]

■ 6. Amend section 25.502 in paragraph (a)(1) by removing the phrase ''sanctioned (see Subpart 25.6),''.

■ 7. Amend section 25.503 by revising paragraph (a)(1) to read as follows:

25.503 Group offers.

(a) * * *

(1) If any part of the award would consist of prohibited end products (see Subpart 25.7); or

* * * * *

Subpart 25.6 [Reserved]

■ 8. Remove and reserve Subpart 25.6.

25.1103 [Amended]

■ 9. Amend section 25.1103 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 10. Amend section 52.212–5 by revising the date of the clause to read ''(April, 2006)''; and in paragraph (b) of the clause by removing and reserving paragraphs (b)(27) and (b)(28).

52.225–15 and 52.225–16 [Reserved]

■ 11. Remove and reserve sections 52.225–15 and 52.225–16.

[FR Doc. 06–3684 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–09; FAR Case 2006–001; Item VIII; Docket FAR–2006–0020]

RIN 9000–AK45

Federal Acquisition Regulation; FAR Case 2006–001, Free Trade Agreements—Morocco

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the new Free Trade Agreement with Morocco as approved by Congress (Public Law 108–302). This Free Trade Agreement went into effect January 1, 2006.

DATES: *Effective Date:* April 19, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 19, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–09, FAR case 2006–001, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2006–001@gsa.gov*. Include FAC 2005–09, FAR case 2006–001 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–09, FAR case 2006–001, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219–1813. Please cite FAC 2005–09, FAR case 2006–001. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Part 25 and the clauses at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, FAR 52.225–5, Trade Agreements, FAR 52.225–11, Buy American Act—Construction Materials under Trade Agreements, and FAR 52.225–12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, to implement the new Free Trade Agreement with Morocco, as approved by Congress (Public Law 108–302). This Free Trade Agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from Morocco, and specifies procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Morocco, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610.

Interested parties must submit such comments separately and cite 5 U.S.C. 601, *et seq.* (FAC 2005–09, FAR case 2006–001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0025 and 9000–0141.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Free Trade Agreement with Morocco, as approved by Congress (Public Law 108–302), went into effect January 1, 2006. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 2. Amend section 25.003, in paragraph (2) of the definition ''Designated country'' and the definition ''Free Trade Agreement country'' by adding ''Morocco,'' after ''Mexico,''.

■ 3. Amend section 25.400 by—

■ a. Removing from the end of paragraph (a)(2)(iii) the word ''and'';

■ b. Adding in paragraph (a)(2)(iv) the word ''and'' at the end of the paragraph; and

■ c. Adding a new paragraph (a)(2)(v) to read as follows:

25.400 Scope of Subpart.

(a) * * *

(2) * * *

(v) Morocco FTA (The United States—Morocco Free Trade Agreement, as approved by Congress in the United States—Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302));

* * * * *

25.401 [Amended]

■ 4. Amend section 25.401 in paragraph (b), in the table heading, by removing from the fifth column the text ''Australia FTA'' and adding ''Australia and Morocco FTA'' in its place.

■ 5. Amend section 25.402 by revising the table following paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	$193,000	$193,000	$7,407,000
FTAs			
Australia FTA	64,786	64,786	7,407,000
Chile FTA	64,786	64,786	7,407,000
Morocco FTA	193,000	193,000	7,407,000
NAFTA			
–Canada	25,000	64,786	8,422,165
–Mexico	64,786	64,786	8,422,165
Singapore FTA	64,786	64,786	7,407,000
Israeli Trade Act	$50,000	-	-

■ 6. Amend section 25.1102 by revising the second sentence of paragraph (c)(3) to read as follows:

25.1102 Acquisition of construction.

* * * * *

(c) * * *

(3) * * * List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, unless the excepted foreign construction material is from a designated country other than Mexico.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 7. Amend section 52.212–5 by revising the date of the clause to read ''(APR 2006)''; and by removing from paragraphs (b)(24)(i) and (b)(25) ''(JAN 2006)'' and adding ''(APR 2006)'' in its place.

52.225–3 [Amended]

■ 8. Amend section 52.225–3 by revising the date of the clause to read ''(APR 2006)''; and in paragraph (c) by adding to the first sentence ''(except the Morocco FTA)'' after ''FTAs''.

52.225–5 [Amended]

■ 9. Amend section 52.225–5 by revising the date of the clause to read ''(APR 2006)''; and in paragraph (a), in the definition ''Designated country'' by adding to paragraph (2) ''Morocco,'' after ''Mexico,''.

52.225–11 [Amended]

■ 10. Amend section 52.225–11 by—

■ a. Revising the date of the clause;

■ b. Adding to paragraph (a), in the definition ''Designated country'' in paragraph (2) ''Morocco,'' after ''Mexico,'';

■ c. Removing from paragraph (b)(2) ''domestic,'' and adding ''domestic or'' in its place.

■ d. Amending Alternate I by—

■ 1. Revising the date of Alternate I;

■ 2. Removing from the introductory paragraph ''Australian or Chilean'' and adding ''Australian, Chilean, or Moroccan'' in its place;

■ 3. Revising the definition ''Australian or Chilean construction material''; and

■ 4. Removing from paragraphs (b)(1) and (b)(2) ''Australian or Chilean'' and adding ''Australian, Chilean, or Moroccan'' in its place.

■ The revised text reads as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ''(APR 2006)''

* * * * *

Alternate I ''(APR 2006)''. * * *

Australian, Chilean, or Moroccan construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Australia, Chile, or Morocco; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Chile, or Morocco into a new and different construction material distinct from the materials from which it was transformed.

* * * * *

52.225–12 [Amended]

■ 11. Amend section 52.225–12 by revising the date of Alternate II to read ''(APR 2006)''; and by removing from paragraphs (a), (d)(1) twice, and (d)(3) twice ''Australian or Chilean'' and adding ''Australian, Chilean, or Moroccan'' in its place.

[FR Doc. 06–3685 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–09; FAR Case 2004–031; Item IX; Docket FAR–2006–0020]

RIN 9000–AK24

Federal Acquisition Regulation; FAR Case 2004–031, Fast Payment Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising fast payment procedures. The revision permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked ''Fast Pay'' provided the contract includes the ''Fast Payment Procedure'' clause. As highlighted in the clause, if the clause is in the contract, the invoices will no longer be rejected, as is the current practice. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices ''No Receiving Report Prepared.''

DATES: Effective Date: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 2005–09, FAR case 2004–031. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule, FAR case 2004–031, at 70 FR 40279 on July 13, 2005, to obtain comments on a proposal to amend the policies and contract clause regarding Fast Pay procedures. No comments were submitted and the rule was converted to a final rule without change from the proposed rule. FAR 52.213–1, Fast Payment Procedure, is revised to permit acceptance and payment under invoices that are not prominently marked ''FAST PAY.''

This change provides the payment office flexibility to make fast payments when invoices and/or outer shipping containers are not marked ''FAST PAY.'' The change permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked ''FAST PAY'' provided the contract includes the ''Fast Payment Procedure'' clause. However, if the payment office decides to not process invoices as ''FAST PAY'' because the proper markings are not present, the payment date will be the payment date that would have applied had the ''Fast Payment Procedure'' clause not been in the contract. In this manner, an unmarked invoice will not be rejected. This change does not eliminate the requirement for the contractor to annotate an invoice ''FAST PAY;'' the contractor remains at risk that fast payment procedures will not be applied unless the invoice is annotated accordingly.

If a receiving report is not prepared, it is imperative that the invoice includes sufficient information to facilitate follow-up verification that the item was received. The FAR revision does not eliminate that requirement for such information on the invoice. However, the revision does not require the statement ''No Receiving Report Prepared'' on the invoice.

This is not a significant regulatory action and, therefore, was not subject to

review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it will have a beneficial, but small, impact. Under the prior policy and clause, small businesses which failed to follow the fast payment clause instructions to mark the invoice ''FAST PAY'' had their invoices rejected, which means they would not be paid until they sent a corrected invoice. The clause revisions mean the invoices would not have to be automatically rejected. No comments were received from small entities or other members of the public.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 52

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.213–1 by revising the date of the clause and paragraphs (c)(1)(ii), (c)(3), and (e) to read as follows:

52.213–1 Fast Payment Procedure.

* * * * *

FAST PAYMENT PROCEDURE (APR 2006)

* * * * *

(c) * * *

(1) * * *

(ii) Display prominently on the invoice ''FAST PAY.'' Invoices not prominently marked ''FAST PAY'' via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

* * * * *

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

(*1*) National stock number and/or manufacturer's part number;

(*2*) Unit of measure;

(*3*) Ship-To Point;

(*4*) Mark-For Point, if in the contract; and

(*5*) FEDSTRIP/MILSTRIP document number, if in the contract.

* * * * *

(e) *Fast pay container identification.* The Contractor shall mark all outer shipping containers ''FAST PAY.'' When outer shipping containers are not marked ''FAST PAY,'' the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

[FR Doc. 06–3686 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2005–09; Item X; Docket FAR–2006–0021]

Federal Acquisition Regulation; Technical Amendment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the Federal Acquisition Regulation (FAR) to make an editorial correction.

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–09, Technical Amendment.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

19.1005 [Amended]

■ 2. Amend section 19.1005 in paragraph (a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry ''541310'' the word ''or''.

[FR Doc. 06–3687 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2006–0023]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–09; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–09 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC

2005–09 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–09

Item	Subject	FAR case	FAR Analyst
I	Federal Technical Data Solution (FedTeDS)	2004–007	Zaffos.
II	Definition of Information Technology	2004–030	Davis.
III	OMB Circular A–76	2004–021	Zaffos.
IV	Combating Trafficking in Persons (Interim)	2005–012	Clark.
*V	Confirmation of HUBZone Certification	2005–009	Cundiff.
*VI	Expiration of the Price Evaluation Adjustment	2005–002	Cundiff.
VII	Removal of Sanctions Against Certain European Union Member States (Interim)	2005–045	Clark.
VIII	Free Trade Agreements Morocco (Interim)	2006–001	Clark.
IX	Fast Payment Procedures	2004–031	Olson.
X	Technical Amendment.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–09 amends the FAR as specified below:

Item I—Federal Technical Data Solution (FedTeDS) (FAR Case 2004–007)

This final rule amends the FAR to require contracting officers to make solicitation-related information that requires limited availability or distribution available to offerors electronically via the Federal Technical Data Solution (FedTeDS), unless certain exceptions apply. FedTeDS provides secure, user identification and password protected access to solicitation-related data that should not be made available to the public on the Governmentwide Point of Entry (GPE) website.

Item II—Definition of Information Technology (FAR Case 2004–030)

This final rule adopts without change the interim rule which amended FAR 2.101(b) by revising the definition for ''information technology'' to reflect changes to the definition resulting from the enactment of Public Law 108–199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108–199 permanently revises the term ''information technology,'' which is defined at 40 U.S.C. 11101, to add ''analysis'' and ''evaluation'' and to clarify the term ''ancillary equipment.''

Item III—OMB Circular A–76 (FAR Case 2004–021)

This final rule amends FAR Subpart 7.3 to provide language that is consistent with OMB Circular A–76 (Revised), *Performance of Commercial Activities*, dated May 29, 2003. In addition, it provides two new provisions that inform potential offerors of the procedures the Government will follow for streamlined and standard competitions, as they are defined in the Circular.

Item IV—Combating Trafficking in Persons (FAR Case 2005–012)

This interim rule amends FAR Parts 12, 22 and 52 to implement the Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005. The statute (22 U.S.C. 7104(g)) requires that the contract contain a clause allowing the agency to terminate the contract without penalty if the contractor or subcontractor engage in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. The interim rule applies to contractors awarded service contracts (other than commercial service contracts under Part 12). Such contractors must develop policies to combat trafficking in persons and notify the contracting officer immediately of any information it received from any source that alleges a contract employee has engaged in conduct that violates this policy, and any actions taken against the employee pursuant to the clause.

Item V—Confirmation of HUBZone Certification (FAR Case 2005–009)

The interim rule published at 70 FR 43581, July 27, 2005 is converted to a final rule without change. The interim rule amended FAR 19.703 and the clause at 52.219–9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 *et seq.*, as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of subcontract awards to HUBZone small business concerns under Government contracts.

Item VI—Expiration of the Price Evaluation Adjustment (FAR Case 2005–002)

This final rule adopts, without change, an interim rule that amended the FAR to cancel the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change was required because the statutory authority for the adjustments had expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item VII—Removal of Sanctions Against Certain European Union Member States (FAR Case 2005–045)

This interim rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement (WTO GPA). These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products,

services, and construction that were previously prohibited by the sanctions.

Item VIII—Free Trade Agreements - Morocco (FAR Case 2006–001)

This interim rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreement. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is $193,000 for supplies and services, $7,407,000 for construction.

Item IX—Fast Payment Procedures (FAR Case 2004–031)

This amendment permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked ''Fast Pay'', provided the contract includes the ''Fast Payment Procedure'' clause. If the Fast Payment clause is in the contract, such unmarked invoices will no longer be rejected. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the revision deletes the requirement for marking invoices ''No Receiving Report Prepared.''

X—Technical Amendment

An editorial change is made at FAR 19.1005(a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry ''541310'' the word ''or''.

Dated: April 12, 2006.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 06–3688 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Wednesday,
April 19, 2006

Part VI

Environmental Protection Agency

Review of Environmental Protection Agency Draft Guidance for Implementing Executive Order 13175, Consultation and Coordination With Indian Tribal Governments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0248; FRL–8159–9]

Review of Environmental Protection Agency Draft Guidance for Implementing Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is seeking public comment on its draft *Guidance, Executive Order 13175: Consultation and Coordination with Indian Tribal Governments* (''Guidance''). This draft Guidance addresses the provisions of Executive Order 13175 (''EO 13175'') and how EPA generally intends to implement EO 13175 in connection with relevant EPA activities. EPA is seeking public comment on this draft Guidance in order to provide EPA with a broad range of experiences and perspectives as the draft Guidance is finalized.

DATES: Comments must be submitted on or before July 18, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2006–0248, by one of the following methods:

- *http://www.regulations.gov*: Follow the online instructions for submitting comments.
- *E-mail: OEI.Docket@epa.gov*.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 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–OA–2006–0248. 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–OA–2006–0248. 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 EPA–HQ–OA 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 EPA–HQ–OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Joan Crawford, Office of Policy, Economics and Innovation, Mail Code 1803A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6568; fax number: (202) 564–0965, e-mail: *crawford.joan@epa.gov* or Jose Aguto, American Indian Environmental Office, Mailcode 4104, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–0289; fax number: (202) 564–0298, e-mail: *aguto.jose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This draft Guidance document is intended for EPA managers and staff who are involved in planning and/or developing actions such as regulations, legislative comments or proposed legislation, and other policy statements or actions. While this draft Guidance is open for public comment, this draft Guidance may be of particular interest to Indian tribes, tribal officials, and those charged with the responsibility of ensuring the protection of public health and the environment in Indian country and elsewhere.

The statements in this draft document are intended solely to provide internal EPA guidance. This document is designed to implement EO 13175, Consultation and Coordination with Indian Tribal Governments. The draft document does not, however, substitute for requirements in federal statutes or regulations, nor is it a requirement itself. This document is not intended, nor can it be relied upon, to create any right or trust responsibility enforceable in any cause of action by any party against the United States, its agencies, officers or any other person. It does not impose legally binding requirements on EPA or anyone else, and may not apply to a particular situation based upon the circumstances. EPA may change this Guidance in the future, as needed or appropriate, without public notice. In addition, EO 13175, by its terms, is itself intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

B. How Can I Get Copies of the Draft EPA Guidance, Other Related Documents, and Additional Information?

You may view copies of the draft Guidance, other related documents, or request additional information by contacting:

1. *By mail:* Joan Crawford or Jose Aguto at the addresses listed under **FOR FURTHER INFORMATION CONTACT**.

2. *In person.* Copies of the entire draft Guidance, together with other related documents, may be examined during normal business hours at the OA Docket, at the docket address listed under **ADDRESSES**.

3. *http://www.regulations.gov/*. Publicly available docket materials are available electronically in *http://www.regulations.gov* by entering Docket ID No. EPA–HQ–OA–2006–0248. The electronic public docket includes an index of all available documents associated with this action as well as electronic versions of those documents.

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

When submitting comments, remember to:

1. Identify the action by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a specific chapter or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. Provide specific examples to illustrate your concerns, and suggest alternatives.
6. Explain your views as clearly as possible, avoiding the use of profanity, obscene language, or personal threats.
7. Make sure to submit your comments by the comment period deadline.

Background

EO 13175 was signed on November 6, 2000 and sets forth various provisions regarding consultation and coordination between Federal agencies undertaking ''policies that have tribal implications'' and Indian tribal governments. This draft Guidance is intended to describe EPA's policy views regarding the provisions and procedures of the EO and to assist EPA personnel in implementing the EO as the Agency undertakes its various actions. Although other federal and EPA policies relating to Indian tribes and government-to-government consultation between EPA and Indian tribes may be referenced in the draft Guidance, the draft Guidance is not intended to define the scope of procedures that may be called for under, or otherwise to implement, those separate documents. Thus, where, for instance, the draft Guidance discusses consultation between EPA and Indian tribal governments, such consultation and related procedures are designed to relate specifically to the EPA/tribal interaction called for by EO 13175.

In developing this draft Guidance, EPA considered the unique relationship between the Federal government and Indian tribes and attempted to address various complex issues as they arose to help strengthen our efforts to work with tribes and establish regular and meaningful consultation and collaboration with tribes as contemplated by EO 13175. Prior to developing this draft Guidance document, EPA convened an internal workgroup to consider the provisions of the EO and potential procedures to implement the EO in the context of EPA programs. During this early development stage, the EPA workgroup had significant interaction with representatives of tribal governments selected and designated for this purpose by the Tribal Caucuses of each of the EPA Regional Tribal Operations Committees. This interaction included active participation by the designated tribal representatives in regularly scheduled teleconferences with EPA staff to exchange ideas, insights and experiences, and to identify challenges related to outreach, engagement and consultation between EPA and Indian tribal governments as well as possible solutions and methods by which EPA and tribal officials might improve the consultation process. EPA recognizes the significance of this early tribal involvement in the process of developing EPA's approach to implementation of EO 13175 and looks forward to additional tribal input as part of this comment process.

EPA is seeking comment on the entire document but would appreciate special consideration of the following issues at this time:

Section 1(a) of EO 13175 defines the term ''Policies that have tribal implications.'' In addition to regulations, legislative comments and proposed legislation, the EO includes a reference within the definition of that term to ''other policy statements or actions'' that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. EPA believes that the reference to such ''other policy statements or actions'' potentially includes issuance of EPA policy statements, strategies, guidelines, guidance and interpretive documents (collectively, ''guidance documents''). EPA's position set forth in the draft Guidance is that guidance documents generally do not create legally binding requirements and, therefore, will not have ''substantial direct effects'' as described in the EO. Thus, where there are no legally binding requirements being created, such guidance documents generally will not have Tribal Implications and will not trigger the various requirements of EO 13175. However, where a document does create legally binding requirements, it may have Tribal Implications. EPA is seeking comment on this issue, including information regarding prior EPA guidances that commenters believe may have had substantial direct effects as described in EO 13175. In addition, EPA is specifically seeking comment on applicability of the EO to certain other types of EPA actions as set forth in Chapter 5 of the draft Guidance.

Comments received within the 90-day period designated in this notice will be taken under consideration as the EPA workgroup continues drafting the Guidance and the key attachments to the Guidance.

Dated: April 13, 2006.

Brian F. Mannix,

Associate Administrator, Office of Policy, Economics and Innovation.

Draft Guidance: Guidance, Executive Order 13175: Consultation and Coordination With Indian Tribal Governments.

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B. EPA's 1984 Policy for the Administration of Environmental Programs on Indian Reservations
C. Stephen L. Johnson's September 26, 2005 Memorandum Reaffirming EPA's 1984 Indian Policy
D. EPA's April 29, 1994 Memorandum on Government-to-Government Relations With Native American Tribal Governments
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Note: Attachments A through D (as listed in the table of contents) are available in the docket (EPA–HQ–OA–2006–0248) for this draft Guidance. Attachments E through J are in the drafting stage and not open for public comment. Those attachments therefore are not provided in the docket for this draft Guidance document.

List of Acronyms, Abbreviations and Key Definitions

AIEO: American Indian Environmental Office of EPA (within the Office of Water).

EO: Executive Order. When used alone, it refers to EO 13175.

FACA: Federal Advisory Committee Act.

OGC: Office of General Counsel.

OIA: Office of International Affairs.

OMB: Office of Management and Budget.

OPEI: Office of Policy, Economics and Innovation.

OPPTS: Office of Prevention, Pesticides and Toxic Substances.

ORC: Office of Regional Counsel.

PRA: Paperwork Reduction Act.

RIC: Regional Indian Coordinator.

RFA: Regulatory Flexibility Act.

RMD: Regulatory Management Division.

RRC: Regional Regulatory Contact.

RSC: Regulatory Steering Committee.

S/L/T: State, local, and Tribal governments.

UMRA: Unfunded Mandates Reform Act.

Key Definitions

Authorized Inter-Tribal Organization: For the purposes of this draft Guidance, an ''authorized inter-tribal organization'' is an organization that has been officially designated by the elected or duly-appointed leader of a federally recognized Tribal government to represent that Tribe on a particular issue. EPA would generally recognize an inter-tribal organization as ''authorized'' after receiving confirmation from an elected or duly-appointed Tribal leader that organization is authorized to consult with EPA on the Tribe's behalf. Consultation with intertribal organizations can enhance but should not be an acceptable substitute for direct consultation with Tribal governments, unless officially delegated the authority by the Tribal government. EPA recommends that such confirmation be provided in writing (*e.g.*, letter, e-mail).

Duly Appointed Officials: For the purposes of this draft Guidance, ''duly appointed officials'' are representatives that have been officially designated by elected or duly-appointed leaders of federally recognized Tribal governments to represent their Tribes on a particular issue. EPA would generally recognize a representative of a Tribal government as a ''duly appointed official'' after receiving confirmation from an elected or duly-appointed Tribal leader that the representative is authorized to consult with EPA on the Tribe's behalf. EPA recommends that such confirmation be provided in writing (*e.g.*, letter, e-mail).

EPA's 1984 Indian Policy: The EPA Policy for the Administration of Environmental Programs on Indian Reservations.

EPA's Indian Program: The phrase ''EPA's Indian Program'' generally describes the composition of EPA's offices, internal workgroups and employees across the Agency's specific environmental program offices that work in whole or in part on Tribal environmental issues. EPA offices devoted specifically to Tribal issues include the American Indian Environmental Office (AIEO) and the Regional Tribal Offices. Internal workgroups include the National Indian Workgroup (NIWG), the Indian Policy Program Council (IPPC) and the National Indian Law Workgroup (NILWG). Contact information is located at *http://www.epa.gov/indian/miss.htm.*

Indian Tribe: 'Indian Tribe' means an Indian or Alaskan Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.[1]

Order: Executive Order 13175.

Tribal Coordination: For the purposes of this draft Guidance document, coordination refers to the harmonization of EPA's Tribal outreach and information dissemination/exchange activities to ensure that Tribal governments are aware of EPA actions that might impact them and afforded the opportunity to alert EPA that they wish to be consulted according to the terms of Executive Order 13175 early in the process of developing those actions.

Tribal Consultation: For the purposes of this draft Guidance document, and to the extent practicable and permitted by

[1] Executive Order 13175, section 1(b).

law, consultation consists of a meaningful and timely two-way exchange with Tribal officials in developing Agency actions, providing for open sharing of information, the full expression of Tribal and EPA views, a commitment to consider Tribal views in decision-making, and respect for Tribal self-government and sovereignty.

Tribal Implications: 'Policies that have Tribal implications' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.[2]

Tribal Officials: 'Tribal officials' means elected or duly appointed officials of Indian Tribal governments or authorized intertribal organizations.[3]

Executive Summary

What Is the Purpose of This Document?

This draft Guidance document provides guidance to EPA staff on how to meet requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'', and recommends how EPA staff should set about the consultation process when required.

What Is in This Document?

Chapter 1: Introduction to Executive Order 13175

This chapter discusses what is Executive Order 13175 and what EPA is required to do under the Order, and, for purposes of this draft Guidance, what are Tribal Coordination and Consultation. This chapter also outlines the Federal Government's relationship with Tribal Governments and how Tribal interests may be distinct from State and Local Governments.

Chapter 2: EPA Regulations

This chapter provides EPA staff and managers guidance on how to determine whether EPA regulations are subject to Executive Order 13175, and what EPA staff should do if the regulation is subject to the Order. Chapter 2 discusses how to determine whether a regulation has Tribal implications, and what EPA should or must do if a rule is determined to have (or not have) Tribal implications. This chapter describes whether and how EPA should or must coordinate or consult with Tribal officials on a regulation, and outlines steps EPA should follow to coordinate with Tribal officials on a regulation. This chapter also discusses how EPA should develop a consultation plan, and when and how to begin the Tribal consultation process. In addition, this Chapter discusses whether and how EPA's certification process under Executive Order 13175 applies to regulation activities, and how does EPA track and record actions affected by the Order.

Chapter 3: Legislative Comments or Proposed Legislation

Chapter 3 discusses how Executive Order 13175 applies to legislative comments or proposed legislation submitted by EPA, and whether the Order applies when EPA provides comments to another Federal agency on their draft legislation or provides technical assistance to Congressional staff.

Chapter 4: Waivers

This chapter discusses Executive Order 13175 requirements that apply to applications submitted to EPA by Tribal governments seeking to waive some or all of the statutory or regulatory requirements that apply to them. Chapter 4 also discusses the EPA's flexibility when considering Tribal applications for waivers of statutory and regulatory requirements.

Chapter 5: Permits

Chapter 5 discusses whether and how the requirements of Executive Order 13175 apply to permitting activities.

Chapter 6: Policy Statements, Guidance Documents and Similar Actions

This chapter discusses whether and how Executive Order 13175 requirements apply to EPA's development of policy statements, guidance documents, and similar actions. This chapter discusses under which situations the requirements of the Executive Order may apply to these statements, documents or actions, and when consultation is recommended even if it is not required under the Executive Order.

Attachments

(a) Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.

(b) EPA's 1984 Policy for the Administration of Environmental Programs on Indian Reservations.

(c) Stephen L. Johnson's September 26, 2005 Memorandum Reaffirming EPA's 1984 Indian Policy.

(d) EPA's April 29, 1994 Memorandum on Government-to-Government Relations With Native American Tribal Governments.

(e) EPA's Indian Program Infrastructure and Examples of Tribal Partners (*flowchart*).

(f) Executive Order 13175 Analysis for EPA Rules and Regulations (*flowchart*).

(g) Recommendations for Developing Tribal Consultation Plans.

(h) Executive Order 13175 Preamble Template Language.

(i) Executive Order 13175 Compliance Certification Form.

(j) Agency Contacts.

A Note About the Development of This Draft Guidance Document

As with many guidance documents, this draft Guidance is a living document. We acknowledge that, over time, we may need to revise and improve this draft Guidance based on the consultation experiences of EPA and Tribes. You should take advantage of the insight and knowledge that Tribal governments will afford you in your consultation opportunities when dealing with policies that have Tribal implications and not merely because the Executive Order requires it. Incorporating the views and concerns of Indian Tribal governments in the action development process may help to bring about more effective implementation and collaboration on actions that are beneficial to public health and the environment in Indian country and elsewhere. As such, the Agency's mission of protecting human health and the environment is advanced by the Tribal consultation process.

Scope and Applicability of This Draft Guidance Document

A. Scope

This draft Guidance document summarizes the requirements under Executive Order 13175, and recommends how EPA staff should set about the consultation process when required. For some actions, separate EPA policies relating to Indian Tribes (described later in this section in ''How Do the Requirements of Executive Order 13175 Relate to EPA's Existing Tribal Policy Framework?'') may be broader than the Executive Order, reflecting EPA's commitment to early and meaningful consultation whenever possible. However, this draft Guidance document is in no way intended to serve as a guide to EPA's implementation of any other statute, executive or judicial order, memoranda on administration policy, or internal EPA policy directive concerning Tribal governments and the development and/or implementation of EPA policies. This

[2] Executive Order 13175, section 1(a).

[3] Executive Order 13175, section 1(d).

draft Guidance document is not a holistic guide to consultation with Tribal governments and should not be interpreted as such.

B. Applicability

This draft Guidance document is intended for EPA managers and staff who are responsible for planning and/or developing actions such as regulations, legislative comments or proposed legislation, and other policy statements or actions. The requirements of Executive Order 13175 will apply to your action if it will have substantial, direct effects on Tribal governments. This draft Guidance document also describes when consultation with Tribal officials is required under this Executive Order, and how EPA staff should set about the consultation process when required. What you should do to comply with the Order depends on the type of action that you are developing. The following table tells you where to continue reading, based on the type of your action:

If your action is a . . .	Then go here for more information about whether the Order applies and what to do . . .
Regulation (or ''Rule'')	page (to be added in final).
Legislative Comment or Proposed Legislation.	page (to be added in final).
Waiver	page (to be added in final).
Permits/License	page (to be added in final).
Policy Statement/ Guidance Document.	page (to be added in final).

While you should read carefully through this draft Guidance to identify what, if anything, you should do to comply with the Executive Order requirements, this draft document is not intended to prohibit any alternative methods of complying with those requirements as they may apply to your action.

How Do the Requirements of Executive Order 13175 Relate to EPA's Existing Tribal Policy Framework?

In situations where your action does not have Tribal implications, and thus does not trigger relevant requirements of the Executive Order, it is still important to assess Tribal interests that may be affected by your action and consider whether other Executive or EPA policies or legal requirements call for the Agency to seek Tribal input or otherwise address Tribal issues. At various places, this draft Guidance may recommend seeking Tribal input and considering Tribal views and interests regarding EPA actions that do not have Tribal implications under Executive Order 13175. Where such recommendations are based solely upon considerations apart from Executive Order, they should not be interpreted as an indication of any EPA position regarding the scope or implementation of Executive Order 13175. Any such recommendations are only intended to help you address the separate legal and policy considerations in a manner consistent with this Executive Order. When developing a policy that has Tribal implications pertaining to a U.S. border region and implements a binational/international treaty and/or agreement, you should consult with the Office of International Affairs (OIA) about any issues that warrant your consideration.

Consider, for instance, the EPA Policy for the Administration of Environmental Programs on Indian Reservations (a.k.a. the ''Indian Policy'') and the April 29, 1994 Presidential Memorandum regarding the Government-to-Government Relations With Native American Tribal Governments. Consistent with these and other policy statements and the Federal government's trust responsibility to federally-recognized Indian Tribes, EPA generally attempts to engage Tribes regarding Agency actions that may affect Tribes through government-to-government consultation and other means of outreach. It is important to note that separate policies and considerations, such as the following, may have different threshold standards than Executive Order 13175 that you might need to consider even if you determined that your action would not have Tribal implications as defined in the Executive Order.

A. EPA's Indian Policy

The EPA Indian Policy states that the ''keynote'' of EPA's effort to protect human health and the environment on Indian reservations will be:

> ''* * * to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands.''

EPA's Indian Policy goes on to recognize Tribes as the primary parties for setting standards, making environmental policy decisions, and managing programs for Indian reservations consistent with Agency standards and regulations. The policy states that EPA will, consistent with the Federal trust responsibility, assure that Tribal concerns and interests are considered where EPA's actions and/or decisions may affect reservation environments. Similarly, the guidance document for implementing EPA's Indian Policy states, among other things, that:

> ''[w]here EPA manages Federal programs and/or makes decisions relating directly or indirectly to reservation environments, full consideration and weight should be given to the public policies, priorities and concerns of the affected Indian Tribes as expressed through their Tribal Governments. Agency managers should make a special effort to inform Tribes of EPA decisions and activities which can affect their reservations and solicit their input as we have done with State Governments. Where necessary, this should include providing the necessary information, explanation and/or briefings needed to foster the informed participation of Tribal Governments in the Agency's standard-setting and policy-making activities.''

B. 1994 Presidential Memorandum

In addition, the April 29, 1994 Presidential Memorandum regarding the Government-to-Government Relations With Native American Tribal Governments sets forth various principles designed to clarify the federal government's responsibility to:

(1) Operate within a government-to-government relationship with federally-recognized Tribes and

(2) Build more effective working relationships respecting the rights of such Tribes to self-government.

The Presidential Memorandum also requires agencies to consult, to the greatest extent practicable and to the extent permitted by law, with Tribal Governments prior to taking actions that affect federally-recognized Tribal Governments and to assess the impact of Federal plans, projects, programs, and activities on Tribal trust resources and assure that Tribal Government rights and concerns are considered during the development of such plans, projects, programs, and activities.

Chapter 1: Introduction to Executive Order 13175

1.1 What Is Executive Order 13175 and What Am I Required to Do?

On November 6, 2000, President Clinton issued Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' to establish regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications, to strengthen the United States government-to-government relationships with Indian Tribes, and to reduce the imposition of unfunded mandates upon Indian Tribes. The Executive Order (the ''EO'' or ''Order'')

established specific requirements for agencies as they develop policies with Tribal implications (TI) and emphasizes consultations with elected and duly appointed Tribal officials of Tribal governments and authorized intertribal organizations. For example, the Order directs agencies to formalize practical and achievable procedures within their decision-making systems to ensure that Tribal officials have the opportunity to consult, as required by the Order, in a ''meaningful and timely manner.''

The requirements of Executive Order 13175, as described throughout this draft Guidance document, apply to policies that have Tribal implications. The Executive Order describes these types of policies as regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on:

- One or more Indian Tribes;
- The relationship between the Federal government and the Indian Tribes; or
- The distribution of power and responsibilities between the Federal government and Indian Tribes.

As the EO's description of policies that have Tribal implications is rather broad, this draft Guidance document does not identify specific EPA actions or types of EPA actions as examples of policies that are definitely subject to the EO requirements. On the one hand, it could be useful to understand that a specific type of action might be more likely to have TI. However, on the other hand, it is important to recognize not only that any identified types of actions may not always have TI, but that identifying a specific action or types of actions within these pages might have been construed by some managers and staff to be the entirety of actions that are subject to the EO. Since a broad array of actions are potentially subject to the EO, managers and staff need to carefully consider whether a given action falls within the scope of the EO. In this light, then, your action might have TI if it:

- Directly impacts Tribal interests, such as access to natural resources, that are specifically recognized by treaty, statute, etc.
- Directly impacts Tribal natural resources and trust lands that the Federal government has a responsibility to protect.
- Directly applies to lands of interest to Tribes, including ceded land where Tribes retain usufructuary rights, reservation land, dependent Indian communities, and allotments.
- Directly applies to the activities, or impacts the authority, of Tribal governments.

1.2 What Are Tribal Coordination and Consultation?

[1.2] A. Coordination

For the purposes of this draft Guidance document, coordination refers to the harmonization of EPA's tribal outreach and information dissemination/exchange activities to ensure that Tribal governments are:

(1) Aware of EPA actions that might impact them and

(2) Afforded the opportunity to alert EPA's offices and officials that they wish to be consulted with according to the requirements of Executive Order 13175 early in the process of developing those actions.

The unique government-to-government relationship between EPA and Tribes presents various complexities. As discussed in Part 2.10(a) (*Coordination and Outreach*), Agency staff are encouraged to coordinate with Tribal governments during the early stages of action development to determine whether the action has potential TI that may call for government-to-government consultation under the EO. The Office of Policy, Economics and Innovation's (OPEI's) Regulatory Management Division (RMD) works with the members of the Agency's Regulatory Steering Committee (RSC) and the American Indian Environmental Office (AIEO) to coordinate the development and dissemination of information to Tribal governments regarding the Agency's regulatory activities. The Agency anticipates that, in the spirit of collaboration, Tribal governments will review the information and provide their views, in a meaningful and timely fashion, on whether actions may have potential TI and warrant further coordination or consultation with the Tribes. In some cases, the coordination efforts described above may be adequate for your action.

Good faith efforts to reach out to and coordinate with Tribes should be undertaken in order to assist EPA in determining whether a consultation obligation under the EO exists and as part of discharging any duty to consult that is identified. The Agency has a Tribal affairs infrastructure already in place that might be helpful to you as you undertake these responsibilities. You may find it useful to seek the help of EPA staff with expertise in Tribal affairs as you evaluate your actions and coordinate with Tribal governments to determine if Tribal consultation obligations under the EO exist. For instance, the help and knowledge of the Indian program representatives in EPA's headquarters and regional offices may be of great value.

AIEO Indian Coordinators and Indian program representatives are often aware of Tribal organizations that have subject matter expertise on the EPA action in question, and may be able to connect you with those groups for further insight and feedback.[4] For example, AIEO has regularly scheduled conference calls with the Tribal Caucus of the Tribal Operations Committee, which is composed of Tribal leaders and Tribal environmental professionals. Most Regional Tribal Offices interact with a Regional Tribal Caucus as well. In another example at headquarters, Office of Prevention, Pesticides and Toxic Substances (OPPTS) works regularly with the Tribal Pesticides Program Council (TPPC) and the Tribal Assistance Project of Forum On State and Tribal Toxics Action (FOSTTA). The TPPC and FOSTTA are both composed of environmental directors with expertise on issues related to pesticides and toxic substances.

AIEO Indian Coordinators and Indian program representatives are also often aware of preferred Tribal consultation protocols and special Tribal considerations. For example, many members of Alaska Native Tribes spend the summer months engaged in subsistence activities. In this example, non-responses to EPA inquiries during that time should not automatically be construed as a lack of interest. Rather, EPA's coordination and, as appropriate, consultation efforts should be implemented, where possible, when active participation in the development of policies likely to be of interest to these Alaska Native Tribes and villages can be maximized.

[1.2] B. Consultation

The Agency generally defines Tribal consultation with Tribal governments as a meaningful and timely government-to-government dialogue with elected or duly appointed Tribal officials or authorized intertribal organizations (*Acronyms, Abbreviations and Key Definitions*).

To the extent practicable and permitted by law, consultation consists of a meaningful and timely two-way exchange with Tribal officials in developing Agency actions, providing for open sharing of information, the full expression of Tribal and EPA views, a commitment to consider Tribal views in decision-making, and respect for Tribal self-government and sovereignty. Where one or more Tribes and the Agency

[4] Meetings with outside organizations may be subject to the Federal Advisory Committee Act (FACA). Consult your Office of General/Regional Counsel attorney to determine whether FACA applies to your meeting.

explicitly or inherently share intergovernmental responsibilities or administration, the Agency seeks mutually acceptable resolutions as part of consultation, when feasible. However, the Tribal officials being consulted do not have the power to stop Agency action by withholding consent.

A need for Tribal consultation under the EO for an agency action is determined as a result of EPA evaluation, as described in 2.2 (for regulations, 2.6 and 2.7), and coordination. In certain limited circumstances as described in section 3c and section 5 of the EO and elaborated upon in Parts 2.6 and 2.7 of this guidance, Tribal consultation is required of the Agency. Where Tribal consultation is recommended or required, this draft Guidance also provides assistance on resources and personnel who can assist you in the implementation of Tribal consultation.

1.3 What Is the Federal Government's Relationship With Tribal Governments and How May Tribal Interests Be Distinct from Those of State and Local Governments?

Indian Tribes are distinct entities, sometimes described as domestic dependent nations, exercising attributes of sovereignty over their members and territory. Among other things, the Federal government has a trust responsibility to federally-recognized Tribes arising from various documents, including the Constitution of the United States, treaties, statutes, executive orders, and court decisions, as well as the historical relations between the United States and the Tribes.

Although the precise legal contours of this trust responsibility are not fully defined, it can be described as including general and specific components providing for the Federal government to, among other things, consult with and consider the views and interests of Tribes when taking actions that may affect Tribes or their resources and to ensure that its actions are consistent with the protection of Tribal rights arising from treaties, statutes and Executive Orders. Consistent with this responsibility and with its legal and political relationship with Tribes, the Federal Government works with Tribes on a government-to-government basis to address issues concerning Tribal self-government, Tribal trust resources and Tribal treaty and other rights.

EO 13175 specifically recognizes the special relationship between the Federal government and Indian Tribes and requires that agencies be guided by certain fundamental principles in formulating or implementing policies with Tribal implications. As outlined in section 2 of the EO, these fundamental principles recognize that the United States has a unique legal relationship with Indian Tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. They further acknowledge that the United States recognizes Indian Tribes as domestic dependent nations under its protection and that the Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian Tribes. In addition, the Executive Order recognizes that Indian Tribes exercise certain inherent sovereign powers over their members and territory, that they have the right to self-government, and that the United States supports Tribal sovereignty and self-determination and works with Indian Tribes on a government-to-government basis.

In addition, understanding the Federal/Tribal relationship and the unique and varied Tribal interests in lands and other natural resources and in respecting their sovereign prerogatives will also help in identifying policies that have Tribal implications in the first instance and developing a constructive foundation for consultation between the Agency and the Tribes.

It is important to note that Tribes are distinct from state and local governments and that Agency actions may have unique political, legal and resource implications for Tribes that are not encountered with other governments. For instance, Tribes and Tribal members may retain various hunting, fishing and gathering rights in areas, or may attach religious and cultural significance to resources, located outside and at a distance from the areas of Indian country they occupy. In addition, economic conditions in Tribal communities may differ from conditions outside of Indian country and thus may uniquely affect the assessment of potential impacts on Tribes. Further, unlike state areas, the histories of some areas of Indian country and the opening up of some Indian reservations to settlement by non-Tribal members has resulted in complex relationships between Tribal and state governments and Tribes and non-Tribal owners of reservation land. It is important to consider these relationships and the integrity of reservation boundaries in assessing impacts of Agency actions on Tribes. For further information on the relationship between the Federal government and Tribal governments and on unique Tribal interests, contact your AIEO liaison or Indian Program representative and/or refer to AIEO's *Working Effectively with Tribal Governments Guidance.*

Chapter 2: Regulations (or "Rules")

2.1 How Will I Know If My Rule Is Subject to Executive Order 13175?

Executive Order 13175 applies to rules with *Tribal implications.* As noted in the Chapter 1, this means a rule that has *substantial direct effects on:*

(1) One or more Indian Tribes;

(2) The relationship between the Federal Government and the Tribes; *or*

(3) The distribution of power and responsibilities between the Federal Government and Indian Tribes.

2.2 What Resources and Tools Can I Access To Help Determine If My Rule Has Tribal Implications?

There are several tools and resources you can use to help determine whether your rule has Tribal implications. Some of them, used individually, will not provide a clear determination, and therefore the use of several at the same time is recommended.

Collaboration with EPA Employees

Because the guidelines are not clear, perhaps the most important resource to access are relevant EPA employees, including:

- RSC representative in your program office—*http://intranet.epa.gov/adplibrary/rsc/index.htm.*
- Tribal Liaison in your Program office—*http://www.epa.gov/indian/miss.htm.*
- Regional Indian Coordinator (RIC)—*http://www.epa.gov/indian/region.htm.*
- RMD representative—*http://intranet.epa.gov/adplibrary/contacts.htm#DO.*
- AIEO representative—*http://www.epa.gov/indian/.*
- Office of General Counsel (OGC) representative—*http://intranet.epa.gov/ogc/issues.htm#assign.*

Sections 2 and 3 of the Executive Order

Sections 2 and 3 of the EO describe fundamental principles and policy making criteria respectively that provide the initial context that is unique to Tribes to assist in a TI determination. For example, section 2(b) of the EO states "The United States continues to work with Indian Tribes on a government-to-government basis to address issues concerning Indian Tribal self-government, Tribal trust resources, and *Indian Tribal treaty and other rights.*" "Indian tribal treaty and other rights" may include Tribal interests on land and waters outside formal reservation boundaries. A rulemaking

on such lands may have Tribal implications.

Existing Analytical Tools

EPA also has existing analytical tools that it applies to other entities such as states, local governments and small entities, that may be of some assistance when formulating your Tribal implications determination. The analyses used under the Federalism Executive Order and Unfunded Mandates Reform Act (UMRA) (See section 2.6 of the draft Guidance) can assist you in determining whether your rule has an economic impact upon a Tribe that is substantial and direct.

Preemption of Tribal Law

With the help of Agency counsel, you might determine that your rule may preempt existing Tribal law, which may affect your Tribal implications determination.

Other Tools

Rules that would apply directly to Indian country may be more likely to have Tribal implications, such as when a regulation would be expected to impose substantial direct compliance costs on one or more Tribal governments. These rules do not have to be national in scope, but are intended to be applied to a specific geographic area which includes Tribes. A Tribal implications determination can be made even if it does not impose substantial direct compliance costs or preempt Tribal law. For example, you could determine that your rule might directly impact Tribal interests (such as land rights and access to natural resources) that are specifically recognized by treaty, statute or federal court rulings and/or that fall within the Federal government's trust responsibility. Other examples of the kinds of rules that you should more closely scrutinize for possible Tribal implications include those that might:

- Establish Federal standards that must be met and/or implemented by Tribal governments.
- Establish or suggest safety levels or levels of protection of, and/or access to, waterways and/or lands and/or other resources of significance to Tribes or held in trust by the Federal government for Tribes.
- Authorize or delegate state, local, and/or Tribal authority over Federal environmental programs or projects in areas where Tribes are located.
- Affect jurisdictional arrangements between the Federal, state and Tribal governments.
- Establish rules in geographic areas that include Indian Country or lands in which Tribes have an interest.

2.3 What Do I Do If My Rule Is Subject to the Executive Order?

The basic process that EPA follows to ensure that Agency actions are developed in compliance with the Executive Order consists of coordination, consultation, and certification to the extent that the EO applies. Early evaluation of rules that may have Tribal implications is recommended. In broad terms, the compliance assurance process for EO 13175 includes the following steps during each stage:

[2.3] A. Coordination

- RMD disseminates early information about new EPA actions to Tribal Officials via the *Unified Agenda of Regulatory and Deregulatory Actions* (''Regulatory Agenda'' or ''Reg Agenda'').
- Tribal Officials have the opportunity to respond to the Regulatory Agenda and provide their views regarding whether actions may potentially have Tribal implications.
- The rulewriting office works with AIEO/RICs and the OGC/Office of Regional Counsel (ORC) attorney assigned to the rule to consider Tribal views and to determine whether an action has Tribal implications.
- For Tier 3 Region-specific rulemakings, offices will have the opportunity to participate through the generic side-agreement.
- Coordination should at minimum include notification to all affected Tribal governments with meaningful and timely opportunities for elected Tribal Officials or duly appointed Tribal representatives to consult with EPA.
- If you determine that your rule will have Tribal implications and requires consultation, you should further coordinate with the Tribes to determine which Tribes are interested in participating in consultation (see ''Engaging Tribal Officials'' for details).

[2.3] B. Consultation

- For a complete Agency definition of ''Tribal consultation,'' see section titled ''What are Tribal coordination and consultation: Consultation.''
- For actions that have Tribal implications and impose substantial direct compliance costs, preempt Tribal law and/or establish Federal standards, the rulewriter would adhere to the consultation requirements of the Order.
- For actions subject to the consultation provisions of the Order, the program office should work with AIEO (as well as other EPA Indian Program and regional staff, as needed) to initiate and implement a consultation plan in a manner appropriate for that action.

[2.3] C. Certification

- For actions with Tribal implications, if the action is subject to Office of Management and Budget (OMB) review under EO 12866, and after the rulewriting office has completed any needed Tribal consultation activities, that office coordinates with AIEO to obtain certification that the Agency has complied with the requirements of EO 13175 when transmitting the draft proposal or final rule to OMB.

What you should do depends on the type of action you have. In general, EO 13175 puts a strong emphasis on consulting with Tribal officials, which are defined as *elected* and/or *duly appointed* officials of Indian Tribal governments (who may be different from your professional counterparts in Tribal government) *or* their authorized inter-tribal organizations. (*Acronyms, Abbreviations and Key Definitions*) Of course, you should continue to work with your professional Tribal government counterparts, but consulting with them may not satisfy the consultation requirements of EO 13175.

2.4 What Do I Do If My Rule Does Not Have Tribal Implications?

If you have determined, using the guidelines in Chapter 2.2, that your rule does not have Tribal implications, then there are no special requirements under the EO that apply to your rule. You should discuss briefly in the preamble to your rule why the Order did not apply.

Additionally, if you determine that there are no Tribal implications, but Tribal consultation occurred nonetheless, you should discuss briefly in the preamble to your rule any consultation that occurred, the nature of the Tribal government's concerns, and how you addressed those concerns or why EPA decided not to implement suggested changes.

2.5 What Do I Do If My Rule has Tribal Implications?

If you determine that your rule has Tribal implications under any of the guidelines that are summarized above in Chapter 2.2, then, in addition to being guided by the fundamental principles set forth in section 2 of the EO, the general policymaking criteria of section 3 of the Order apply to your rule to the extent permitted by law. The policymaking criteria for all rules with Tribal implications include:

• Respect Indian Tribal self-government and sovereignty, honor Tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal government and Indian Tribal governments;

• With respect to Federal statutes and regulations administered by Indian Tribal governments, grant the Tribes the maximum administrative discretion possible;

• Encourage Indian Tribes to develop their own policies to achieve program objectives;

• Where possible, defer to Indian Tribes to establish standards; and

• In determining whether to establish Federal standards, consult with Tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian Tribes.

In addition, the EO may impose certain requirements to consult with Tribal officials regarding your rule. Those requirements are discussed below in Chapter 2.6 and 2.7.

2.6 What Are the Types of Rules With Tribal Implications for Which I Must Consult With Tribal Officials?

The guidelines for each type of rule with Tribal implications that requires consultation are outlined below in paragraphs A, B, and C.

EO 13175 identifies requirements to consult to the extent practicable and permitted by law, for rules:

A. That have TI and impose substantial direct compliance costs on Indian Tribal governments, unless they are required by statute or Federal funds are provided to cover the direct costs of compliance incurred by the Indian Tribal government or the Tribe (EO section 5(b)); and for rules

B. That have TI and preempt Tribal law (EO section 5(c)); and for rules

C. That have TI and that establish Federal standards. In determining whether to establish Federal standards, consultation with Tribal officials shall include consultations as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian Tribes (EO section 3(c)(3)).

Even if your rule has TI but does not impose substantial direct compliance costs, preempt Tribal law, or establish Federal standards, it still may be appropriate to provide an opportunity for meaningful and timely input by Tribal officials under separate Agency policy.

[2.6] A. Rules With Tribal Implications That Impose Substantial Direct Compliance Costs

The regulatory analysis under UMRA, sections 202 and 203 may help you determine whether your EPA rule places substantial direct compliance costs upon Tribal governments. An explanation of the UMRA analysis follows below.

However, these UMRA analyses are not determinative due to the economic hardships that some Tribes endure. The Census Bureau reported in 1999 that ''the percentage of American Indians and Alaska Natives living below the poverty level (25.7%) was over two times greater than for all other people in the United States (12.4%).'' [5] Many Tribes do not have a reliable stream of revenue, and no tax base. Additionally, many Tribes depend heavily upon federal funding to administer Tribal environmental programs. Therefore, seemingly innocuous direct compliance costs may be substantial for some Tribes.

[2.6–A] 1. *Significant Federal intergovernmental mandate under UMRA Section 202*. If your rule contains a significant federal intergovernmental mandate within the meaning of section 202 of UMRA—*i.e.*, it is likely to result in the expenditure by State, local, and Tribal (SLT) governments [6] in the aggregate of $100 million or more in any one year—then EPA should conclude the rule also has TI and imposes substantial direct compliance costs thus triggering the requirements of section 5(b) of the EO, unless:

• The rule is required by statute,

• Federal funds are provided to cover the Tribal Governments' or Tribe's compliance costs of the rule, or

• You can demonstrate that the costs to Tribes are minimal.

We interpret the phrase, ''required by statute,'' to mean that the action is specifically and explicitly compelled by statute without the use of any discretion by EPA. While our rules are authorized by statute, most are not specifically and explicitly compelled by statute without the exercise of our discretion.

[2.6–A] 2. *Impact on Small Governments under UMRA Section 203*. While UMRA defines ''small government'' to include Tribal governments, we recognize that economic data for small governments is available only for local governments and generally does not include Tribal governments. As described above, Tribal revenues may be less than that of other small governments. With this recognition in mind, if your rule will significantly or uniquely impact small governments (e.g., the cost of the rule is likely to equal or exceed 1% of their revenues), then as a policy matter, EPA should conclude the rule also has TI and imposes substantial direct compliance costs thus triggering the requirements of section 5(b) of the EO, *unless:*

• The rule is expressly required by statute without the use of any discretion by EPA,

• Federal funds are provided to cover the Tribal governments' or Tribes' compliance costs for the rule, or

• You can demonstrate that no Tribes are directly regulated or that the costs are minimal.

Tip for combining consultation under UMRA and EO 13175: If your rule contains a significant Federal intergovernmental mandate under UMRA section 202, then section 204 requires you to consult with elected officers of State, local, and Tribal governments or their designated employees with authority to act on their behalf. Likewise, if your rule has a significant or unique impact on small governments under UMRA section 203, you must allow officials of affected small governments (including Tribes) to provide meaningful and timely input into the development of your rule. Thus, consultation under UMRA does *not* have to be with elected officials. However, where consultation is called for under EO 13175, the consultation must be with ''Tribal Officials,'' which is defined as elected or duly appointed officials of Indian Tribal governments or authorized interTribal organizations. Thus, unless consultation under UMRA is conducted with Tribal representative that also qualify as ''Tribal Officials'' under the EO, the consultation under UMRA will not satisfy consultation requirements under EO 13175.

[2.6] B. Rules With Tribal Implications That Preempt Tribal Law

Generally, preemption is the doctrine that holds that certain matters are of such a national, as opposed to local,

[5] See *http://www.census.gov/prod/cen2000/phc-5-pt1.pdf Characteristics of American Indian and Alaska Native by Tribe and Language:* 2000, Table 13: Poverty Status in 1999 for Selected American Indian and Alaska Native Tribes.

[6] The UMRA section 202 Federal intergovernmental mandate trigger is based on the aggregate expenditures by State, Tribal and local governments. Although the definition of TI does *not* include effects on State and local (S/L) governments, we nonetheless use the UMRA section 202 trigger with minor modification to make the test easy to apply. If you believe your rule primarily affects S/L governments and only has minimal impacts on Tribes, consult with your Regulatory Steering Committee Representative and the attorney assigned to your rule to determine whether it is appropriate to conclude your rule has TI.

character that Federal laws take precedence over non-Federal laws. When preemption occurs, a Tribal government may not pass a law that is inconsistent with the Federal law. There are generally three types of preemption:

• Express preemption: Congress' intent to preempt non-Federal law is stated expressly in the Federal statute.

• Field preemption: Occurs where Congress' creation of a pervasive system of Federal regulation makes reasonable the inference that Congress left no room for other governments to supplement it, or where an Act of Congress touches a field in which the Federal interest is so dominant that the Federal system is assumed to preclude enforcement of non-Federal laws on the same subject.

• Conflict preemption: Occurs when Federal law is in direct conflict with non-Federal law or where non-Federal law stands as an obstacle to the achievement of Federal objectives.

In general, minor amendments to an existing preemptive program probably will not trigger the consultation and other requirements of section 5(c) of the EO which relates to rules with TI that preempt Tribal law. [Note: Such rules could still have TI for other reasons even if they don't preempt Tribal law or trigger 5(c).] On the other hand, a significant new preemptive program may create TI and preempt Tribal law for purposes of section 5(c).

Application of the principles of preemption in the context of Federal and Tribal laws may raise significant and complex issues. Consult with the AIEO, OGC/ORC attorney assigned to your rule, your RIC (if applicable) and your RSC/RRC Representative to determine whether your rule has TI and preempts Tribal law.

[2.6] C. Federal Standards

Section 3(c) of EO 13175 states:

(c) When undertaking to formulate and implement policies that have Tribal implications, agencies shall:

(1) Encourage Indian Tribes to develop their own policies to achieve program objectives;

(2) Where possible, defer to Indian Tribes to establish standards; and

(3) In determining whether to establish Federal standards consult with Tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian Tribes.

2.7 What Should I Do if My Rule Has Tribal Implications and I Am Required To Consult?

• There are three possible scenarios under which you would decide to consult with Tribal officials:

• You have determined there are no Tribal implications but EPA should consult for some reason,

• You have determined there are Tribal implications and that consultation is not required, but EPA should consult for some reason, and

• You have determined there are Tribal implications and that consultation is required.

[2.7] A. Consultation Plan Development

If you decide that consultation is either recommended or required under any of the above three possible scenarios, you should develop a Tribal Consultation Plan for your action. The consultation plan should outline an appropriate mix and sequence of Tribal consultation activities that will occur in a timely manner as you develop your action, and be tailored to the estimated impacts on Tribal Governments, complexity and controversy of issues involved, and other specific circumstances surrounding the rule. A description of issues to consider as you develop your consultation plan is provided in the document *Recommendations for Developing Tribal Consultation Plans.*

Your consultation plan should be developed to synchronize with steps outlined in EPA's ''Action Development Process'' [7], which identifies the steps that you will follow as you develop your action. As you create and implement your Consultation Plan, you should be guided and informed by the Fundamental Principles set forth in section 2 of the EO and Policymaking Criteria in section 3 of the EO. For example, as stated in section 2,

> The United States has a unique legal relationship with Indian Tribal governments * * *. Since the formation of the Union, the United States has recognized Indian Tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian Tribes. * * * The United States continues to work with Indian Tribes on a government-to-government basis to address issues concerning Indian Tribal self-government, Tribal trust resources, and Indian Tribal treaty and other rights.

EO § 3(a) in part states:

> Agencies shall respect Indian Tribal self-government and sovereignty, honor Tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian Tribal governments.

As you create and implement your Consultation Plan, it is recommended that you obtain input and views from the following resources:

• Tribal Liaison in your Program office (*http://www.epa.gov/indian/miss.htm*);

• RSC representative and Regional Regulatory Contact (RRC) (*http://intranet.epa.gov/adplibrary/rsc/index.htm*);

• AIEO representative (*http://www.epa.gov/indian/*); and

• RIC (*http://www.epa.gov/indian/region.htm*).

[2.7] B. If I Am Required To Consult With Tribal Officials Under Section 5 of the Executive Order Because My Rule Has Tribal Implications and Imposes Substantial Direct Compliance Costs and/or Preempts Tribal Law, Are There Certain Requirements in Section 5 of the Executive Order With Which I Must Comply?

Yes. In particular, section 5 of the EO directs you, to the extent practicable and permitted by law, to do the following:

1. Consult with Tribal officials;

2. Your consultation must be ''meaningful and timely.'' Generally, we interpret ''meaningful and timely'' as beginning consultation with appropriate Tribal representatives as early as practicable in the development of the proposed action. It also means that you should strive to provide Tribal officials with information, to the extent that it is available, that will enable them to assess (and subsequently describe) potential Tribal impacts and views.

This consultation and information exchange should continue as you develop the proposed rule to give appropriate Tribal representatives an opportunity to consider and comment on our proposed approach for the issues that are of concern to them. If EPA substantially changes its selected approach on these issues after the proposed rule's comment period, you should let those you consulted know about the change and why we made it, as appropriate.

3. In a separately identified portion of the preamble to the regulation, provide a Tribal summary impact statement, which consists of:

• A description of the extent of the Agency's prior consultation with Tribal officials,

• A summary of the nature of their concerns and the Agency's position

[7] The Action Development Guidance is available at (*http://intranet.epa.gov/adplibrary*).

supporting the need to issue the regulation, and

• A statement of the extent to which the concerns of Tribal officials have been met.[8]

4. If your draft final rule has TI and is subject to OMB review under EO 12866, section 7(a) of EO 13175 states that you must include, in the package you send to OMB, an ''EO 13175 Compliance Certification'' signed by EPA's Designated EO 13175 Compliance Official, the Director of AIEO, certifying that the Agency has met the requirements of the Order in a meaningful and timely manner in promulgating the rule. The EO 13175 Compliance Certification should be prepared after the rulewriting office has completed any needed Tribal consultation activities, and included in the draft proposal or final rule package that you will transmit to OMB. See section 2.11 for more information on how the certification form will be processed.

5. In addition, under section 5 of the EO you must make available to OMB any written communications submitted to the Agency by Tribal officials.

2.8 What Steps Do I Follow for My Rule?

In the broad sense, EPA's ''Action Development Process''[9] will serve as the vehicle for coordinating with Tribes to identify Tribal implications and complying with the Order.

2.9 What Help and Participation Can I Expect as I Develop My Rule?

The AIEO oversees and coordinates the Agency-wide effort to strengthen public health and environmental protection in Indian country and oversees development and implementation of EPA's Indian Policy, including implementation of the EO, across the Agency. EPA's Indian Program staff can help you with your efforts to comply with Executive Order 13175. Contact information for AIEO, Headquarters and Regional staff, is available at *http://www.epa.gov/indian/miss.htm.*

EPA's RSC coordinates the Agency's rulemaking process and includes representatives for each Assistant Administrator (AA) and each Regional Administrator (RA). As part of the Office of Water (OW), the interests of AIEO are represented on EPA's RSC by the OW committee member. Like other members of the RSC, the OW representative reviews tiering forms, Regulatory Agenda entries, and other reports to identify rules under development that warrant or necessitate the AA-ship's participation.

For Tier 1 and Tier 2 rules, OW, like each of the other AA-ships and Regional offices, has an opportunity to confirm their participation in a formal role as a workgroup participant as well as the option to concur or non-concur that the Agency should issue a regulation as drafted.

The preliminary TI determination should preferably be made before the action is tiered. If TI is determined and consultation is determined to be necessary, the Tiering form should reflect that determination and note that OW/AIEO is requested to be a workgroup member or have a side agreement. As described in the above paragraph, AIEO or OW on AIEO's behalf would then reply in the affirmative to the tiering request to confirm that they will participate in a formal role as a workgroup participant or that they will request a side agreement.

You are encouraged to contact your RSC representative or RRC about any help they can give you as you plan or conduct your consultation. If you determine that your rule has TI after it has been tiered, alert your AA-ship's RSC representative as soon as possible in order to arrange for any appropriate formal workgroup participation by OW/AIEO.

It is important that you provide the AIEO workgroup member with timely information, such as drafts of requested consultation plans or Tribal summary impact statements, and that you carefully consider and respond, as appropriate, to their comments at the earliest stages of rulemaking. The following chart provides a summary of the stages in the rulemaking process where you may interact with OW/AIEO:

Step	OW/AIEO participation on rules with tribal implications
Tiering	You should consult with AIEO before making your initial TI determination. AIEO participates on all rules that have TI. If you determine that your rule has TI, AIEO should participate on your workgroup either as an active member or through a ''side agreement'' between the lead office and OW to forward your consultation plan to AIEO. OW/AIEO may also have side agreements on Tier 1 and Tier 2 rules. If you cannot make a TI determination at the tiering stage (and for many rules, you may not be able to), alert your AA-ship's RSC representative to arrange for any appropriate formal workgroup participation by OW/AIEO as soon you as you determine that your rule has TI.
Analytic Blueprint/Consultation Plan	You should work with AIEO in developing your analytic blueprint/consultation plan.
Final Agency Review (Tier 1 and 2 rules only).	If OW/AIEO participates on your Tier 1 or Tier 2 workgroup, they should participate in Final Agency Review of your rule. Like all participating offices, OW (in representation of AIEO and its other program offices) is asked to concur, concur with comment, or non-concur on the draft rule and preamble. You should alert the OW RSC representative if your rule has TI. If they non-concur, you should include their comments in the Action Memo sent by your AA to the Administrator, or in the memo to your AA requesting his or her signature on your rule.
OMB Review under EO 12866	Under EO 13175, EPA's Designated EO 13175 Compliance Official (the Director of AIEO) must certify each final rule with TI that will be reviewed by OMB under EO 12866. RMD will coordinate certification of your rule by the Designated EO 13175 Compliance Official.

[8] As a matter of policy, we recommend that you include the Tribal summary impact statement in the preamble to the proposal, as it helps alert Tribes to their potential interests, as well as in the final rule.

The EO calls for consultation early in the process of developing the proposed regulation so consultation should predate both the proposed and final rules.

[9] The Action Development Guidance can be found at *http://intranet.epa.gov/adplibrary.*

2.10 How Do I Begin the ''Tribal Consultation'' Process?

A. Coordination and Outreach

Coordination and outreach provide the key building blocks that lead to full-blown consultation. Coordination and outreach allow for early information exchange, issue education, problem identification, and the eventual establishment of consultation protocols. Early coordination with Tribes and Tribal interests can help to inform the final determination that the rule does or does not have TI.

[2.10–A] 1. *Outreach through regulatory reports.* The Agency has a number of routine means to alert the public, including Tribal officials, that EPA is developing regulations. For example, EPA publishes the Regulatory Agenda twice each year. The Regulatory Agenda describes EPA's planned rulemakings, identifies anticipated schedules for proposed and final rules, and indicates which rules are likely to have impacts on State, local, and Tribal Governments.

OPEI intends to send a copy of the Regulatory Agenda to each federally recognized Tribe upon publication bi-annually. This information is made available via the Internet (*http://www.epa.gov/regagenda*).

When the Regulatory Agenda is disseminated to the Tribes, EPA should also specifically request that the Tribal governments review the regulatory information and respond to the EPA program offices with an indication of actions that may have potential Tribal implications and information to help the Agency understand such implications. The Agency should also strive to make this information available electronically through AIEO's Internet site (*http://www.epa.gov/indian*) and the Federal government's interagency Web site, Codetalk (*http://www.hud.gov/offices/pih/ih/codetalk/index.cfm*). This information exchange helps ensure that Tribal Officials are afforded early and meaningful opportunities to provide input on regulations that may require consultation.

Your determination of whether an action has TI should be made with the help of AIEO and the OGC/ORC attorney assigned to your rule. You should carefully assess the feedback of Tribal governments before making your TI determination. The sections above explain how you should generally proceed within the rulemaking process after you make the determination that your rule does or does not have TI. You should still continue to work with your RSC representative to provide periodic updated regulatory information to Tribes. As stated earlier, a lack of Tribal responses to EPA inquiries during a time period should not automatically be construed as lack of interest, nor should you immediately infer that the lack of feedback regarding the potential impacts on Tribes means that the rule will not have TI. However, if after a meaningful and timely effort at consultation, there is no response from any Tribal Officials, these efforts will be sufficient to satisfy the EO with respect to your action's promulgation.

[2.10–A] 2. *Outreach through forums for hearing Tribal concerns and perspectives.* We also strongly encourage you to take advantage of existing EPA resources, contacts within your AA-ship's Lead Region, and the Agency's existing relationships with Tribal entities, be they EPA Indian program staff, advisory committees, and/or Tribal organizations. Your program office's Indian Coordinator/RIC and AIEO staff have developed relationships with Tribes and are well versed in areas of particular concern to Tribes. Your work with organizations representing Tribal interests may not satisfy the consultation requirements of the EO because representatives of these bodies are not necessarily authorized to speak officially on behalf of their respective Tribes. However, these organizations may provide you with valuable information and perspectives, as well as help you identify whether your rule has the potential to have more than a minimal impact on Tribes. They may also be able to recommend with whom you should/may consult.

In addition to the attorney assigned to your rule and your RSC/RRC Representative, your program office's Tribal coordinator/RIC, and EPA's Indian Program staff are the most appropriate internal contacts to help evaluate Agency actions for Tribal implications, identify the appropriate Tribal representatives and organizations, and facilitate contacts with those Tribal representatives and organizations. For a list of those contacts, *see* 2.10–C.

You should also consider soliciting input on the potential impact of your rule from EPA's TOC and RTOC, respectively. These committees are composed of EPA's senior leadership, Tribal leaders and/or their Tribal environmental program managers.

Engaging the TOC and RTOCs to discuss your rule, inviting input and comment from Tribes, and providing further outreach, if needed, may help bring about important insights and perspectives. Again, while the TOC and RTOCs are important and effective vehicles for enhancing communications between EPA and the Tribes, your work with them may not a substitute for Agency consultation with Tribal Officials under the EO. However, the TOCs or ROTCs may be able to identify Tribal Officials with whom you should consult.

You may also consider soliciting input on the potential impact of your rule by publishing articles in EPA or other newsletters that reach Indian country, through electronic forums such as EPA Web sites, through e-mails directly to Tribal governments/environmental staff, or through other forums.

[2.10] B. Engaging Tribal Officials

If you determine that your rule will have TI and requires consultation, you should further coordinate with the Tribes to determine which Tribes are interested in participating in consultation. You should prepare a letter from your senior program manager or AA to Tribal leaders that:

- Extends an opportunity to consult on the rule, and
- Requests that the Tribal leader identify the manner in which he or she wishes to be consulted, if at all, and/or identify a Tribal official, employee or inter-Tribal organization that is duly authorized to consult with the Agency on the Tribal leader's behalf. (Note: Meetings with inter-Tribal organizations may be subject to FACA.)

As part of that mailing, we recommend that you include your appropriate contact information and options for Tribes to recommend and return in order to simplify the response process. Once the consultation options have been identified, the Program office will develop a consultation plan in concert with AIEO.

[2.10] C. Consultation With Tribal Officials

As discussed in sections 2.6 and 2.7, sections 3(c)(3) and 5 of the Order create requirements for EPA to consult with Tribal officials under certain circumstances on rules with Tribal implications and substantial direct compliance costs or that pre-empt Tribal law or that establish Federal standards. Such consultation should involve AIEO, rulewriters, and high-level program office representatives. Senior program managers should be involved because the Agency may be consulting with high-level officials in Tribal government. Given the government-to-government relationship between the Federal government and the Tribes, your AA/RA would optimally be involved in the consultation activity, or

at a minimum, delegate that responsibility to a senior program manager.

The key to successful consultation is early notice and early initiation of contact with elected Tribal officials to promote adequate input during the regulatory development process. Important to the process is a willingness to go to the Tribes openly without preconceived outcomes, and to listen to the concerns and issues the Tribes bring to the process. It is in this climate of mutual respect and sharing of information that the concept of consultation can be realized.

It is also important to identify opportunities to engage the Tribes in outreach activities, such as scheduling special or separate sessions for Tribes at public hearings, attending National Tribal Forums, and other such meetings as circumstances warrant. This helps to ensure that Tribes continue to be informed of any actions with potential Tribal implications. Each rule may call for a different approach to consultation, and flexibility in this process will be a hallmark of successful collaboration.

[2.10–C] 1. *How much consultation is appropriate?* The amount and type of outreach and consultation for a rule should be commensurate with its estimated impacts on Tribal governments, its complexity, and controversy over the issues involved. This approach focuses the most extensive outreach and intensive consultation efforts on those regulations of greatest interest to, and potential effect on, Tribal governments. Recognizing that Tribal officials are often in a better position than EPA to identify the potential political and resource implications of regulations EPA is considering, you are strongly encouraged to coordinate with potentially affected Tribal leaders before deciding how much consultation would be appropriate and before preparing a final consultation plan. Consultation is especially important at key points in the process, such as options selection. AIEO can help you to determine appropriate levels of consultation.

Tribal consultation for rules with TI that are expected to preempt Tribal law and/or impose substantial direct compliance costs should begin early in the process of developing the proposed regulation. Proposed regulations that have benefitted from Tribal involvement in their development inherently have greater support from the regulated entities, and the possibility of poor reception to a proposed rule from those affected is diminished.

[2.10–C] 2. *How do I communicate with Tribal officials?* Because of the large number of Tribal governments that you may potentially consult, there is no one-size-fits-all approach to Tribal consultation. You should tailor the consultation process, using the approach described above in C.1, to the regulation that you are developing. However, it is very important that a senior manager sign correspondence between EPA and the Tribes, and be present at conference calls and in-person meetings, especially during initial contact. Authority may be delegated—by both EPA and the Tribes—as appropriate, keeping in mind the government-to-government relationship and the importance of choosing appropriate personnel for these sensitive dialogues.

Once the consultation plan has been developed, confirm the time-line and provide the Tribes with enough information so that meaningful dialogue is promoted. Whether through teleconferences or face-to-face meetings, it is important to continue the dialogue, obtain input from the Tribes, and provide feedback.

You should carefully consider what information to prepare and provide to Tribal government representatives. Information can serve two purposes:

(a) To promote understanding of what EPA is planning and why, and

(b) To foster participation of these officials in the rulemaking process.

To consult with Tribal officials, you should design information specifically for their needs and interests. Materials designed for Tribal government officials should be in plain language and, to the extent such information is available:

- Describe clearly the problem the rule is intended to address.
- Explain the basis for determining there is a problem.
- Point out whether the problem is regional or national in scope.
- Explain how the rule will improve on present conditions.
- Identify who will benefit from the rule.
- Identify what facilities or operations will be subject to the requirements.
- Explain whether and how the benefits of the rule can be measured.
- Identify who will pay for the rule.
- Provide information on potential costs and benefits.
- Explain any flexibility in the rule that would allow for adjustments to Tribal conditions or circumstances.

Some of this information may not be available until later in developing a proposed rule. You may, however, begin your consultations without full information and provide further information as it becomes available.

[2.10–C] 3. *What types of consultation should I consider?* You should explore a variety of alternative approaches to consulting with Tribal government officials when developing a regulation—including one-on-one discussions, public meetings, Tribal summits, workshops, policy dialogues in formal advisory committees, written correspondence and regulatory negotiations.[10] You can also work with the TOC and RTOC to identify possible avenues for consulting with Tribal officials and via consortia, as appropriate or agreed upon. Remember, Tribes may not want or need to consult face-to-face but they should be offered the opportunity to consult if a proposed rule has TI and preempts Tribal law or imposes substantial direct compliance costs. Regardless, you should involve AIEO and the OGC/ORC attorney assigned to your rule when discussing these approaches, for example, in your consultation plan. You will need to be aware of any legal requirements that may apply to your approach (including, for instance, requirements of the Paperwork Reduction Act) and ensure your outreach and consultation activities are consistent with the law.

[2.10–C] 4. *Does the Federal Advisory Committee Act (FACA) apply to consultations with Tribal government representatives?* Under UMRA's FACA exemption, FACA does not apply to meetings that are ''exclusively between Federal officials and elected officers of State, local, and Tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities, [provided that the] meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.'' [UMRA 204(b), 2 U.S.C. 1534(b)]. OMB construes the UMRA exemption broadly[11] to facilitate intergovernmental communications.

Caution!! UMRA's exemption to FACA might not apply to your meeting!

While OMB construes the exemption broadly, it applies only to meetings convened solely to discuss matters

[10] Meetings with outside organizations may be subject to the Federal Advisory Committee Act (FACA). Consult your Office of General/Regional Counsel attorney to determine whether FACA applies to your meeting.

[11] Guidelines and Instructions for Implementing section 204, ''State, Local, and Tribal Government Input,'' of Title II of Public Law 104–4, Alice M. Rivlin, Director, Office of Management and Budget, September 21, 1995, pages 6–7.

relating to intergovernmental responsibilities or administration. Meetings relating to situations in which the Tribe is a regulated party likely are not exempt from FACA. Even if your meeting is not covered by the UMRA exemption, other statutes may still govern whether and how you are to consult with Tribal governments.[12]

[2.10–C] 5. *Should I keep records of Tribal consultations?* In general, yes. It is generally recommended to keep records of consultation activities that you undertake related to the Order, and place them in the docket of the rulemaking. This helps to readily document compliance in the event of questions, either from EPA's Designated EO 13175 Compliance Official or from OMB. However, it is also important to promote a full and frank exchange of views during government-to-government consultation with Tribes, which may include discussions relating to issues of unique sensitivity to Tribes such as Tribal cultural practices and uses of environmental resources, locations of Tribal cultural resources, Tribal relationships with surrounding States, jurisdictional issues, etc. In preparing any records memorializing consultations with Tribes, you should consider these potential sensitivities in determining the level of detail to include. You should also consider and, as appropriate, consult with the Tribes regarding the fact that memorializations of consultations (or other documents) exchanged between EPA and Tribes may not necessarily be privileged or otherwise protected from disclosure under the Freedom of Information Act. You should consult with your OGC/ORC contact in evaluating these issues.

2.11 Process for Executive Order 13175 Certification

If a draft final regulation has substantial, direct effects on Tribal governments (i.e., Tribal implications), a designated agency official must certify that EPA has complied with the relevant requirements of EO 13175, pursuant to section 7(a) of the Order.

If the draft final regulation will be reviewed by OMB pursuant to Executive Order (EO) 12866 *and* it has Tribal implications, complete the form and submit it to OPEI's RMD with your EO 12866 submission package. OPEI will transmit this form to OMB when submitting the final rule to OMB pursuant to EO 12866.

For Tier 1 and 2 rules, OPEI's RMD will generate the EO 13175 Compliance Certification in preparation for the Final Agency Review meeting and coordinate signature by the Designated EO 13175 Compliance Official.

For Tier 3 rules, the RSC representative or RRC will send the rule and an unsigned certification form to RMD when the rule is ready for certification and submission to OMB. RMD will coordinate signature by the Designated EO 13175 Compliance Official.

Program offices place the EO 13175 Compliance Certification form in the docket of the rulemaking.

2.12 How Does EPA Track and Record Actions That May Be Affected by the Executive Order?

OPEI gathers a listing of all rules that will have any effect on Tribal governments in order to prepare EPA's semi-annual Regulatory Agenda.

The status of Tribal consultation plans (*e.g.*, under development, consulting with AIEO, outreach initiatives) is monitored throughout the action development process.

For draft final regulations that are reviewed by OMB pursuant to Executive Order (EO) 12866 *and* have Tribal implications, the EO 13175 Compliance Certification forms will be placed in the docket for the particular rulemaking.

Chapter 3—Legislative Comments or Proposed Legislation

3.1 How Does Executive Order 13175 Apply to Legislative Comments or Proposed Legislation Submitted by EPA?

The Order defines ''policies that have Tribal implications'' as including legislative comments or proposed legislation that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Accordingly, if EPA is submitting official Agency legislative comments or proposed legislation to Congress or OMB, and the comments or proposed legislation have TI, the principles of section 2 and the general policymaking criteria provided in section 3 of the Order would apply (see Chapter 2.5).

In addition, section 4 of EO 13175 contains ''Special Requirements for Legislative Proposals.'' The Order states that agencies shall not submit to the Congress legislation that would be inconsistent with the section 3 policymaking criteria.

EPA interprets the EO as applying to proposed legislation or legislative comments that are official Agency positions with Administration clearance. At EPA, the Office of Congressional and Intergovernmental Relations (OCIR) within the Office of the Administrator is the Agency's principal point of contact with Congress, and has responsibility for developing and implementing the legislative agenda of the Agency.

Legislative comments or proposals that would fall within the scope of the Order are typically those on which OCIR has worked with all Agency offices to develop and/or draft; has worked with other departments and agencies within the Executive Branch to obtain Administration-wide concurrence and clearance through OMB; and has communicated to Congress.

For example, if a member of Congress or the Senate has draft legislation to introduce and sends a letter to the Administrator or the Associate Administrator asking for the Agency's position on that legislation, our legislative comments on that bill potentially would be subject to the requirements of sections 2, 3 and 4 of the Order. Similarly, if a member of Congress or the Senate asks EPA to submit draft legislation to him or her for consideration, this potentially would be subject to the Order.

As with draft final rules that are subject to OMB review under EO 12866, when OCIR transmits to OMB for clearance any proposed legislation that has TI, OCIR must include an EO 13175 Compliance Certification Form signed by the Designated EO 13175 Compliance Official that states that EPA has met the requirements of the Order. In this case, the certification would state we have met the ''Special Requirements for Legislative Proposals'' contained in the Order.

Within EPA, the responsibility for determining whether there are TI and following the Order's requirements falls on the program office that has the lead for drafting the substance of the draft legislation or legislative comments. The lead office should work closely with its OGC or ORC attorneys and AIEO staff.

[12] Mandatory consultation provisions with Tribes (and other affected entities) may exist in statutes and regulations that may not be directly administered by EPA, but which may nevertheless obligate the Agency to consult. E.g., the National Historic Preservation Act (NHPA) and the Native American Graves Protection and Repatriation Act (NAGPRA) are not directly administered by EPA; however, circumstances may exist which require consultation under these statutes. Check with OGC and/or ORC for legal interpretations of the consultation-related provisions in the various statutory and regulatory schemes.

3.2 Does the Executive Order Apply When EPA Provides Comments to Another Agency on Their Draft Legislation or Provides Technical Assistance to Congressional Staff?

No. Responding to another agency's request for comments on their draft legislation or testimony would not be subject to the Order, as these are not comments submitted by EPA to Congress. The duty to determine whether there are any Tribal implications for the draft bill or legislative comments falls upon the agency that is submitting the bill or comments.

Similarly, responding to a request from Congressional staff for technical assistance on how to craft or word a bill would not be subject to the Order, as EPA is merely responding to the request for technical assistance, not submitting to Congress draft legislation or official agency legislative comments.

Chapter 4—Waivers

4.1 What Does the Executive Order Require Concerning Indian Tribes Applying for Waivers of Statutory and Regulatory Requirements?

Section 6 of EO 13175 contains requirements that apply to applications submitted to EPA by Tribal governments seeking to waive some or all of the statutory or regulatory requirements that apply to them.

Specifically, if the authorizing statute gives EPA discretion to waive some or all of the statutory or regulatory requirements as applied to the Tribal government(s), EO 13175 requires EPA, to the extent practicable and permitted by law, to:

- Streamline the process for Tribal waiver applications.
- Increase opportunities for utilizing flexible policy approaches where the proposed waiver is consistent with Federal policy objectives and is otherwise appropriate.
- Render a decision within 120 days or as otherwise provided by law or regulation.
- Provide timely written notice and reasons therefor if the waiver is not granted.

4.2 What Does the Executive Order Contain About Flexible Policy Approaches?

As described above, the Order directs agencies, to the extent practicable and permitted by law, to consider Tribal applications for waivers of statutory and regulatory requirements with a general view toward increasing opportunities for use of flexible policy approaches. To this end, we encourage you to encourage Tribes to develop their own policies to achieve program objectives, and where possible, to defer to Indian Tribes to establish standards. At a minimum, under the EO you would be required, to the extent permitted by law, to consult with Tribal officials as to the need for Federal standards and to explore any alternatives that would limit the scope of Federal standards or preserve the prerogatives and authority of Indian Tribes.

Chapter 5—Permits and Licenses

5.1 Do the Requirements of Executive Order 13175 Apply to Permitting Activities?

As noted throughout this draft document, EO 13175 applies to ''policies that have Tribal implications.'' In addition to regulations and legislative comments/proposed legislation, which are discussed, respectively, in Parts 2 and 3 of this draft document, ''policies that have Tribal implications'' may also include other policy statements and actions that have substantial direct effects as described in the EO. EPA's position with respect to such other actions, including permitting actions, is that, to the extent they do not in and of themselves require any action or compliance by Tribal governments, these actions will not have direct effects on such governments and thus will not have Tribal implications. Permits typically apply directly to named parties (*i.e.*, permittees), and it is those named parties that realize any direct impacts. For example, a water treatment facility applying for a discharge permit will be directly responsible for compliance with the permit and the underlying environmental statute and regulations, as well as the associated compliance costs. Such a facility would be the entity that may be directly affected by the permitting action. Any additional effects (for instance, on users of the water or local communities) would necessarily be indirect in nature. Thus, permits issued to non-Tribal facilities would generally be considered as not having Tribal implications even if the facility is located in or near Indian country or some other area of interest to a Tribal government since any effect on the Tribe would be indirect in nature. However, where a permit would require action or compliance by a Tribal government (*e.g.*, where a Tribe or a Tribal facility is the applicant/permittee), it is possible that the permitting action will have substantial direct effects as described in the EO, and EPA should consider whether the threshold for Tribal implications has been met.

For permitting actions that do meet the threshold for Tribal implications, EPA should apply all applicable provisions of the EO for this type of action. Because permits are not rules and because they do not establish Federal standards (which, for purposes of EPA actions, would generally be accomplished through rulemaking), EPA's view is that the specific requirements, including consultation requirements, of sections 3(c)(3) and 5 of EO 13175 generally do not apply to permits.

Permits typically apply directly to named parties, and therefore it is those named parties that receive a permit which realize any direct impacts. For example, a water treatment facility holding a discharge permit is directly responsible for compliance with the permit and the underlying environmental statute and regulations, as well as the associated compliance costs. If EPA issues a permit to a non-Tribal facility that is located near, but not in, Indian country, the permit would generally be considered to have no Tribal implications. In such a case, while a Tribe may in fact be impacted, it is the facility that realizes any direct effects of the permit. Where a Tribe is the recipient of a permit, then the tribe is the directly impacted, named party subject to compliance with the permit, the statute, and regulations. In these situations, a permit could have substantial, direct effects on a tribe. However, for permitting actions with Tribal implications, you must still adhere to the fundamental principles and federal policymaking criteria expressed in sections 2 and 3 (respectively) of the EO. As always, you should work with the OGC/ORC attorney assigned to your action to address any questions about the applicability of EO 13175 to your action.

Lastly and importantly, even though you may not be required to consult with Tribal governments on individual permitting/licensing actions under the terms of EO 13175, consultation with Tribal governments may be called for under other Federal and/or EPA-specific policies and/or directives. The Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments, which EO 13175 intended to supplement, and EPA's Policy for the Administration of Environmental Programs on Indian Reservations both set forth further criteria for appropriately consulting/interacting with Tribal governments.

Chapter 6—Policy Statements, Guidance Documents and Similar Actions

6.1 Are EPA's Policy Statements, Guidance Documents, and Similar Actions Covered by Executive Order 13175?

In addition to those actions described in Chapters 2 through 5 of this draft document, EO 13175 also applies to ''other policy statements and actions'' that have substantial direct effects. These other policies may include policy statements, strategies, guidelines, guidance and interpretive documents (collectively, ''guidance documents''). EPA's position is that guidance documents generally do not create legally binding requirements and, therefore, will not have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.'' Thus, where there are no legally binding requirements being created, such guidance documents generally will not have TI and will not trigger the various relevant requirements of the EO. Nonetheless, other policies relating to consultation with Tribal governments and consideration of Tribal views may be relevant to your guidance document.

6.2 Do the Requirements of Executive Order 13175 Apply If My Guidance Document Is Not Titled a ''Rule'' or ''Regulation'' But Creates Legally Binding Requirements?

Regardless of what it is called, if your guidance document does create any legally binding requirements (e.g., grant guidelines/conditions—including application deadlines—upon which EPA will base its award decisions), the requirements of the EO may apply, and you should determine in consultation with your program's RSC representative and the attorney assigned to your action whether it has TI.[13] Documents that contain legally binding requirements are generally subject to the TI analysis and consultation provisions in the same manner as rules, as discussed in Chapter 2 of this draft Guidance. As described in that Chapter, if your document has TI, you should consider whether consultation requirements of the EO are triggered by analyzing whether your document imposes substantial direct compliance costs on Tribal governments (including consideration of whether your action has either an UMRA intergovernmental mandate or will impact small governments at or above 1% of their revenues)[14]. Similarly, you should coordinate with OGC/ORC in analyzing whether the document would have preemptive effects.

6.3 An Important Note about Guidance Documents and EPA's Internal Policy on Consulting With Tribal Governments

As noted above, EPA's guidance documents generally do not create legally binding requirements and most will not have Tribal implications. However, Tribal governments may have—or you may expect them to have—a heightened level of interest in certain non-binding guidance documents. For example, a policy statement might announce for the first time how EPA is planning to address a significant environmental problem nationally. In some circumstances, you might know or expect that the problem at hand is one of particular significance to Tribal governments, and that the policy statement would have significant implications for those governments.

Even if the consultation requirements of EO 13175 and the considerations of other EPA and/or government-wide policies do not apply to your guidance document, you are nonetheless encouraged to engage Tribal officials—in the spirit of EO 13175 and consistent with EPA's objective of promoting communication between EPA and Tribal governments—on those guidance documents that you expect to be of interest to Tribal governments by:

- Consulting early, to the extent practicable given the nature and the timing of the action, with appropriate Tribal government representatives, including your professional counterparts, if they so desire; and
- Discussing briefly in your document any consultation that occurred, the nature of the Tribal government representative's concerns, and how you addressed those concerns or why EPA decided not to implement suggested changes.

[13] Under the APA section 551(4), '' 'rule' means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;''.

[14] In general, grant guidelines don't have TI under the substantial cost threshold (see part [2.6–A]1) because conditions of federal assistance are excluded from the definition of Federal intergovernmental mandate under UMRA, 2 U.S.C. 658(5). But you still must determine whether your guideline meets any of the other thresholds for TI (see part 2.6A and C).

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Federal Register

Wednesday,
April 19, 2006

Part VII

The President

Memorandum of April 17, 2006—Designation of Officers of the Social Security Administration

Federal Register
Vol. 71, No. 75
Wednesday, April 19, 2006

Presidential Documents

Title 3—

The President

Memorandum of April 17, 2006

Designation of Officers of the Social Security Administration

Memorandum for the Commissioner of Social Security

By the authority vested in me as President under the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, I hereby order that:

Section 1. *Order of Succession.*

During any period when both the Commissioner of Social Security (Commissioner) and the Deputy Commissioner of Social Security (Deputy Commissioner) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Commissioner, the following officers of the Social Security Administration, in the order listed, shall perform the functions and duties of the office of Commissioner, if they are eligible to act as Commissioner under the provisions of the Federal Vacancies Reform Act of 1998, until such time as the Commissioner or Deputy Commissioner is able to perform the functions and duties of the office of Commissioner:

Chief of Staff;

Deputy Commissioner for Operations;

Regional Commissioner, Philadelphia; and

Regional Commissioner, Dallas.

Sec. 2. *Exceptions.*

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Commissioner pursuant to this memorandum.

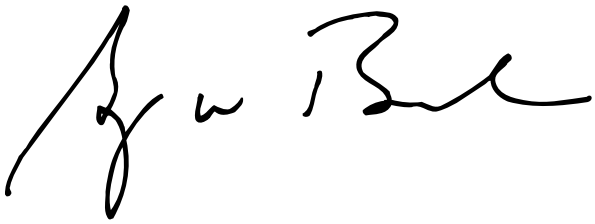
(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this memorandum in designating an acting Commissioner.

Sec. 3. *Prior Memorandum Superseded.*

This memorandum supersedes the Presidential Memorandum of May 9, 2002, entitled ''Designation of Officers of the Social Security Administration.''

Sec. 4. *Publication.*

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 17, 2006.

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H.J. Res. 81/P.L. 109–216

Providing for the appointment of Phillip Frost as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 13, 2006; 120 Stat. 331)

H.J. Res. 82/P.L. 109–217

Providing for the reappointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 13, 2006; 120 Stat. 332)

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