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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AH44

Conservation Reserve Program—Emergency Forestry Conservation Reserve Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Conservation Reserve Program (CRP) regulations to implement provisions of Public Law 109–148 (2006 Act) that provide for enrollment in the CRP of private non-industrial forest land that experienced a loss of 35 percent or more of merchantable timber in the States suffering forestry damage directly related to hurricanes Katrina, Ophelia, Rita, Dennis, and Wilma.

DATES: *Effective Date:* June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Kiley Barnes, Conservation and Environmental Programs Division, USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue SW., Washington, DC 20250–0513, Telephone (202) 720–8772; e-mail: *kiley.barnes@wdc.usda.gov*.

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Background

Section 107 the 2006 Act amended the Food Security Act of 1985 (16 U.S.C. 3831), which provides statutory authority for the CRP, to provide for the Emergency Forestry Conservation Reserve Program (EFCRP) to enroll in the CRP private non-industrial forest land that experienced a loss of 35 percent or more of merchantable timber in the States suffering forestry damage directly related to hurricanes Katrina, Ophelia, Rita, Dennis, and Wilma. Accordingly, the CRP regulations at 7 CFR part 1410 are changed by adding a new section 1410.12.

The CRP is the Nation's largest private lands conservation program. Compared to the broader CRP which targets certain cropland and marginal pastureland, the EFCRP is designed to focus on the restoration of private non-industrial forest land damaged by 2005 hurricanes. EFCRP shares with the broader CRP the authority to consider certain expected environmental benefits from enrollment. The 2006 Act also authorized an additional factor for EFCRP, mitigation of economic loss. Accordingly, which is discussed in greater detail later, when considering which offers are acceptable for enrollment, Commodity Credit Corporation (CCC) will consider the expected environmental benefits from soil erosion prevention, water quality improvement, and wildlife habitat restoration as well as mitigation of economic loss.

For purposes of eligibility, this new program is available in counties with a Presidential-or Secretarial-declared primary disaster designation due to hurricanes during the 2005 calendar year. The eligible owners and operators may enroll applicable private non-industrial forest land in the new EFCRP during calendar year 2006. Private non-industrial forest land, for purposes of EFCRP, means lands with existing tree cover that is owned by an individual, group, association, corporation, Indian tribe, or other private entity or a person who or entity who receives concurrence from the landowner for practice implementation.

Offers for enrollment may be made at local Farm Service Agency (FSA) offices through November 30, 2006. The 2006 Act requires that eligibility for enrollment is limited to owners and operators of private non-industrial forest land that have experienced a loss of 35 percent or more of merchantable timber in a county affected by hurricanes during the 2005 calendar year. All offers will be verified for eligibility. Merchantable timber is defined in the 2006 Act and in the regulations as timber on private non-industrial forest land on which the average tree has a trunk diameter of at least six inches measured at least four-and-one-half feet above the ground. Under EFCRP, contracts will be for 10 years and will become effective the first day of the month following the month of contract approval by the CCC. Therefore, EFCRP contracts will expire at the end of the month throughout the year, depending upon the month of the effective date, rather than expiring September 30 of the appropriate year as required by section 1410.7(c) and, accordingly, an exception to his requirement was made in section 1410.12(j).

A conservation plan for forestry is a required component of an EFCRP contract and will include provisions for soil erosion, water quality, and wildlife habitat as well as provisions for site preparation and planting, to the maximum practicable, of native species or, if native species are not practicable, with similar species as existed prior to hurricane damage. EFCRP participants will agree to restore trees to the minimum silvicultural level established by the United States Forest Service for the purposes of the practice. As with all CRP contracts, no commercial use of the crop (timber) will be permitted during the contract period, but management activities customary with normal forestry practice such as pruning, thinning, and stand improvement will be permitted as specified in the conservation plan for the property. However, forestry maintenance such as pruning, thinning, and timber stand improvement, in accordance with a conservation plan and in exchange for an applicable reduction in the annual rental payment, as determined by the Deputy Administrator, is permitted.

In determining which offers to accept, CCC will collect data on soil erosion, water quality, wildlife habitat, and mitigation of economic loss and, using a generally-applicable benefits index, CCC will determine the acceptability of all offers.

Regarding the acceptability of offers for EFCRP and as previously indicated, the purposes of the EFCRP include soil erosion prevention, water quality improvement, wildlife habitat restoration, mitigation of economic loss. Accordingly, section 1410.12(g) provides that offers will be evaluated and ranked consistent with those goals. Periodically throughout calendar year 2006, CCC will aggregate the offers and select those offers deemed most desirable.

A conservation plan for forestry is a required component of an EFCRP contract and will include provisions for soil erosion, water quality, and wildlife habitat as well as provisions for site preparation and planting, to the maximum practicable, of native species, or with similar species as existed prior to hurricane damages, as approved by CCC. For each EFCRP contract, the conservation plan will describe the area enrolled, how the site will be prepared, and measures for soil erosion prevention, water quality improvement and wildlife habitat restoration such as wildlife plantings and tree density reduction. In preparing the conservation plan, an assessment will be conducted of resources, environmental documentation, and a schedule outlining the specified dates for planning activities pertaining to the contract. Also included will be the maintenance requirements for the contract length such as weed control, tree thinning, and prescribed burns, if appropriate for the site. As part of the conservation plan, the type of soil on the acreage and acceptable plantings will also be considered.

For offers that are not acceptable, those offers will be ''grandfathered'' into the next aggregation of offers. This process of evaluating offers and ''grandfathering'' those offers not acceptable into the next aggregation to be reviewed is scheduled to occur until the final aggregation and offer evaluation which is scheduled to occur after November 30, 2006.

The 2006 Act authorized EFCRP participants the choice of receiving one discounted, lump-sum payment or annual rental payments for the duration of the contract. Total funding is $404,100,000, which will remain available until expended and includes all financial, cost-share, and technical assistance costs.

As previously indicated, CCC will evaluate all offers based on four factors: Soil erosion prevention, water quality improvement, wildlife habitat restoration, and mitigation of economic loss. Soil erosion prevention and water quality improvement are inherent in any acceptable cover. Wildlife habitat restoration will be evaluated based on the type and density of tree cover that the landowner offers to restore that may be more desirable as wildlife habitat, such as planting longleaf pine and hardwoods (bottomland and upland) as opposed to other softwood species (including loblolly pine). Mitigation of economic loss is an assessment by forestry professionals of the economic loss suffered as a result of the 2005 hurricanes.

The 2006 Act provided that acreage enrolled under this provision does not count towards otherwise applicable limits on the number of acres that may be enrolled in the CRP in any one county or on CRP's maximum acreage enrollment authority. Therefore, the provisions of section 1410.4 do not apply to the new EFCRP provisions which will now be codified at section 1410.12.

Lump sum payments will be calculated using the Office of Management and Budget's (OMB) 2006 nominal 10-year discount rate of 5 percent published under Circular A–94, Discount Rates to Be Used in Evaluating Time-Distributed Costs and Benefits. Payments, it should be noted, are normally issued at the end of the program year. Use of a discount means that one lump-sum payment issued today will be less in absolute terms than 10 equal annual payments issued over time but are equal given the time-value of money. For example, assume a producer enrolls 10 acres into EFCRP with a rental rate of $30 per acre. Under a lump-sum payment option, the payment would be $2,317 whereas, over 10 years, an annual rental payment of $300 would produce $3,000.

Other programs such as the Emergency Watershed Program authorized under regulations at 7 CFR part 624 or the Emergency Conservation Program authorized under the regulations at 7 CFR part 701 may be available for the removal of debris, downed timber, or for other purposes which are consistent with the purposes of EFCRP. If another Federal program makes a ''cost-share'' payment, an EFCRP participant is not eligible to receive or retain a EFCRP cost-share payment a result required by the regulations at 7 CFR 1410.40(f). Also, CCC will assure that duplicate payments are not made for the same practice under different programs. Section 1410.12(k) was added to address that issue.

Cost/Benefit Analysis Summary

In analyzing the economic effects of this rule two options have been examined: (1) Using of a Benefits Index that selects participants based on economic damages, potential gully erosion, tree species to be established, and wetland acres; and (2) targeting the funds to counties with the greatest timber damage. The full $404,100,000 appropriated would be exhausted under either scenario.

FSA has chosen to use Option 1 which uses the Benefits Index to select participants for the EFCRP. Use of a Benefits Index to select participants complies with the instructions in the statute to ''* * * consider an equitable balance among the purposes of soil erosion prevention, water quality improvement, wildlife habitat restoration, and mitigation of economic loss.'' Under either option additional, qualitative environmental benefits are obtained from controlling invasive plant species, establishing longleaf pine stands, and restoring bottomland hardwood stands. Controlling invasive species enhances wildlife habitat, as does establishing longleaf pine and bottomland hardwood forests. Longleaf pine stands are a declining ecosystem and bottomland hardwoods restore floodplain wetlands.

The Agency analysis found that use of the $404,100,000 appropriated has a 10 year discounted cost of between $353 million and $378 million. When adjusted for inflation, the cost ranges from $341 to $364 million. When the cost of EFCRP was examined under a high cost scenario, inflation adjusted, discounted costs increased approximately 3 percent, ranging from $352 to $372 million. Under the low cost scenario, inflation adjusted, discounted costs decreased approximately 5 percent, with a range between $323 million and $351 million dollars.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 107(a) of Division B of the 2006 Act requires that these regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notice and comment rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This rule is Economically Significant for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A Cost/Benefit Analysis was completed and is available from the person cited above.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 107(a) of Division B of the 2006 Act requires that the Secretary use the authority in 5 U.S.C. 808 which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of

filing for public inspection by the Office of the Federal Register.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner that is consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA has initiated the completion of a programmatic environmental assessment (PEA) to determine the potential impacts of this action upon the human and natural environments. A copy of the draft and final PEA will be made available for public comment upon their completion. No contracts will be approved by the Agency until all environmental review requirements have been completed.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. This final rule is not retroactive and does not pre-empt State laws. Before any judicial action may be taken with respect to the provisions of the final rule, administrative remedies at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any 1 year. This rule contains no Federal mandates for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are: Conservation Reserve Program—10.069.

Paperwork Reduction Act

Section 107(a) of Public Law 109–148 requires that these regulations be promulgated and administered without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule do not apply.

List of Subjects in 7 CFR Part 1410

Agriculture, Disaster assistance, Forests and forest products, Grazing lands, Natural resources.

■ Accordingly, 7 CFR part 1410 is amended as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

■ 1. The authority citation for 7 CFR part 1410 continues to reads as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

■ 2. Amend § 1410.2 by adding the following definitions in their appropriate alphabetical order:

Merchantable timber means timber grown for commercial purposes on private non-industrial forest land on which the average tree has a trunk diameter of at least 6 inches measured at a point no less than 4.5 feet above the ground.

Present value means the value of a stream of future payments discounted by 5 percent in accordance with Office of Management and Budget Circular A–94 (revised January 2006), Discount Rates to Be Used in Evaluating Time-Distributed Costs and Benefits.

Private non-industrial forest land means, for purposes of § 1410.12, lands with existing tree cover that are owned by a private non-industrial forest landowner and which were damaged by hurricanes occurring in calendar year 2005.

Private non-industrial forest landowner means, for purposes of § 1410.12, an individual, group, association, corporation, Indian Tribe, other legal private entity, or State School Trust, owning non-industrial private forest land or who receives concurrence from the landowner for making the claim in lieu of the owner, and for practice implementation and who holds a lease on the land for a minimum of 10 years. Corporations whose stocks are publicly traded or owners or lessees principally engaged in the primary processing of raw wood products are excluded from this definition. An owner of land leased to a lessee shall also be excluded who should be excluded under the previous sentence.

State school trust land means land owned by a State with the explicit purpose of supporting public schools.

■ 3. Add § 1410.12, to read as follows:

§ 1410.12 Emergency Forestry Program.

(a) In addition to other allowable enrollments, certain non-industrial private forest land located in Presidential- or Secretarial-declared primary disaster counties that suffered damage from hurricanes in calendar year 2005 may be enrolled through the Emergency Forestry Conservation Reserve Program (EFCRP) provided for in this section.

(b) Owners and/or operators may enroll non-industrial private forest land, as defined in § 1410.2, in the CRP provided that the private non-industrial forest land:

(1) Has merchantable timber (timber on land on which the average tree has a trunk diameter of at least six inches measured at a point no less than four and one-half feet above the ground); and

(2) Has experienced a loss of 35 percent or more of merchantable timber in a 2005 calendar year hurricane-affected county due to 2005 hurricanes.

(c) The provisions of § 1410.4 do not apply to this section.

(d) Any overall acreage enrollment limit imposed on CRP shall not apply to acreage enrolled under this section.

(e) All participants subject to a CRP contract entered into pursuant to this section must agree:

(1) To restore the land, through site preparation and planting of, to the maximum extent practicable, native species or similar species as existing prior to hurricane damages as may be specified in the contract, and comply with other requirements as may be specified in the contract;

(2) To establish temporary vegetative cover; and

(3) That the contract term shall be for a period of 10 years, during which time standing timber may not be harvested from the enrolled land except as may be approved by CCC in the conservation plan as part of the normal maintenance of the forest land.

(f) Offers for contracts under this section shall be submitted under continuous signup provisions as authorized in § 1410.30.

(g) In evaluating contract offers to which this section applies, different factors, as determined by CCC, may be considered for priority purposes. These include but are not limited to soil erosion prevention, water quality improvement, wildlife habitat restoration, and mitigation of economic loss.

(h) In return for a contract entered into under this paragraph, a participant may opt for:

(1) Annual rental payments authorized by § 1410.42, except that the payment rate shall be equal to:

(i) The average rental rate for CRP contracts in the county in which the land is actually located; or

(ii) In the case where no CRP contracts are enrolled in a county, the average rental rate will be the CRP rate applicable to a nearby similarly-situated county.

(2) In lieu of the annual payments provided for in paragraph (h)(1) of this section, lump sum payment equal to the present value of the total amount of annual rental payments that would otherwise be paid under paragraph (h)(1) of this section.

(i) Cost-share assistance authorized under § 1410.40 may be reduced by the value of salvaged timber or timber products which are removed to prepare the site for replanting.

(j) The provisions of § 1410.7(c), which concern enrollment limits, do not apply to contracts to which this section applies.

(k) To avoid duplicate payments, participants under this section are not eligible to receive EFCRP funding for land on which the participant has or will receive funding under any other program that covers the same expenses.

(l) All other requirements of this part shall apply to enrollments under this section.

Signed at Washington, DC, on May 25, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–8527 Filed 6–1–06; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23888; Directorate Identifier 2005–SW–03–AD; Amendment 39–14622; AD 2006–11–17]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, BA, B1, B2, B3, C, D, and D1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350B, BA, B1, B2, B3, C, D, and D1 helicopters that have a Geneva Aviation, Inc. (Geneva) P132 console (console) installed. This AD requires installing right and left side Geneva cyclic control sticks and modifying the cyclic grips and the co-pilot cyclic stand (receptacle). This amendment is prompted by reports that pilots had restricted cyclic stick travel when using Eurocopter factory-installed cyclic sticks in a helicopter modified under a certain Supplemental Type Certificate (STC) for the installation of a Geneva P132 console. The actions specified by this AD are intended to prevent restricting full lateral movement of the cyclic control during high lateral center of gravity (CG) load operations in high cross winds and during slope takeoffs or landings and subsequent loss of control of the helicopter.

DATES: Effective July 7, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 2006.

ADDRESSES: You may get the service information identified in this AD from Geneva Aviation, Inc., 20021–80th Ave. South, Kent, Washington 98032; telephone: (800) 546–2210; fax: (800) 546–2220; Internet: *http://www.GenevaAviation.com.*

Examining the Docket

You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vince Massey, Aviation Safety Engineer, FAA, Seattle Aircraft Certification Office, Systems and Equipment Branch, 1601 Lind Ave. SW., Renton, Washington 98055–4056; telephone (425) 917–6475, fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on February 28, 2006 (71 FR 9979). That action proposed replacing the right and left side Geneva cyclic control sticks and modifying the cyclic grips and the receptacle.

Geneva has issued Service Bulletin GA107–7, dated June 14, 2005 (SB). The SB describes a condition that pilots may encounter regarding restricted cyclic control stick movement in helicopters that have a Geneva P132 console installed under STC No. SH4747NM. The Geneva center console is wider than the factory-installed Eurocopter console and may limit lateral cyclic movement under certain conditions. The SB specifies replacing the Eurocopter factory-installed pilot (right-side) cyclic stick and co-pilot (left-side) cyclic stick with a Geneva-manufactured right-side cyclic stick, part number (P/N) G12316–26, and left-side cyclic stick, P/N G12324–26. For cyclic sticks with a ''Bendix'' cyclic grip without any cyclic grip flange, which has a 90-degree bend at the top of the cyclic stick, the SB specifies replacing the Eurocopter factory-installed pilot and co-pilot cyclic sticks with a Geneva-manufactured right-side cyclic stick, P/N G12425–26, and left-side cyclic stick, P/N G12426–26, respectively. The SB also specifies modifying the flange at the base of the cyclic grips and the receptacle to prevent inadvertent installation of the factory original co-pilot cyclic stick.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. We have reviewed all available information and determined that AD action is necessary for products of these type designs, modified under STC No. SH4747NM, that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 122 helicopters of U.S. registry.

The required actions will take about 14 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. The Geneva cyclic sticks cost about $300 each or $600 per set. Geneva, the manufacturer of the console, has stated that it will supply left and right side cyclic sticks at no charge to current owners of Geneva P132 consoles, regardless of when they purchased the console. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $184,220 to do the replacements and modifications on all 122 helicopters in the fleet or $111,020 assuming the cyclic sticks are provided at no cost to operators.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–11–17 Eurocopter France: Amendment 39–14622. Docket No. FAA–2006–23888; Directorate Identifier 2005–SW–03–AD.

Applicability

Model AS350B, BA, B1, B2, B3, C, D, and D1 helicopters, with a Geneva Aviation, Inc. (Geneva) P132 Console installed in accordance with Supplemental Type Certificate No. SH4747NM, certificated in any category.

Compliance

Required within 60 days, unless accomplished previously.

To prevent restricting full lateral movement of the cyclic control during high lateral center of gravity (CG) load operations in high cross winds and during slope takeoffs or landings, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the Eurocopter France installed pilot (right-side) and co-pilot (left-side) cyclic control sticks in accordance with paragraph 2.1 of the Instructions section of Geneva Aviation, Inc. Service Bulletin GA107–7, dated June 14, 2005 (SB).

(1) Install Geneva-manufactured cyclic control sticks, part number (P/N) G12316–26 (right side) and P/N G12324–26 (left side), or

(2) For installations with a ''Bendix'' cyclic grip, which has a 90-degree bend at the top of the cyclic control stick, install Geneva-manufactured cyclic control sticks, P/N G12425–26 (right side) and P/N G12426–26 (left side).

(b) If the base of the cyclic grip has a flange to help support the pilot's hand, modify both the pilot and co-pilot cyclic control grips by removing a ⅜ inch section of the flange in accordance with paragraph 2.2 of the Instructions section of the SB.

(c) Modify the co-pilot cyclic control stand (receptacle) by installing a blind rivet in accordance with paragraph 2.3 of the Instructions section of the SB.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Seattle Aircraft Certification Office, FAA, ATTN: Vince Massey, 1601 Lind Ave., SW., Renton, Washington 98055–4056; telephone (425) 917–6475, fax (425) 917–6590, for information about previously approved alternative methods of compliance.

(e) Installing the cyclic stick and modifying the receptacle shall be done by following the specified portions of Geneva Service Bulletin GA107–7, dated June 14, 2005. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Geneva Aviation, Inc., 20021–80th Ave. South, Kent, Washington 98032; telephone: (800) 546–2210; fax: (800) 546–2220. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on July 7, 2006.

Issued in Fort Worth, Texas, on May 24, 2006.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–5003 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA No. FAA–2004–19684; Airspace Docket No. 04–ANM–24]

Revision of Class E Airspace; Herlong, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** April 24, 2006 (71 FR 20876), Airspace Docket No. 04–ANM–24, FAA Docket No. FAA–2004–19684. In this rule, the title in the legal description was incorrect and should have been listed as AWP CA Herlong, CA instead of ANM CA E5 Herlong, CA.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On April 24, 2006, a final rule for Airspace Docket No. 04–ANM–24, FAA Docket No. FAA–2004–19684, was published in the **Federal Register** (71 FR 20876). This rule revised Class E airspace at Herlong, CA. The legal description title was incorrectly stated as ANM CA E5 Herlong, CA. The correct legal description title should be AWP CA Herlong, CA. This action corrects this error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the title in the legal description as published in the **Federal Register** on April 24, 2006 (71 FR 20876), Airspace Docket No. 04–ANM–24, FAA Docket No. FAA–2004–19684, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Amended]

■ On page 20876, correct the legal description title for Herlong, CA, to read as follows:

Paragraph 6005—Class E Airspace.

* * * * *

AWP CA Herlong, CA [Revised]

* * * * *

Issued in Seattle, Washington, on May 23, 2006.

R. D. Engelke,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 06–5034 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24027; Airspace Docket No. 06–ASO–1]

RIN 2120–AA66

Modification of VOR Federal Airways; and Establishment of Area Navigation Route; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Very High Frequency Omnidirectional Range (VOR) Federal Airways V–56 and V–290, NC; and Colored Federal Airway G–13, NC; to remove unusable airway segments. In addition, this action establishes a new low altitude area navigation (RNAV) route, designated T–243, to enhance instrument flight rules (IFR) access to the Outer Banks area of North Carolina.

DATES: *Effective Date:* 0901 UTC, August 3, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 17, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify VOR Federal Airways V–56 and V–290, and Colored Federal Airway G–13, NC, to remove unusable airway segments; and to establish low altitude RNAV route T–243 (71 FR 13789). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. Two comments were received, both in favor of the proposal. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the descriptions of VOR Federal Airways V–56 and V–290, and Colored Federal Airway G–13, to delete segments based on nondirectional beacon (NDB) navigation aids that are no longer in service. This action also establishes a new Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) RNAV route, designated T–243, to enhance IFR navigation in the Outer Banks area of North Carolina. The FAA is taking this action to enhance the safe and efficient use of the navigable airspace in eastern North Carolina.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6009(a)—Colored Federal Airways.

* * * * *

G–13 [Revised]

From Manteo, NC, NDB, to INT Manteo, NC, NDB 139° (T) bearing and Wright Brothers, NC, 22 miles DME.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways.

* * * * *

V–56 [Revised]

From Meridian, MS; Kewanee, MS; Montgomery, AL; Tuskeegee, AL; Columbus, GA; INT Columbus 087° (T) and Macon, GA, 266° (T) radials; Macon; Colliers, SC; Columbia, SC; Florence, SC; Fayetteville, NC, 41 miles 15 MSL, INT Fayetteville 098° (T) and New Bern, NC 256° (T) radials; to New Bern.

* * * * *

V–290 [Revised]

From Rainelle, WV; Montebello, VA; to Flat Rock, VA. From Tar River, NC; to INT Tar River 109° (T) radial and New Bern, NC, 042° (T) radial.

* * * * *

Paragraph 6011—Contiguous United States Area Navigation Routes.

* * * * *

T–243 PUNGO to ZOLMN [New]

PUNGO; Fix; lat. 35°36′38″ N., long. 76°27′03″ W

HULIP; WP; lat. 35°07′47″ N., long. 75°48′32″ W
ZOLMN; Fix; lat. 35°38′42″ N., long. 75°24′27″ W
* * * * *

Issued in Washington, DC, on May 25, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–5035 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Notice of Office of Management and Budget (OMB) approval for information collection.

SUMMARY: On January 10, 2006, the FAA published a regulation titled ''Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities; Final Rule.'' This final rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). No agency may conduct or sponsor and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. In accordance with the Paperwork Reduction Act, documentation describing the information collection activities was submitted to OMB for review and approval. OMB approved this control number, 2120–0689, on March 7, 2006 and it is being published in the **Federal Register**. This OMB control number will expire on March 31, 2007. The January 10, 2006, rule imposes additional reporting and recordkeeping requirements on regulated employers (part 121 and 135 certificate holders and operators as defined in § 135.1(c)).

DATES: The compliance date for the information collection requirements in 14 CFR part 121, appendix I, section IX, and appendix J, seciton VII, is June 2, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey Stookey, Acting Manager, Program Analysis Branch, Drug Abatement Division, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591; telephone (202) 267–8442; facsimile (202) 267–5200; e-mail—*drugabatement@faa.gov.*

Issued in Washington, DC on May 25, 2006.

Diane J. Wood,

Manager, Drug Abatement Division.

[FR Doc. 06–5028 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 141 and 142

[CBP Dec. 06–11]

RIN 1505–AB34

Single Entry for Unassembled or Disassembled Entities Imported on Multiple Conveyances

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the regulations in title 19 of the Code of Federal Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single entity which, due to its size or nature, arrives in the United States on separate conveyances. This document implements statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

DATES: *Effective Date:* July 3, 2006.

FOR FURTHER INFORMATION CONTACT:

For operational matters: Timothy Sushil, Office of Field Operations, (202) 344–2567.

For legal matters: Emily Simon, Office of Regulations and Rulings, (202) 572–8867.

SUPPLEMENTARY INFORMATION:

Background

Section 1460 of Public Law 106–476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) by adding a new subsection (j) in order to provide for the treatment of certain multiple shipments of merchandise as a single entry.

The amended law, 19 U.S.C. 1484(j), is concerned with two issues. First, section 1484(j)(1) addresses the problem long encountered by the importing community in entering merchandise the size or nature of which necessitates shipment in an unassembled or disassembled condition on more than one conveyance. Second, section 1484(j)(2) offers relief to importers whose shipments, which they intended to be carried on a single conveyance, are divided at the initiative of the carrier. As to both these matters, the legislation is silent as to the affected modes of transportation, thus indicating that the new law is to apply to merchandise shipped by air, land or sea.

The Bureau of Customs and Border Protection (CBP) determined to proceed first with proposed regulations only to shipments which are divided by carriers (19 U.S.C. 1484(j)(2)); these are referred to as ''split shipments.'' Separate proposals were undertaken because CBP had already begun a project to amend the regulations to provide for one entry for such split shipments prior to the present statutory amendments.

The proposed rule regarding split shipments (RIN 1515–AC91) was published in the **Federal Register** (66 FR 57688) for public comment on November 16, 2001. The comment period ended on February 14, 2002, and the final rule was published in the **Federal Register** (68 FR 8713) on February 25, 2003. The final rule regarding split shipments went into effect on March 27, 2003.

On April 8, 2002, CBP published a proposed rule in the **Federal Register** (67 FR 16664) proposing regulations and requesting comments concerning a single entry for merchandise the size or nature of which necessitates shipment in an unassembled or disassembled condition on more than one conveyance (19 U.S.C. 1484(j)(1)). The comment period ended on June 7, 2002. These final regulations concern single entries for unassembled or disassembled shipments as addressed in 19 U.S.C. 1484(j)(1).

Unassembled or Disassembled Entity Defined

For the purposes of this final rule, an unassembled or disassembled entity consists of merchandise which is not capable of being transported on a single conveyance, but which is purchased and invoiced as a single classifiable entity. By necessity, due to its size or nature, the entity is placed on multiple conveyances which arrive at different times at the same port of entry in the United States. The subject arriving portions are consigned to the same person in the United States.

The current regulations in title 19 of the Code of Federal Regulations (CFR) ordinarily require, with certain exceptions, that all merchandise

arriving on one conveyance and consigned to one consignee be included on one entry (*see* 19 CFR 141.51). With the exception of split shipments regulations in 19 CFR 141.57, there is no provision currently in the regulations authorizing the filing of a single entry to cover multiple portions of a single entity arriving at the same port of entry in the United States at different times on separate conveyances. While today's final regulations permit the acceptance of a single entry in the case of a qualifying unassembled or disassembled shipment, importers may, of course, continue to file a separate entry for each portion of an unassembled or disassembled shipment as it arrives, if they so choose.

Filing of Single Entry for an Unassembled or Disassembled Entity Under the Proposed Rule

In principal part, the April 8, 2002, **Federal Register** document proposed to permit the filing of a single entry to cover unassembled or disassembled shipment provided that: (1) The subject shipment is not capable of being transported on a single conveyance, but is purchased, invoiced and classified under a single provision of the Harmonized Tariff Schedule of the United States (HTSUS) as a single entity; (2) the arriving portions of the shipment are consigned to the same person in the United States; and (3) the portions covered under the entry arrive directly from abroad at the same port of importation in the United States within 10 calendar days of the date of the portion that arrives first.

Specifically, to implement 19 U.S.C. 1484(j)(1) under which an importer could make a single entry for an unassembled or disassembled shipment, it was proposed to add a new 19 CFR 141.58, in addition to making certain amendments to 19 CFR 141.51. Also, minor conforming changes were to be made to 19 CFR 142.21 and 142.22.

In addition, appearing in this edition of the **Federal Register** is a notice explaining and extending application of the National Customs Automation Program (NCAP) test concerning the periodic monthly deposit of duties and fees for those duties and fees attributable to entries utilizing this regulation.

Renaming of U.S. Customs as CBP

Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296) transferred the U.S. Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security. Pursuant to section 1502 of the Act, the President renamed the ''Customs Service'' as the ''Bureau of Customs and Border Protection,'' also referred to as ''CBP''. Accordingly, for the sake of consistency throughout the sections in the regulations affected by this final rule (*i.e.*, 19 CFR 141.51, 141.58, 142.21, 142.22 and 142.23), the term ''Customs'' is removed wherever it appears in those sections and the term ''CBP'' is added in its place.

Discussion of Comments

CBP solicited written comments on its proposal regarding the implementation of 19 U.S.C. 1484(j)(1). A total of 13 comments were received in response to the April 8, 2002, notice of proposed rulemaking. A review of CBP's response to the issues and questions that were presented by the comments follows.

Comment: The proposed regulations subtly misstate the statutory directive because they add conditions yet fail to take into account the ''nature'' of the articles. The statute refers to merchandise that is ''purchased and invoiced as a single entity but is shipped in an unassembled or disassembled condition in separate shipments due to the size or nature of the merchandise.'' In the proposed regulations CBP limits coverage to merchandise that is both large and incapable of being transported on a single conveyance. This would allow a large machine or a knocked-down log home, all parts of which are ready for shipment at the same time but requiring two or more shipments because of size, to qualify for single entry treatment. However, a large turbine generator that could be accommodated on one vessel but the parts of which are made in different locations, necessitating shipment by different conveyances, would not qualify under the proposed regulations. Also precluded would be an entity, such as an industrial equipment installation, which for construction reasons is sent over a period of time. These last two examples would qualify for single entry treatment under the statute but not under the proposed regulation. The proposed regulations should be changed to reflect that the nature of the article and not just size alone is also a criterion that must be taken into account.

CBP Response: CBP agrees with the commenter that the nature of the article not just size alone is a criterion that must be taken into account. Accordingly, the regulatory text has been amended to include the nature of the article as an equal and independent criterion. However, the commenter's examples would not be afforded single entry treatment under the regulations due to the nature of the entity alone. A large turbine generator that could be accommodated on one vessel but the parts of which are made in different locations would not qualify on that basis. CBP believes that the legislation was intended to apply to the components of articles with a single point of origin which are shipped from the same port of export at approximately the same time. Similarly, an entity, such as an industrial installation, would not qualify for single entry treatment on the basis of construction reasons. CBP believes that the legislation was not intended to act as a means to control an importer's inventory or manufacturing processes. An example of an article which may be entered under the regulations due to its nature is an article which, because of safety concerns, must be shipped in an unassembled or disassembled state. In addition, an importer may enter an article which, because of the nature of the article, must be shipped by more than one mode.

Comment: An expansive interpretation of the legislation would benefit trade statistics, because the ensuing entries would reflect the article that is actually being imported, instead of the parts and components that comprise the whole.

CBP Response: CBP has endeavored to promulgate regulations that accurately reflect the underlying statute. There are many laws with differing effects on trade statistics, and the agency's responsibility is to implement the law.

Comment: The proposed 10-calendar day arrival window is too short and does not reflect congressional intent or commercial reality. Its adoption would severely limit the application of the statute, particularly where ocean shipments are involved. The legislative history indicates that the provision was targeted towards single entities shipped unassembled or disassembled ''over a period of time''. That time should be sufficient to accommodate the many large machines that are sold as one entity but manufactured in segments, often over a period of time and at different factories. Requiring the importation of machinery within a short time frame may not afford the purchaser sufficient time to install each component before the next one arrives, thereby significantly increasing the storage and project costs. Also, given the size of ocean vessels today, most products can be shipped on a single conveyance. However, often the steamship company does not want an entire hold of a vessel to be filled with several big pieces of machinery, and would impose a very high price to have them shipped together. Suggested

alternative time frames include 30 days, one year, 15 months, or a period to be set at the discretion of the port director depending on the circumstances of the transaction.

CBP Response: CBP is sensitive to the interest expressed in extending the time frames. However, CBP in drafting these regulations was constrained by the longstanding rule, expressed both judicially and administratively, that importation of merchandise shall precede its entry. The regulations accomplish this by ensuring that all portions will have arrived either before an entry is filed under the ''hold all'' procedure of 19 CFR 141.58(d)(1), or before an entry summary—which serves as the entry—is filed when an election has been made to have the portions released incrementally under 19 CFR 141.58(d)(2). Certain time limits necessarily apply to these two different entry methods. General order rules allow merchandise to remain unentered for 15 calendar days after unlading or after arrival at the port of destination if transported in bond. A 10-day arrival window was selected to ensure that this requirement could be met. In deference to the interests of the importing community, CBP will adjust the arrival times to the outermost possible limits within the existing legal framework. The final rule will reflect new arrival times as follows: For entities entered under the ''hold all'' method, all of the portions of the shipment must arrive within 15 calendar days after the unlading of the first portion or arrival at the destination port if transported in bond; and for those entities released incrementally, all of the portions must arrive within 10 calendar days after the *release* of the first portion under special permit procedures. This adjustment would extend by five days the arrival window under the ''hold all'' method, and would potentially give an importer using incremental release an arrival window of 25 days, attained by filing the special permit on the fifteenth calendar day after arrival of the first portion. Section 141.58(b)(4) is amended accordingly. Importers filing unassembled or disassembled entities in a single entry may pay through the method set forth in the National Customs Automation Program (NCAP) test concerning the periodic monthly payment statement process, as announced in a General Notice published in the **Federal Register** (69 FR 5362) on February 4, 2004, and amended by a General Notice published in the **Federal Register** (70 FR 5199) on February 1, 2005, and a General Notice published in the **Federal Register** (70 FR 45736) on August 8, 2005.

Comment: The proposed regulations require, in the case of incremental release, the entry/entry summary to be filed within 10 working days from the date of the first released portion. This may be too restrictive, because it would not take into account delays incurred by the carrier, due to weather, mechanical malfunction, etc. A better alternative would be to require entry summary filing within 10 working days after the arrival of the last portion of the entity. Adoption of the longer filing period may raise interest issues, which could be addressed by developing a unique entry type code and building a new interest calculator into the CBP Automated Commercial System (ACS).

CBP Response: As discussed above, for entities released incrementally, CBP is amending 19 CFR 141.58(b)(4) to allow subsequent portions of an entity to arrive 10 calendar days after the *release* of the first portion under special permit procedures. Therefore, an importer using incremental release could potentially take advantage of an arrival window of 25 days, attained by filing the special permit on the fifteenth calendar day after arrival of the first portion. Also as mentioned above, CBP believes that the legislation was intended to apply to the components of articles which are shipped at approximately the same time.

Comment: The restriction to arrival at a single port of importation can be a potential problem where shipments are dispatched from different geographic locations. In other cases, some carriers do not offer specialized containers, such as open top units, which may be required for a portion of a particular machine, or such specialized units may not be available from the same underlying carrier when the shipment is ready to move. Since not all carriers serve the same ports, it is quite possible that the different machine components will arrive at different ports. With respect to truck shipments, neither the carrier nor the importer exerts much control over where a particular shipment may cross the border. In some cases, long lines at one border port may prompt the driver to divert to another port of entry. For these reasons, the same arrival port requirement should either be eliminated or a unique entry type developed to accommodate multiple ports of entry.

CBP Response: CBP agrees. Accordingly, proposed 19 CFR 141.58(b)(4) is revised in this final rule by eliminating the requirement that all portions of a qualifying unassembled or disassembled shipment arrive at the same port of importation in the United States. Instead, all portions of the shipment must timely arrive at the same port of entry in the United States. Any portion that arrives at a different port must be transported in-bond to the destination port where entry will be made.

Comment: The proposed rulemaking is somewhat ambiguous regarding the term ''port of arrival'', *i.e.*, is this to be the first port of arrival, or the destination port when goods are being transported in-bond?

CBP Response: The changes made in response to the previous comment should serve to clarify that the focal point is the port of entry, which is otherwise known as the destination port when goods are being transported in-bond.

Comment: With respect to the provision granting the port director discretion to deny incremental release, the decision to select one portion (or all of the shipments) for examination should not in itself cause the importer to lose the potential benefit of 19 U.S.C. 1484(j).

CBP Response: A decision to examine one portion or to deny incremental release is not tantamount to a denial of the benefit of the new legislation, because the importer may still file a single entry under the ''hold all'' procedure, provided all of the requirements for that procedure are met.

Comment: While the entire process is clearly subject to the approval of CBP officers on a case by case basis, there should be an expression that it is the policy of CBP to approve applications for single entry treatment whenever possible.

CBP Response: It will be the policy of CBP to approve applications made under these regulations, provided the shipments fall within the parameters of these regulations.

Comment: Such requirements as advance notice and application for a single entry will allow CBP to meet its regulatory tracking and management obligations. However, this commitment can easily be met by simply requiring advance notice [of an unassembled or disassembled entity] at the first port of entry and then requiring reference to the first entry number, port code, and purchase order or other contract reference on all subsequent related entries.

CBP Response: This comment appears to be based on the mistaken belief that advance notice will be required before the arrival of each portion of an unassembled or disassembled entity. However, the proposed regulation only requires that such notice be provided in

advance of the arrival of the first conveyance.

Comment: There is no reason why CBP should require both an explanation as to why a shipment cannot be entered all at once and approval by the port director.

CBP Response: The explanation to which the comment refers is an integral part of the application the importer must make to secure single entry treatment. The statute that gave rise to this provision imposes the application requirement. CBP was thus obligated to include an application process in the regulations. An application by its very nature is either approved or denied, in this case by the port director. Therefore, the need for both an explanation and port director approval is well founded.

Comment: The regulations should expressly state that when a port director denies an application, the denial will be deemed to be an exclusion from entry and eligible for protest pursuant to 19 CFR 174.11(d).

CBP Response: CBP disagrees that a denial of an application amounts to an exclusion from entry, because the merchandise may still be entered, albeit on separate entries.

Comment: By granting port directors discretion to deny incremental release, CBP is defeating the benefits of the legislation.

CBP Response: The legislation confers the benefit of being able to file one entry under circumstances that previously would have required the filing of multiple entries. The denial of incremental release does not remove this benefit, because the importer still retains the option of filing one entry under the ''hold all'' procedure.

Comment: CBP should have included an option in these proposed regulations that would permit the importer to enter the complete entity on the first shipment and to pay the appropriate duties, fees, and taxes on the known value as witnessed by the purchase order or contract. Where the importer knows that the price is not yet firm he may utilize the reconciliation process to report the final value when determined. CBP could allow subsequent importations on CBP Form 3461 or CBP Form 3461 ALT, properly referenced to the original entry summary for the complete entity. Generally, there are purchase order amendments that follow for some time after the importation of a large piece of equipment, and the value is reconciled with CBP.

CBP Response: The entry process as presented in these new regulations was designed to implement the underlying legislation while at the same time uphold the well-established legal requirement that importation precede entry of goods. The procedure that is suggested in the foregoing comment would not accomplish the latter goal. An election to file one entry under these regulations will not prevent an importer from filing reconciliation entries, should the unresolved issues be of the kind which are entitled to be resolved under the reconciliation program.

Comment: It is unclear whether the application to file a single entry must be submitted by the importer five days prior to the first arrival when such application is made by annotating CBP Form 3461 or CBP Form 3461 ALT.

CBP Response: The 5-day advance application requirement applies equally to applications made in letter format and to those made on a CBP Form 3461 or CBP Form 3461 ALT.

Comment: The requirement to file the application in advance of first arrival is onerous, at least insofar as land border and air modes of transportation are concerned. The air split shipment regulations did not require such notice.

CBP Response: As explained in a response to a previous comment, the advance application is required by statute, and thus must be included in these regulations. As to the requirement being burdensome, an importer seeking to utilize this single entry provision should know well in advance the transportation arrangements that will necessitate shipping on separate conveyances. This is in contrast to the split shipment situation to which you refer whereby the carrier, at its own initiative, decides to divide a shipment and convey its various portions on different conveyances. Quite frequently in the latter scenario the importer only learns of the split after the goods have arrived. In recognition of this fact, CBP in the split shipment regulations (19 CFR 141.57(c)) indicated that ''advance notice'' of the intent to file a single entry for the various portions may be made as soon as the importer learns of the split but in all cases prior to entry summary filing. The same need for practical accommodation does not apply here.

Comment: Granting the port director discretion to approve or deny an importer's application for single entry treatment and requiring that justification for such treatment be submitted are superfluous, as the importer would know in advance that the particular entity would qualify. The use by importers of experts such as brokers would be the first line of defense against misuse of this provision.

CBP Response: As noted in earlier responses, applications are required by the implementing legislation. When making a determination as to whether to approve or deny a particular application, the port director must rely on the information that is supplied on the application.

Comment: The proposed rulemaking does not address the issue of whether a blanket application would be acceptable. Use of a blanket permit would reduce CBP's workload. While specific invoice or purchase order information would not be available, the entity's specifications should suffice.

CBP Response: Blanket applications are not acceptable because a decision to grant or deny treatment as a single entity will depend on the facts pertaining to each particular shipment.

Comment: The proposed regulations will benefit importers of fiber production equipment which frequently incorporate units of substantial size that must be transported unassembled or disassembled on multiple conveyances.

CBP Response: CBP agrees in principle with the general nature of this comment, which reflects the purpose behind the regulatory proposal.

Comment: The proposed requirement that importers file adjusted CBP Form 3461s for each arriving portion that is released incrementally is burdensome and unnecessary. Instead, CBP should allow incremental release of split shipments without the filing of a CBP Form 3461 as long as the entry summary and carrier manifest data are consistent.

CBP Response: CBP finds that requiring an adjusted copy of the CBP Form 3461 to be submitted for each portion of the shipment is necessary in order to afford a mechanism by which the importer and CBP may easily and effectively keep track of the specific merchandise contained in any given portion of the shipment. However, CBP agrees that multiple CBP Form 3461 copies are unnecessary when both the carrier and the importer are automated. In the case of such automation, adjustments may be made electronically to show the quantity of merchandise contained in each portion of the shipment as it arrives. Proposed 19 CFR 141.58(e) is thus amended in this final rule to reflect that if both the carrier and the importer are automated, such adjustments may be made electronically through the ACS.

Comment: The proposed regulations should provide for the amendment of certificates of origin that are used in preferential trade programs so as to eliminate the need to obtain revised certificates from the importer or producer covering each portion of an unassembled or disassembled shipment that arrives separately.

CBP Response: CBP does not believe that this is necessary. Most certificates

of origin are blanket certificates, designed to cover merchandise appearing on many entries. When a certificate of origin covering a single entry pertains to a single entity that is shipped unassembled or disassembled on different conveyances, and separate entries covering different portions of the shipment are filed (either by choice or because a portion of the shipment arrives too late to be covered under the split-shipment entry), copies of the certificate may be made to apply to the additional entries.

Comment: The proposed regulations wrongly preclude quota merchandise from incremental release.

CBP Response: CBP finds that quota and/or visa merchandise is of such a sensitive nature as to warrant its exclusion from incremental release.

Comment: The proposal will compromise the quality of statistics received and recorded by the U.S. government, particularly with respect to freight charges and shipping weight information obtained from the CBP Form 7501 entry summary. It will result in the government losing valuable carrier information. The commenter requests that CBP develop a means of collecting multiple carrier, charges, and shipping weight information on a single entry summary that covers shipments of unassembled or disassembled merchandise that arrives on separate conveyances. It is also suggested that CBP require the importer of record to submit separate carrier, charges, and shipping weight information for each portion of a single entity that arrives in the United States on separate conveyances. Finally, the commenter asks CBP to implement these changes in the Automated Commercial Environment (ACE).

CBP Response: CPB will take these concerns into consideration and attempt to address them in the design and implementation of ACE.

Comment: The commenter periodically imports machines for the production of industrial textile yarns, which by nature of their size and multiple parts cannot be shipped on a single conveyance. This importer firmly favors the proposed rule as this type of equipment is not produced in the United States and must therefore be imported.

CBP Response: CBP agrees that the regulations will facilitate the entry of machines in circumstances such as are described.

Comment: In the Regulatory Flexibility Act and Executive Order 12866 analyses, CBP noted that the implementation of the proposed regulations will engender cost savings by reducing paperwork for importers and by reducing the number of entries required for separate shipments of unassembled and disassembled entities. If CBP issues these regulations as proposed, there will be little, if any, possible usage of this provision because of CBP constraints. The savings that CBP purports will be made simply will not materialize under the burdensome proposed regulations and in the end will force importers to return to Congress for further legislation on this issue.

CBP Response: The commenter did not provide any empirical evidence for this statement, and other commenters including the previous commenter (importer of industrial yarn machines) provided comments contrary to this claim.

The Regulatory Flexibility Act and Executive Order 12866

This rule is intended to implement the amendment of 19 U.S.C. 1484 by the Tariff Suspension and Trade Act of 2000. The rule will engender cost savings by reducing the number of entries required for separate shipments of unassembled or disassembled entities. Therefore, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the rule will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does the rule result in a ''significant regulatory action'' under E.O 12866.

Signing Authority

The signing authority for this document falls under 19 CFR 0.1(a)(1). The Secretary of the Treasury retained the sole authority to approve any regulations concerning, among other things, the completion of entry. Accordingly, this document must be signed by the Secretary of Homeland Security (or his or her delegate) and the Secretary of the Treasury (or his or her delegate).

List of Subjects

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Computer technology, Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated above, 19 CFR parts 141 and 142 are amended as follows.

PART 141—ENTRY OF MERCHANDISE

■ 1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

■ 2. Section 141.51 is revised to read as follows:

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of entry in multiple portions, either as a shipment split by the carrier or as components of a large unassembled or disassembled entity, may be processed under a single entry, as prescribed, respectively, in §§ 141.57 and 141.58.

■ 3. Subpart D of part 141 is amended by adding a new § 141.58, to read as follows:

§ 141.58 Single entry for separately arriving portions of unassembled or disassembled entities.

(a) *At election of importer of record.* At the election of the importer of record, an unassembled or disassembled entity arriving on multiple conveyances as contemplated under section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), may be processed as a single entry, as prescribed under the procedures set forth in this section.

(b) *Unassembled or disassembled entities covered.* An unassembled or disassembled entity for purposes of this section is an entity which:

(1) Cannot, due to its size or nature, be shipped on a single conveyance, and is thus imported in an unassembled or disassembled condition;

(2) Is ordered, invoiced and is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), as a single entity and is consigned to one person in the United States;

(3) Is imported on more than one conveyance to the same port of entry in the United States; and

(4) Involves the first portion and all succeeding portions arriving at the same United States port of entry within either:

(i) 15 calendar days after the unlading of the first portion or arrival at the destination port if transported in bond

for entities entered under the ''hold all'' method permitted in paragraph (d)(1) of this section; or

(ii) 10 calendar days after the release of the first portion under special permit procedures for entities released incrementally as permitted in paragraph (d)(2) of this section.

(c) *Application by importer*. The importer of record must apply to file a single entry covering an entity described in paragraph (b) of this section. Applications may be made either by appropriately annotating a Customs and Border Protection (CBP) Form 3461, CBP Form 3461 ALT, or electronic equivalent, or by submitting a letter to CBP. The required application must be made no later than 5 working days in advance of the arrival of the first conveyance. Justification for the need for more than one conveyance must be provided in the application, which must include an affirmative statement that the entity cannot, due to its size or nature, be shipped on one conveyance. A copy of the relevant invoice or purchase order, or electronic equivalent, must accompany the application, along with the proposed appropriate single tariff number under the HTSUS. The port director will notify the applicant of the approval or denial of the application within 3 working days of the receipt of the application.

(d) *Entry or special permit for immediate delivery*. In order to make a single entry for portions of an entity covered under this section that arrive at different times, an importer of record must follow the procedure prescribed in paragraphs (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of all portions (Hold All)*. An importer may file an entry at such time as all portions of the entity have arrived at the same port of entry in the United States. Any portion that arrives at a different port must be transported in-bond to the destination port where entry will be made. In the alternative, the importer may file a special permit for immediate delivery after arrival of all portions of the entity provided that it is eligible for such a permit under § 142.21(a)–(d), (f) and (i) of this chapter.

(2) *Special permit for immediate delivery after arrival of first portion (Incremental Release)*. As provided in § 142.21(h) of this chapter, an importer of record may file an application for a special permit for immediate delivery after the arrival of the first portion of the entity covered by paragraph (b) of this section, and its remaining portions may be released incrementally pursuant to the requirements set forth in paragraph (e) of this section. All portions of the shipment must timely arrive at the same port of entry in the United States. Any portion that arrives at a different port must be transported in-bond to the destination port where entry will be made.

(e) *Release*. If an importer wishes to secure release of an entity under paragraph (d)(1) of this section after the entity's arrival, the importer must file with CBP a CBP Form 3461 or CBP Form 3461 ALT, as appropriate, or electronic equivalent. To secure the separate release upon arrival of each portion of a shipment under paragraph (d)(2) of this section, the importer must file with CBP a CBP Form 3461 or CBP Form 3461 ALT, as appropriate, or electronic equivalent after arrival of the first portion. As each successive portion arrives, the importer must submit a copy of the originally submitted CBP Form 3461/CBP Form 3461 ALT, annotated to specifically identify that particular portion. The CBP Form 3461/CBP Form 3461 ALT must indicate the order of the arriving portion in relation to the entire shipment as reflected on the invoice (for example, third of six portions). If both the carrier and the importer are automated, such adjustments may be made electronically through the CBP Automated Commercial System (ACS). The release of each portion upon arrival as permitted under this paragraph may be restricted due to CBP's need to examine the merchandise in accordance with paragraph (f) of this section. In addition, the importer of record must present to CBP either on paper or through an authorized electronic equivalent, specific and detailed information supplementing the CBP Form 3461 or 3461 ALT, relating to the merchandise on each conveyance which reflects exact information for that portion of the ordered entity (for example, detailed packing lists).

(f) *Examination*. CBP may require examination of any or all portions of the entity. CBP reserves the right to deny the release of each portion of such shipments as they arrive (i.e., incremental release) should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary*. (1) For merchandise entered under paragraph (d)(1) of this section, an entry summary must be filed within 10 working days from the time of entry. For merchandise released under a special permit for immediate delivery, the entry summary, which serves as both the entry and entry summary, must be filed within 10 working days after the first portion of the entity is authorized for release under the special permit.

(2) For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the entry summary, which serves as both the entry and the entry summary, must be filed within 10 working days from the date of the first release of a portion of the unassembled or disassembled entity. However, the entry/entry summary for the entity cannot be filed before the last portion of the entity which is to be included on the entry has arrived.

(3) *Duty payment*. At the time the entry summary is filed under paragraphs (g)(1) and (g)(2) of this section, estimated duties, taxes and fees must be attached. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse procedures (*see* 19 CFR 24.25).

(h) *Classification*. Except as provided in paragraph (j) of this section, for purposes of section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), the merchandise comprising the separate portions of an entity covered by paragraph (b) of this section included on one entry will be classified as though imported together. Any spare parts accompanying a portion of an entity must be classified and entered separately.

(i) *When separate entry and entry summary required*. When all portions of an entity do not arrive at the port of entry within the time constraints of paragraphs (b)(4)(i) and (ii) of this section, as applicable, a separate entry and entry summary must be filed for each portion that has already arrived, and for each portion that subsequently will arrive on separate conveyances. The merchandise included on each separate entry shall be classified in its condition as imported. Each entry would reflect the quantities, values, classifications and rates of duty, as appropriate, of the various components conveyed in each shipment, and not the value or classification of the ordered single entity.

(j) *Exclusions*. Merchandise subject to quota and/or visa requirements is entirely excluded from the procedures set forth in this section. Also, CBP reserves the right for the port director to deny use of the incremental release procedure and only release the shipment in its entirety as circumstances warrant, such as in the case where a particular shipment has been selected for examination.

PART 142—ENTRY PROCESS

■ 4. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

■ 5. Section 142.21 is amended by:
■ a. Removing the term ''Customs'' wherever it appears and in its place adding the term ''CBP'';
■ b. Revising the heading of paragraph (e)(1);
■ c. Removing the second sentence in paragraph (e)(1) and adding in its place two new sentences;
■ d. Revising the heading of paragraph (e)(2);
■ e. Removing the second sentence in paragraph (e)(2) and adding in its place two new sentences;
■ f. Revising paragraph (g);
■ g. Redesignating paragraph (h) as paragraph (i);
■ h. Adding a new paragraph (h), and
■ i. Revising newly designated paragraph (i).

The additions and revisions read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(e) *Quota-class merchandise*—(1) *Tariff rate quotas.* * * * However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraphs (g) and (h) of this section. Nor is such merchandise eligible for release under a special permit pursuant to 19 CFR 141.58(d)(1). * * *

(2) *Absolute quotas.* * * * However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraphs (g) and (h) of this section. Nor is such merchandise eligible for release under a special permit pursuant to § 141.58(d)(1) of this chapter. * * *

* * * * *

(g) *Split shipments.* Merchandise subject to § 141.57(d)(2) of this chapter, which is invoiced and delivered to the carrier as a single shipment, but which, due to the carrier's inability to accommodate the merchandise on a single conveyance, is shipped by the carrier in separate portions to the same port of entry in the United States as listed on the original bill of lading, may be released incrementally under a special permit. Incremental release means releasing each portion of such shipments separately as they arrive.

(h) *Entities shipped unassembled or disassembled on multiple conveyances.* Merchandise subject to § 141.58(d)(2) of this chapter, which is purchased, invoiced, and classified as a single entity under the Harmonized Tariff Schedule of the United States (HTSUS), and which is shipped in separate portions because its size or nature prevents shipping the entity on a single conveyance, may be released incrementally under a special permit.

(i) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in § 142.21(a) through (h) provided a bond on CBP Form 301 containing the bond conditions set forth in § 113.62 of this chapter is on file.

■ 6. Section 142.22 is amended by:
■ a. Removing the term ''Customs'' wherever it appears and in its place adding the term ''CBP''; and
■ b. Revising the first sentence in paragraph (a) to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on CBP Form 3461, supported by the documentation provided for in § 142.3. * * *

* * * * *

Deborah J. Spero,

Acting Commissioner, Bureau of Customs and Border Protection.

Dated: May 26, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E6–8498 Filed 6–1–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 1998C–0790] (formerly 98C–0790)

Listing of Color Additives Exempt From Certification; Mica-Based Pearlescent Pigments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of titanium dioxide coated mica-based pearlescent pigments as color additives in food. This action is in partial response to a petition filed by EM Industries, Inc.

DATES: This rule is effective July 5, 2006. Submit written or electronic objections and requests for a hearing by July 3, 2006. See section VIII of the **SUPPLEMENTARY INFORMATION** section of this document for information on the filing of objections.

ADDRESSES: You may submit written or electronic objections and requests for a hearing, identified by Docket No. 1998C–0790, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

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

Written Submissions

Submit written submissions in the following ways:

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul C. DeLeo, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1302.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of September 25, 1998 (63 FR 51359), FDA announced that a color additive petition (CAP 8C0262) had been filed by EM Industries, Inc., 7 Skyline Dr., Hawthorne, NY 10532 (now EMD Chemicals, Inc.). The petition proposed to amend the color additive regulations to provide for the safe use of synthetic iron oxide and mica to color food and to provide for the safe use of titanium dioxide to color food at levels higher than the current limit. At the time of the filing of the petition, FDA considered the pigments that are the subjects of this petition to be color additive mixtures of synthetic iron oxide, mica, and titanium dioxide. During its subsequent review of the petition, the agency determined that these pigments are composite pigments, not color additive mixtures. Therefore, the agency published an amended filing notice in the **Federal Register** of June 21, 1999 (64 FR 33097), to indicate that the petition proposed to amend the color additive regulations to provide for the safe use of composite pigments prepared from synthetic iron oxide, mica, and titanium dioxide to color food. This final rule is a partial response to the petition and addresses only the composite pigments prepared from mica and titanium dioxide to color food. The remaining composite pigments containing synthetic iron oxide included in the petition remain under review.

The petitioner is seeking approval for a maximum use level of the resulting pigments of up to 1.25 percent by weight in food. The categories of food identified in the petition to which mica-based pearlescent pigments would be added are cereals, confections and frostings, gelatin desserts, hard and soft candies (including lozenges), nutritional supplement tablets and gelatin capsules, and chewing gum.

II. Manufacturing and Nomenclature

The subject color additive is manufactured by preparing a suspension of mica platelets, then adding a solution of soluble salts of titanium and a basic solution to precipitate titanium hydroxide onto the mica platelets. These particles are then heated (calcined) at temperatures up to 900 °C. During the calcination, titanium hydroxide is converted into titanium dioxide. The agency has reviewed the relevant data and information in the petition relating to the manufacture and identity of the subject color additive (Ref. 1), and to the proposed uses of and estimated exposure to the subject color additive (Refs. 2, 3, and 4).

In a final rule published in the **Federal Register** of October 24, 2002 (67 FR 65311), the agency listed the color additives based on titanium or iron salts and mica platelets for use in contact lenses in § 73.3128 (21 CFR 73.3128). In the same final rule, the agency collectively identified these color additives as mica-based pearlescent pigments. In addition, in the **Federal Register** of July 22, 2005 (70 FR 42271), the agency published a final rule to amend the color additive regulations to provide for the use of mica-based pearlescent pigments as color additives, in amounts up to 3 percent by weight, in ingested drugs by adding § 73.1128 (21 CFR 73.1128). To be consistent with these actions, the agency is using the same name for the color additive that is the subject of the present rule.

III. Safety Evaluation

To evaluate the safety of the proposed use of titanium dioxide coated mica-based pearlescent pigments for coloring food, the agency reviewed the toxicological data and information submitted in the petition as well as other information contained in agency files (Ref. 5).

To determine whether a color additive in food is safe under its proposed conditions of use, FDA considers the projected human dietary intake of the additive, toxicological data on the additive, and other relevant information (such as published literature) available to the agency. FDA compares an individual's estimated daily intake (EDI) of the additive from all sources to an acceptable daily intake (ADI) established by toxicological data. The EDI is determined by projections based on the amount of the additive proposed for use in particular foods and on data regarding the amount consumed from all sources of the additive. The agency commonly uses the EDI of the additive from consumption of food at the 90th percentile as a measure of high chronic dietary intake.

FDA estimates the EDI of mica-based pearlescent pigments from all the petitioned uses in food (except nutritional supplements in tablet and gelatin capsule form) for consumers aged 2 years or more at the 90th percentile to be 0.86 grams per person per day (g/p/d) (Ref. 3). The agency also considered the exposure to the color additive from its uses in ingested drugs, nutritional supplements in tablet and gelatin capsule form, and contact lenses. The estimated intake of the pigments from their use in ingested drugs and nutritional supplements is approximately one-eighth of the intake from their proposed use in food (Ref. 4). The exposure to the components of mica-based pearlescent pigments from the use of the pigments in contact lenses is negligible compared to the intake from their use in ingested drugs or food (Ref. 5).

As part of the FDA's safety evaluation, the agency selected a life-time rodent bioassay submitted with the petition as the pivotal study. During the study, a blend of two titanium dioxide-coated mica-based pearlescent pigments was fed to rats at levels up to 5 percent in the feed for up to 2 years (Ref. 5). The agency determined that the results of the study showed no indications of adverse effects in rats from the prolonged consumption of the pigments at any of the doses tested. FDA concluded that the no-observed-effect level (NOEL) based on the highest dose tested in this study is over 3,000 mg/kg body-weight/day. By applying a 100-fold safety factor to this NOEL, the agency calculated the ADI for titanium dioxide-coated mica-based pearlescent pigments for a 60 kg human as 1.8 g/p/d. Therefore, taking into account the available safety information, and the conservative estimates of intake of the additives, the agency concludes that the proposed use of titanium dioxide-coated mica-based pearlescent pigments to color food is safe.

IV. Conclusion

Based on the data and information in the petition and other relevant material, FDA concludes that the petitioned use of mica-based pearlescent pigments prepared from titanium salts and mica to color food is safe. The agency further concludes that the additive will achieve its intended technical effect, and is suitable for use in coloring food. The agency also concludes that 21 CFR part 73 of the color additive regulations should be amended as set forth in this document. In addition, based upon the factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of these titanium dioxide-coated mica-based pearlescent pigments is not necessary for the protection of the public health.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the

petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing and amended filing notice for CAP 8C0262 (63 FR 51359 and 64 FR 33097). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

This rule is effective as shown in the **DATES** section of this document, except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Jensen, Chemistry Review Team, Division of Product Manufacture and Use, to Orstan, Division of Petition Control, January 22, 1999.
2. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to Orstan, Regulatory Group II, Division of Petition Review, April 16, 2003.
3. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to DeLeo, Regulatory Group II, Division of Petition Review, March 1, 2005.
4. Memorandum from Lee, Chemistry Review Group, Division of Petition Review, to Orstan, Regulatory Group II, Division of Petition Review, January 30, 2003.
5. Memorandum from Park, Toxicology Review Group I, Division of Petition Review, to DeLeo, Division of Petition Review, December 14, 2005.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (the act) and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 73.350 is added to subpart A to read as follows:

§ 73.350 Mica-based pearlescent pigments.

(a) *Identity*. (1) The color additive is formed by depositing titanium salts onto mica, followed by heating to produce titanium dioxide on mica. Mica used to manufacture the color additive shall conform in identity to the requirements of § 73.1496(a)(1).

(2) Color additive mixtures for food use made with mica-based pearlescent pigments may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring food.

(b) *Specifications*. Mica-based pearlescent pigments shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

(1) Lead (as Pb), not more than 4 parts per million (ppm).

(2) Arsenic (as As), not more than 3 ppm.

(3) Mercury (as Hg), not more than 1 ppm.

(c) *Uses and restrictions*. (1) The substance listed in paragraph (a) of this section may be safely used as a color additive in amounts up to 1.25 percent, by weight, in the following foods:

(i) Cereals.

(ii) Confections and frostings.

(iii) Gelatin desserts.

(iv) Hard and soft candies (including lozenges).

(v) Nutritional supplement tablets and gelatin capsules.

(vi) Chewing gum.

(2) The color additive may not be used to color foods for which standards of identity have been issued under section 401 of the act, unless the use of the added color is authorized by such standards.

(d) *Labeling*. The label of the color additive and of any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification*. Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8575 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 458

RIN 1215–AB48

Standards of Conduct for Federal Sector Labor Organizations

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department) proposed to revise the regulations applicable to Federal sector labor organizations subject to the Civil Service Reform Act of 1978 (CSRA), the

Foreign Service Act of 1980 (FSA), and the Congressional Accountability Act of 1995 (CAA) (referred to collectively as ''these Acts''). This document sets forth the Department's review of comments submitted by the public on the proposal, the Department's response to those comments, and the changes from the proposal that are embodied in a final rule.

The Department will require each labor organization subject to these Acts to periodically inform their members of their rights as union members as set forth in the standards of conduct provisions of these Acts and their implementing regulations.[1] Labor organizations subject to this rule must provide written notice to existing members within 90 days after the effective date of the regulation and to new members within 90 days of their joining the organization. Such notification must also be given to each member at three-year intervals. Notification may be made by hand delivery, regular mail, electronic mail (e-mail), or a combination of these methods as long as the method selected is reasonably calculated to reach all members. A labor organization is permitted, but not required, to include such notice with the organization's notice of election of officers if such notice is mailed to members at least every three years. If a labor organization has a Web site, the site must contain a link to the CSRA Union Member Rights, or, alternatively, provide the organization's own notice as long as the notice accurately states all of the CSRA standards of conduct provisions. OLMS will use the existing administrative mechanism in the standards of conduct regulations for resolving complaints related to this rule. Where OLMS determines after investigation that a violation has occurred and has not been remedied, OLMS will institute enforcement proceedings against the labor organization before the Department's Office of Administrative Law Judges.

DATES: *Effective Date:* This rule will be effective on July 3, 2006.

FOR FURTHER INFORMATION CONTACT: Kay Oshel, Director, Office of Policy, Reports, and Disclosure, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov*, (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

On November 3, 2004, the Department issued a notice of proposed rulemaking (69 FR 64226) proposing revisions of the regulations applicable to Federal sector labor organizations subject to the Civil Service Reform Act of 1978, 5 U.S.C. 7120 (CSRA), the Foreign Service Act of 1980, 22 U.S.C. 4117(d) (FSA), and the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1) (CAA). As the notice explained, the purpose of the revision is to require labor organizations subject to these Acts to periodically inform members of their democratic rights as set forth in the standards of conduct provisions of the Acts and their implementing regulations. These rights include, among others, the right to participate in union affairs, freedom of speech and assembly, and the right to nominate candidates for office and run for office. A summary description of these rights and other pertinent standards of conduct provisions can be found in the Department of Labor publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act, which is appended to this Final Rule.

Before issuing this proposal, Department officials met with representatives of the regulated community, including unions and organizations advocating greater democracy within labor organizations, to hear their views on the need for the proposed rule and the likely impact of changes that might be proposed. The Department's proposal, developed with these discussions in mind, requested comments on numerous specific issues in order to obtain the views of the parties affected by the proposal and to fully inform the Department in developing the final rule.

As noted in the Department's proposal, this rule amends the regulations for unions subject to the standards of conduct provisions of the CSRA, FSA and CAA to require such unions to inform members of the standards of conduct provisions found at 29 CFR parts 457–459. The CSRA standards of conduct regulations make certain provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401 *et seq.* applicable to federal sector labor organizations. The standards incorporate portions of the reporting provisions of the LMRDA's Title II (compare 29 U.S.C. 431 with 29 CFR 458.3), the trusteeship provisions of Title III (compare 29 U.S.C. 461–466 with 29 CFR 458.26–.28), the union democracy provisions of Title IV (compare 29 U.S.C. 481 with 29 CFR 458.29), and the fiduciary obligations of Title V (compare 29 U.S.C. 501(a) with 29 CFR 458.31), among others.

Most pertinent here, the standards of conduct regulations incorporate Title I of the LMRDA (Bill of Rights of Members of Labor Organizations) virtually verbatim. See 29 CFR 458.2. Union member rights protected by Title I of the LMRDA include the right to:

- Nominate candidates for union office;
- Vote in elections or referenda;
- Attend membership meetings and vote upon the business of union meetings;
- Meet and assemble freely with other members, and express views, arguments and opinions;
- Participate in setting rates of dues, fees, and assessments;
- File a lawsuit;
- Receive notice and a fair hearing before being disciplined; and
- Inspect or obtain copies of collective bargaining agreements between an agency-employer and the member's union (for members and other employees affected by the agreement).

29 U.S.C. 411–415. The standards of conduct regulations do not, however, incorporate the important protection found in section 105 of the LMRDA. Compare 29 U.S.C. 411–415 with 29 CFR 458.2. This provision states that ''every labor organization shall inform its members concerning the provisions of this Act.'' 29 U.S.C. 415. The Department's proposal would revise the standards of conduct regulations to correct this omission.

When the comment period closed on January 3, 2005, OLMS had received over 750 comments, including 24 detailed, substantive comments from labor organizations, individual union officials, public interest and trade groups, and a Member of Congress, and over 700 copies of a form letter supporting the proposed rule. All the comments have been carefully reviewed and considered. The Department's analysis of the comments follows.

II. Comments on the Proposal and Responses to the Comments

A. General Comments

In addition to many specific comments that are discussed in the sections that follow, many of which were from unions in opposition to the proposed regulation, the Department also received over 700 identical comments from individuals in support

[1] To avoid unnecessary repetition, this final rule will refer to the standards of conduct provisions of the CSRA, the FSA, and the CAA and the Department's regulations implementing these provisions as the ''CSRA standards of conduct.''

of the Department's proposed reform, stating: ''[t]his requirement is sorely needed to prevent federal employee unions from becoming personal fiefdoms in which a few powerful union officials control the organization * * * [i]nforming union members of their rights is an essential part of strengthening union democracy and protecting the federal civil service from corrupt union officials.'' Although the value to the Department of these comments was diminished by the individuals' failure to articulate whether they are union members or federal employees, the comments do show strong support among numerous individuals for the proposed reform.

B. The Secretary's Statutory and Regulatory Authority

Under the CSRA, a Federal agency ''shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles.'' 5 U.S.C. 7120(a). To avoid having to prove that it is free from corrupt influences, a public sector union must adopt governing documents that guarantee ''democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the rights of individual members to participate in the affairs of the organization, and to receive fair process in disciplinary proceedings.'' Id. The provisions must include the exclusion from union office individuals ''identified with corrupt influences,'' the prohibition of financial conflicts of interests on the part of union officers and agents, and the maintenance of fiscal integrity in the conduct of the affairs of the organization. Id. A union seeking to be the bargaining representatives of Federal employees must file financial reports with the Department, provide for bonding of union officials and employees, and adhere to trusteeship and election standards. 5 U.S.C. 7120(c). The Secretary implements these provisions through a grant rulemaking authority that authorizes regulations as are ''necessary to carry out the purposes'' section 7120. These regulations are to ''conform generally to the principles applied to labor organizations in the private sector.'' 5 U.S.C. 7120(d). A second grant of rulemaking authority is found in section 7134, which authorizes rules and regulations to carry out the provisions of section 7120 just discussed. 5 U.S.C. 7134. The Standard of Conduct regulations promulgated under these grants are found in 5 CFR parts 457–459. A summary description of their provisions can be found in the Department of Labor publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act, which is appended to this Final Rule. The Final Rule adds another provision to these regulations requiring federal sector unions to provide notice to their member of the existing Standards of Conduct provisions.

The International Association of Machinists (IAM) challenged the Secretary's authority to issue the proposed rule, asserting that section 105 requires notice of rights that are held only by private sector union members and its application to federal sector unions therefore falls outside of the Secretary's rulemaking authority.[2] Specifically, the IAM argues that the CSRA does not grant public sector union members individual rights in the same manner as the LMRDA, and there are, thus, no rights of which union members can be notified. In support of its position, the IAM asserts:

> [T]he first sentence of Section 7120(a) states a general requirement that Federal agencies shall only accord recognition to Unions that are free from corrupt influences. The second sentence provides that unions do not have to prove freedom from corrupt influences if their governing documents incorporate the standards set out in subsections (a)(1) through (a)(4). Thus, section 7120(a) effectively requires Federal-sector Unions to build the enumerated LMRDA-type rights into their constitutions, bylaws, and governing policies.

From the premise that a Federal employee's rights derive solely from the union's governing documents, the IAM concludes that public sector union members have no ''free standing rights under Section 7120'' and, therefore, ''Section 105's purpose of alerting Union members to such external rights is simply absent.'' The Department's proposal is, therefore, ''ill-conceived'' and ''lack[s] statutory authority.'' The National Federation of Federal Employees (NFFE), an affiliate of IAM, advances IAM's arguments in its comments.

The IAM's argument that Federal sector union members possess only the rights embodied in the unions' governance documents is unpersuasive. Its related argument that section 105 exists only to provide notice of external, ''free-standing'' rights also is unconvincing. Contrary to the IAM's suggestion, section 7120 provides, by force of law, that unions representing Federal employees ensure:

> The maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the rights of individual members to participate in the affairs of the organization, and to receive fair process in disciplinary proceedings.

5 U.S.C. 7120(a)(1). Congress chose to ensure such ''rights of individual members'' by encouraging unions to adopt these protections in their constitution rather than by direct regulation of the unions. But the result is precisely the same: every recognized public sector union member enjoys these protections by statute.

In addition, section 7120 operates directly to regulate unions in a manner that preserves important union member rights. ''A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports * * *, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.'' 5 U.S.C. 7120(c). By direct operation of law, therefore, labor unions representing federal employees must comply with stringent standards concerning full and accurate financial disclosure, responsible use of trusteeship authority, and fair and democratic elections. See 29 CFR 458.3 (reporting requirements), 29 CFR 458.26 (purposes for which a trusteeship may be established), and 29 CFR 458.29 (election of officers). These requirements by necessity vest union members with individual rights. For example, a union's duty to hold a fair election necessarily encompasses a union member's right to speak freely, express views, and support the candidate of his or her choice. If the election did not encompass these rights, the union member may file a complaint that, if validated by an investigation, could result in a new election, supervised by the Department of Labor. As a final note, accepting the argument

[2] The legal authority for this notice of proposed rulemaking is the standards of conduct provisions of the CSRA, 29 U.S.C. 7120(d), 7134, and the FSA, 22 U.S.C. 4117. These provisions expressly authorize the Assistant Secretary of Labor for Labor Management Relations to issue regulations implementing standards of conduct that conform generally to the principles applicable to labor organizations in the private sector. This position no longer exists and through a series of Secretary's Orders, most recently embodied in Order 4–2001, which was issued May 24, 2001, and published in the **Federal Register** on May 31, 2001 (66 FR 29656), the Assistant Secretary for Employment Standards has the authority and responsibility to carry out the standards, programs and activities under the CSRA, FSA and CAA. In addition, under the CAA, the Office of Compliance, U.S. Congress, has issued regulations, expressly approved by the House and Senate, providing that the Secretary is responsible for issuing decisions and orders on standards of conduct matters. *See* 142 Cong. Rec. S12062–01, S12074 (October 1, 1996); 142 Cong. Rec. H10369–06, 10382 (September 12, 1996).

that federal sector union members have no free-standing rights would require the Department to consider invalid its own regulation, 29 CFR 458.2, which vests Federal sector union members with the same ''Bill of Rights'' afforded to private sector union members by the LMRDA. The Department declines to do so.

Even if it were demonstrated that the CSRA does not provide Federal sector union members ''individual'' or ''free-standing rights,'' the Department would still reject IAM's argument because it is erroneously premised on the belief that section 105 requires unions to notify their members only of individual rights. On the contrary, section 105 provides that ''every labor organization shall inform its members concerning the provisions of this Act.'' 29 U.S.C. 415. The language does not limit notice only to ''individual rights'' but is much more encompassing. This provision of the LMRDA includes, in addition to rights that IAM would consider free-standing (primarily relating to election and associational protections), numerous other substantive and procedural requirements and prohibitions. Thus, even if IAM were right that the CSRA provides union members with no free-standing rights, this would not affect the Secretary's statutory authority to require public sector unions to provide notice of the relevant provisions of the CSRA.

The Department has ample statutory authority to require unions subject to the CSRA standards of conduct to notify their members of these provisions. By including fundamental protections within their governing documents, unions seeking to become a bargaining representative of Federal employees satisfy their obligation to demonstrate their freedom from corrupt influences. Despite IAM's suggestion to the contrary, it does not follow that Congress, in establishing this statutory framework, intended to deny the Secretary the authority to further regulate union governance. Indeed, the plain language of section 7120(d) demonstrates just the opposite. Section 7120(d) reads: ''The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector.'' 5 U.S.C. 7120(d). Similarly, the Assistant Secretary is required by the CSRA to ''prescribe rules and regulations to carry out the provisions of'' Chapter 71 (Labor-Management Relations) of Title 5 that are administered by her. 5 U.S.C. 7134. As the legislative history indicates, the rulemaking authority was meant to enable the Assistant Secretary to ''effectuate'' the statute, 5 U.S.C. 7120. *See* S. Rep. 95–969, 107–108, 1978 U.S.C.C.A.N. 2723, 2829–30. The notion that sections 7120(a)(1)–(4) reflect the sole obligations of unions covered by the CSRA would deny effect to section 7120(d), among other subsections, and ignore the interpretative maxim that a statute should not be construed in a way that renders a provision superfluous. See, e.g., *United States* v. *Menasche,* 348 U.S. 528, 538 (1955).

A rule that requires unions to provide notice of the provisions of the CSRA is, to paraphrase the statute, necessary to fully realize the purposes of the CSRA and conforms generally to the principles applicable to private sector unions. 5 U.S.C. 7120(d). Notice is necessary because union member action is often required to ensure that unions comply with the provisions of the CSRA. A botched or stolen election cannot be set aside and rerun by the Department until a union member files a complaint. 29 CFR 458.29, 458.65. A union member who believes that his or her local union has been placed in trusteeship for a prohibited reason may file a complaint with OLMS, which, if well-founded, will result in an enforcement action to lift the trusteeship. 29 CFR 458.26–458.28, 458.53, 458.66(a). The financial reporting provisions are policed in part by union members who may, under certain circumstances, examine the union's books to verify the union's financial reports. 29 CFR 458.3; 29 CFR 403.8(a). The comments indicate that some unions do not adequately provide notice of the provisions of the CSRA to their members and that members are not versed in these provisions. Union members who are not aware of these laws will not likely take the steps needed to ensure that unions comply with these laws.

The rule is also consistent with private sector principles. Private sector unions have, since 1959, been required by statute to provide their members with notice of the law applicable to them. Section 105 of the LMRDA requires every covered union ''to inform its members concerning the provisions of the Act.'' 29 U.S.C. 415. It is evident from this section that a rule requiring unions subject to the CSRA standards of conduct to inform members of their rights as union members and the responsibilities of their union officers ''conforms generally to principles applied to labor organizations in the private sector.''

In its comments, the International Federation of Professional and Technical Engineers (IFPTE) stated that the NPRM fails to explain the absence of a provision in the CSRA comparable to section 105 of the LMRDA. IFPTE implies that this omission evidences an intention to relieve federal sector unions of any duty to notify their members of the provisions of the CSRA. The Department disagrees. IFPTE overlooks the state of the law pertaining to union regulation at the time the CSRA was enacted. In 1959, Congress enacted the LMRDA, complete with multiple titles imposing numerous prohibitions and requirements on labor unions and other entities. Public Law 86–257, September 14, 1959, 73 Stat. 519–546. By the mid-1960s, the Department had promulgated detailed regulations implementing and interpreting the LMRDA. See generally 29 CFR Parts 401–453. Congress did not, and did not need to, codify in the CSRA detailed provisions already established in the LMRDA for private sector unions. Instead, Congress chose to enact broad standards, provide the Assistant Secretary with rulemaking authority, and instruct the Assistant Secretary to prescribe necessary regulations that conform generally to the principles applied to private sector labor unions. 29 U.S.C. 7120. Thus, the absence of any particular provision in the CSRA comparable to section 105 in the LMRDA does not mean that Congress did not intend the notification requirement to apply to unions covered by the CSRA.

IAM and NFFE also argued that the proposed rule ''upset[s] the balance of rights, duties and responsibilities that Congress enacted in the CSRA'' by imposing a Federal obligation to highlight some CSRA rights over others. As discussed above, the notification required under the rule is within the authority provided the Department to effectuate the CSRA's standards of conduct. The Department acknowledges that the CSRA affords unions, their members, and Federal agencies important rights and obligations not addressed by the rule; however, the Department does not have express authority to require unions to apprise members of all their rights under the CSRA, but only those rights specifically under the authority of the Assistant Secretary, i.e., the standards of conduct for labor organizations. *See* 5 U.S.C. 7120(d) (Assistant Secretary has authority to carry out purposes of section 7120 by rules that conform generally to private sector principles); 5 U.S.C. 7134 (Assistant Secretary has authority to issue rules to carry out the applicable provisions of Chapter 71 (Labor-Management Relations) of Title 5). Furthermore, the Department rejects the notion that informing members

about their rights as union members somehow diminishes the other rights and obligations imposed on unions, union members, and agency management under the CSRA.

The IFPTE notes that the Department proposes to prescribe the content of the notice and the frequency and method of its distribution, thus imposing a greater burden on Federal unions than private unions. The IFPTE asserts that the Department ''offers no factual basis for the imposition of these unique and burdensome requirements upon Federal sector unions.'' The Department disagrees that the final rule lacks factual or legal support. The comments provide factual support for the findings supporting the final rule, as does the common sense proposition that increased notice leads to increased awareness. The particular requirements of the rule are discussed below, along with the comments and reasoning that support the Department's decision. In addition, the final rule also has ample legal justification. In *Thomas* v. *International Ass'n of Machinists,* 201 F.3d 517 (4th Cir. 2000), a labor organization took the position that a notice it provided to its members forty years ago, shortly after the passage of the LMRDA, satisfied its section 105 notice obligations. The Court of Appeals rejected this position, stating that the democratic principles in the statute ''are meaningless * * * if members do not know of their existence [because] if a member does not know of his rights, he cannot exercise them.'' *Machinists,* 201 F.3d at 520. As stated in the Department's proposal, at 69 FR 64227, the reasoning in *Machinists* also applies to unions governed by the CSRA. Furnishing a notice of the CSRA standards of conduct provisions to union members furthers the fundamental policies of Federal labor law. Union members aware of these provisions are more likely to monitor the conduct of their union and its officers as it affects their rights and interests as members; such information also equips them to help remedy any breach of the union's obligations. Union members who are not informed or aware of their rights are less able and less likely to take such action.

The Department acknowledges that the final rule imposes on Federal sector unions more precise requirements concerning the timing and content of the notice than have been expressly set forth in the law governing private sector labor organizations. The Department believes that requiring unions of Federal employees to notify their members of the provisions of the CSRA is squarely within the rulemaking authority the Assistant Secretary has been granted, as discussed immediately above. The Department has also concluded that providing precise guidelines on the particulars of the notice merely effectuates the notice requirement and constitutes a reasonable administrative construction of the requirement. Clear instructions provide detail that will assist unions in complying with the law. The Department rejects any implication that the final rule is invalid because no court has heretofore imposed comparable terms on private sector unions. The relevant statute requires that CSRA regulations merely ''conform *generally* to the *principles* applied to labor organizations in the private sectors,'' and nowhere requires that the regulations adhere precisely in every particular to each articulation of, or omission in, private sector requirements. See 29 U.S.C. 7120(d).

C. The Need for Notice to Members

The NPRM asked whether union members already receive adequate notice of their rights as union members. The Department received relatively few comments from unions on whether members already receive adequate notice of their rights. The IFPTE stated that it ''fully supports the principle that it is important to educate union members about their statutory rights, as employees, citizens and union members, and devotes appropriate resources to educate members about all these issues, including their rights and obligations as union members.'' The IFPTE did not, however, describe the extent of the ''resources'' it devotes to this effort, the content of the information it provides to its members, or the frequency with which it provides this notice. NFFE asserted that ''most unions'' give new members ''membership information'' and that ''information is consistently and continuously posted on union websites.'' NFFE did not, however, describe the content of the information it or other unions provide their members, or the frequency with which this information is provided. A letter from the IAM, provided as an attachment to NFFE's comments, asserted that it takes the following steps: ''[W]e now supply DOL's own summary of the LMRDA to each new member, publish that summary in issues of our magazine, and carry it at all times on our website (clearly accessed from our home page).'' The Department notes, however, that IAM may not be representative of other unions in that its commendable practices stemmed from a lawsuit against it by one of its members.

NFFE and the IFPTE asserted that members already have adequate notice of their rights. Neither of these unions, however, submitted copies of any information provided to their members, nor did they suggest that any such information is similar to, or as comprehensive as that contained in, the CSRA Union Member Rights notice. Other than IAM, no commenter included a copy of, quotation from, or link to, any statement of members' rights on a labor organization's Web site (or other union resource).

On the other hand, the National Right to Work Legal Defense Foundation (NRTWF) stated that ''the basic provisions of the NPRM are essential.'' The NRTWF asserted that ''at least one union believes its legal obligation was satisfied with notices issued to union members two generations ago.'' The Association for Union Democracy (AUD) argued that the proposed rule does not go far enough and that there should be a rule mandating inclusion of a rights notice in union constitutions. AUD also supported giving full written notice to new union members. One union official supported the regulation because ''members are not informed of their rights.'' Congressman Sam Johnson, Chairman of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the United States House of Representatives (Congressman Johnson), stated that ''too many of today's union members are wholly unaware of these rights, as too many unions have failed to provide their members with the notice of their rights as contemplated in section 105 of the LMRDA.'' As noted, the Department also received 700 form comments, stating that the notice is ''sorely needed.''

Many individuals and institutional commenters claim that new members do not receive adequate notice. A union officer wrote that he had ''held an office in a local union for over 25 years, [and] not once during my tenure has my organization provided notice or training concerning my rights.'' A union member commented that members are ''never'' apprised of their rights as union members. The Americans for Tax Reform wrote that ''[r]eminding ordinary union members that they own the union they pay dues to is a great step for worker rights and democracy.'' The AUD stated that by enacting the proposed regulation ''the DOL will be ensuring that federal sector union members receive the same information about their rights as private sector union members are already entitled to under [section] 105 of the [LMRDA].''

After considering all the comments, the Department has concluded that each labor organization subject to the CSRA must inform its members of the relevant provisions of the CSRA. In the Department's view, there is no persuasive argument that members of federal sector unions are less deserving of such information than members of unions solely representing private sector employees. The comments indicate that unions subject to the proposed rule, as a general matter, do not already provide such information of their own volition to their members. The comments also indicate that union members, as a general matter, are not already aware of the provisions of the CSRA. The Department has concluded that notice is necessary to ensure that Federal sector union members are provided a basic understanding of their rights as union members and the responsibilities of their officers.

D. Content of the Notice

The NPRM asked whether the CSRA Member Rights publication clearly and accurately states all union member democratic rights. The NPRM also asked what specific changes to the language would improve the accuracy or clarity of the notice.

The Department received comments recommending specific changes to the document, including the following: the Department should delete the listing of union officer responsibilities, delete the statement concerning trusteeships, and delete the statement requiring unions to provide copies of collective bargaining agreements. Other comments suggested that the Department should add statements regarding a union's duty of fair representation, an individual's right to join or not join a union, the asserted right to ''limit membership'' to financial core matters, the need to exhaust internal union proceedings in order to obtain redress for a violation of a member's rights, and the right to accurate information about union finances. We discuss each of these points in turn.

NFFE stated union officer responsibilities should not be included because these duties concern internal union policy, not ''members' rights.'' The Department disagrees. Members' rights include the obligations owed members by the officers of their union. Even if the term ''members' rights'' could be construed in the narrow sense suggested by NFFE, the notification is designed to apprise members about all of the relevant CSRA standards of conduct, rather than simply membership rights. In the Department's view, ''Union Member Rights and Officer Responsibilities'' better conveys the purpose of the notification than a title in which ''standards of conduct'' is the focal point, as a commenter urged, notwithstanding the longstanding use of the term in Federal sector labor relations.

NFFE further stated that ''the requirement to provide copies of collective bargaining agreements to dues paying and non-dues paying members is not a legal requirement under 5 U.S.C., Chapter 71.'' The obligation that a union provide copies of the collective bargaining agreement on request to any member of the bargaining unit has long been established by this Department's regulations. See 29 CFR 458.3. This rule was adopted in 1980, as part of an overall effort to update the Department's responsibilities following the CSRA's 1978 enactment. The obligation existed under regulations promulgated under E.O. 11491, as amended, the antecedent authority governing labor-management relations in the Federal service. See 29 CFR 204.2(d) (1979) (indicating source as 40 FR 19992 (1975)). Moreover, this requirement is the analog to the LMRDA section 104 obligation of unions ''to forward a copy of each collective bargaining agreement * * * to any employee who requests such a copy * * *'' 29 U.S.C. 415, 414. For these reasons, the Department has determined that the inclusion of this statement in the members' rights notification is appropriate.

NFFE stated that the notice should include a statement concerning an employee's right to join a union. Three organizations (NRTWF, Evergreen Freedom Foundation (EFF), and Stop Union Political Abuse (SUPA)) recommended that the notice contain a statement concerning an employee's right not to join a union. Without regard to any possible merit of including such statements in the notice, the right to join or not join a Federal sector union is chiefly enforced by the Federal Labor Relations Authority (FLRA) and is outside the jurisdiction of this Department.

NFFE contended that the Department lacked the authority to state that ''[a] union may not be placed in trusteeship by a parent body except for those reasons stated in the standards of conduct regulations.'' NFFE claimed that this statement is inconsistent with three Federal courts of appeals decisions (*Reed* v. *Sturdivant*, 176 F. 3d 1051 (8th Cir. 1999); *Smith* v. *Office & Professional Employees International Union*, 821 F.2d 355 (6th Cir. 1987); *New Jersey County & Mun. Council #61* v. *American Federation of State, County and Municipal Employees*, 478 F.2d 1156 (3rd Cir. 1973), *cert. denied*, 414 U.S. 975 (1973)). The Department believes that the statement in question accurately summarizes the restrictions on trusteeships under the CSRA, as articulated in the Department's existing regulations. See 29 CFR 458.26. The substantive requirements under the CSRA conform generally to the LMRDA. Only the enforcement mechanisms are different. As stated in *Reed* v. *Sturdivant,* ''After two circuits construed Title III [of the LMRDA] as not applying to trusteeships imposed upon local unions of federal employees, Congress responded by enacting the CSRA, which mandates the same substantive standards but is enforced by exclusively administrative remedies.* * *'' 176 F.3d at 1054. For these reasons, the Department has decided to retain unchanged the statement that ''[a] union may not be placed in trusteeship by a parent body except for those reasons specified in the standards of conduct regulations.''

The NRTWF and SUPA requested that the Department include in the required notice that the union has a duty to fairly represent all employees in the bargaining unit and to charge dues only for ''core'' union purposes, i.e., for matters such as collective bargaining, contract administration, and the adjustment of grievances. The duty of fair representation is not a provision within the authority of the Department. Although the duty is set forth in the CSRA, this duty arises independent of an employee's membership in a union and the duty is enforced by the FLRA, not this Department. For these reasons, the Department believes it would be inappropriate to include such statements in the required notice. Similarly, the Department believes it would be inappropriate to include a statement concerning ''core'' union responsibilities. The Department is not persuaded that the concept of financial core membership is applicable to Federal sector union members because a union shop is not permitted under the CSRA and, in any event, any claimed violation would fall within the authority of the FLRA, not this Department.

For similar reasons, the Department rejects SUPA's related recommendation that the notice include the statement that members possess the ''right to clear, concise, and accurate financial information * * *, especially for * * * expenditures on ''non-core'' activities.'' The Department believes that the CSRA Union Member Rights accurately identifies a union's obligation to provide financial information to its members as relevant to the CSRA provisions for which the Assistant

Secretary has responsibility. And, even assuming that there is a relevant distinction between charges for ''core'' and ''non-core'' activities in the Federal sector, the Department has not been persuaded that it possesses the authority to require unions subject to this rule to provide any accounting to members other than those that conform generally to the principles already prescribed by Title II of the LMRDA.

The NRTWF also suggested that the notice should be denominated the ''Rights of Represented Employees and Union Officer Responsibilities under the Civil Service Reform Act'' because non-union member bargaining unit employees have the same rights to representation as members. The NRTWF would require unions to send the notices to all employees in the bargaining unit it represents, members and nonmembers alike. Protecting representation rights, however, is not one of the purposes of section 7120 and not one of the provisions of Chapter 71 that is applicable to the Assistant Secretary. 5 U.S.C. 7120(c), 7134. Thus, there is no express rulemaking authority to issue such a regulation. The Department is not persuaded that unions should be required either to include in a notice to their own members a statement that primarily concerns the rights of nonmembers or that the union should be required to bear the expense of providing information to nonmembers (even assuming that the union had addresses or an alternative means to mail notice to them).

The EFF recommended that unions should be required to use specific language, developed by the Department, in order to ensure that members are given proper notice of their rights. Another commenter, an officer of a Federal union, objected, ''If you allow the unions to abbreviate the statement, some would also abbreviate the rights.'' On the other hand, NTEU, and other unions, urged the Department to permit unions to devise their own language in order to correct perceived omissions in the notice or provide information tailored to the unique needs of each union and its membership. After considering the comments, the Department concludes that it is appropriate to provide unions the alternative opportunity to devise their own notice. Although use of the Department-prepared notice ensures uniformity by providing a minimum compliance standard, uniformity is also its weakness. Such a notice must of necessity be generic—without any tie to a union's particular internal practices or procedures. By developing its own notice, a union may choose to apprise members of their specific rights under the union's governing documents, and the duties owed by officers and the members to the union and each other at the same time it informs members of the provisions of the CSRA. Given the Department's authority to undertake its own investigation of union compliance with the notification requirement and its ability to prosecute violations, the Department believes that it can oversee union practices in devising language and, if proven necessary, quickly undertake corrective action without any significant loss of information to members. At the same time, the Department determined that it was appropriate to make explicit that the standards to be identified in a union-developed notice include, at a minimum, each of the standards listed in the OLMS publication appended to this document. To accomplish this result, the text of the final rule now clarifies that the union-prepared notice must accurately state the CSRA provisions as they appear in CSRA Union Member Rights.

The NRTWF stated that the notice should include statements that union members have the right to resign their membership and to revoke their dues authorization. Although the NRTWF correctly states that union members have these rights, the purpose of the notice is to inform members generally of the standards of conduct provisions in the CSRA and the Department's regulations, not to provide an exhaustive list of union member rights, as recognized by the courts or other authorities. Similarly, as discussed above, the Department was not expressly authorized by Congress to prescribe rules that would more generally require unions to apprise members of their collective bargaining and other rights and obligations under the CSRA.

NFFE and NTEU recommended that the notice contain a statement that ''employees should exhaust internal union administrative procedures prior to seeking department relief regarding the election of officers.'' In crafting the proposed rule, the Department considered the inclusion of a statement specifically alerting union members that they may be required to ''exhaust'' internal procedures before obtaining relief under the standards of conduct provisions. The Department concluded that a relatively complete yet succinct statement of the exhaustion principle could not be accomplished through a summary notice and that the very term ''exhaustion'' might be confusing to some individuals. For these reasons, the Department instead included the following statement in the notice. ''If you need additional information * * * please contact OLMS * * *. You should also refer to 29 CFR 457.1–459.5, and your union's constitution and bylaws for information on union procedures, timelines, and remedies.'' The Department's view remains that this approach is preferable to an attempt to include even a truncated statement of the exhaustion principle in the notice. Furthermore, as NTEU noted, a union may choose to include such information in a notice of its own devising. This approach would allow a union to explain to its members the union's particular procedures and time constraints applicable to a member's claims, a choice left available to unions under the final rule.

E. Dissemination of the Notice

The NPRM proposed that labor organizations subject to the CSRA standards of conduct may meet their duty to inform members about their rights by any method as long as it was reasonably calculated to reach all members. The NPRM also solicited comments from the public with regard to the following two issues: (i) Whether a posting, either permanent or periodic, at a union's offices and on agency bulletin boards to which the union has access by virtue of its status as bargaining representative would adequately apprise members of their rights as union members; and (ii) whether a union which has a Web site must be required to include a link to CSRA Union Member Rights or the union's own notice.

A common theme in the comments received by the Department was that unions should be required to use a combination of methods to disseminate notice of members' rights. For example, Congressman Johnson urged the Department to issue a rule that would require unions to incorporate such notices in their constitutions, post notices at union offices and on bulletin boards, and deliver the notice by e-mail where possible. The SUPA recommended that a ''combination of communication methods'' is preferable. It suggested that unions should provide ''(1) verbal and written notice during new member orientation; (2) a mailing to all members with election notices; (3) e-mail notification; and (4) bulletin board posting.''

The Department has concluded that notification to individual members must be in writing. The Department also has concluded that a union must use personal delivery, regular mail, or electronic mail, alone or in

combination, to provide notification to members. Further, if a union has a Web site it must also include such notification on the Web site or provide a link to the CSRA Union Member Rights. The Department believes that providing such information on a Web site and posting it on bulletin boards will prove beneficial to members; however, in the Department's view, these resources, either alone or in combination, are inadequate as the sole means of informing members about their membership rights. Each of these points is discussed in greater detail below.

1. Bulletin Board Posting

The NPRM asked whether a posting at a union's offices and on agency bulletin boards would adequately apprise members of their rights as union members. Most of the comments received on this issue expressed the general view that such posting would be inadequate as a primary method of providing notice. NTEU indicated that posting alone would not reach members who spend most or all of their time at third-party worksites or other sites separate from their employer's premises. NTEU stated that Web site posting alone is adequate notice to members and stated that unions without Web sites should be required to post notices in union offices and on agency bulletin boards.

Other comments identified flaws in using posting as a primary means of providing notice. One commenter argued that ''all too often the union bulletin board is not placed in a strategic location, because management often has control over exactly where that bulletin board is placed.'' The AUD noted that it would be too easy for a notice to be covered up or removed from a cluttered bulletin board. This organization further noted that ''monitoring union compliance with the requirements of the final rule would be difficult, if not impossible, given the number of bulletin boards in countless government offices and union halls.'' One comment stated the concern that if such notices were posted in or near union offices members observed reading such notices could become ''prime targets for retaliation.'' The comments, however, generally supported posting as a supplement to other methods. For example, the EFF suggested that a permanent posting would be a good supplement to individual notice to members.

The Department has concluded that posting the members' rights notice on bulletin boards to which a union has access is less likely than other methods to ensure that members will be adequately apprised of their rights. As discussed below, a mailing to individual members is far more likely to reach individual members than a posting. The Department has also considered and rejected the comment suggesting bulletin board posting as an alternative to Web site posting when the union does not maintain a Web site. The commenter proposed this idea while arguing that Web site notice was sufficient alone, and that bulletin board posting would be required only for unions without a Web site. The Department has chosen to require direct, individual notice to members, and it is doubtful that the commenter would support bulletin board posting as a supplemental measure. In any event, the drawbacks of bulletin board posting in terms of location, accessibility, visual clutter, and compliance monitoring make this an ineffective means for disseminating notice.

2. Web Site Posting

The Department proposed that if a union maintains a Web site, it must include as part of the site a notification to members of their rights as union members. Under the proposal, a union could choose to develop its own notice or include a link to CSRA Union Member Rights. The comments expressed general support for the proposal, but noted some concerns.

IFPTE argued that its Web site ''plays a pivotal role'' in communications with its members: ''It's reasonable to expect that Web site notification will be extremely effective at keeping members informed of their rights as union members.'' IFPTE, as well as NTEU, argued that notification on the union's Web site, by itself, is adequate to apprise members of their rights as union members.

The AUD supported the Web site posting as one method of notification, stating that ''the financial burden these requirements would impose on affected unions would be minimal, amounting to mere pennies per union member covered.'' AUD cited Arthur B. Shostak, The Cyberunion Handbook: Transforming Labor Through Computer Technology 4 (2002) for the proposition that ''by January 2000, some 60 percent of union homes already had at least one computer * * * and that percentage is undoubtedly much higher five years later.'' Another commenter stated that information is ''consistently and continuously'' posted on his union's Web site. One union urged the Department to ''allow federal sector unions to comply by providing notice via the parent union Web site or the subordinate body Web site.'' It further affirmed that ''Web site notice has the advantage of being continuing in nature, readily accessible, and inexpensive for the union to maintain.'' Similarly, another commenter indicated that Web site posting would ''keep administrative costs at a minimum while still informing members of their rights.''

On the other hand, one comment stated that Web site posting denies information to members without Internet access and members who belong to unions that do not maintain a Web site. Another indicated that his union's Web site is difficult to navigate, and another noted his union's difficulty in keeping its Web site current.

While Web posting is continuous and would supplement periodic mailing of notice to members, the Department has concluded that Web posting is not adequate as the sole means for disseminating notice to members. Despite the growing availability of Internet access and the public's familiarity with this technology, it appears that there still may be a significant number of members who lack access to their union's Web site or possess only a limited ability to navigate the site. Each member of a union should receive notification of his or her rights, a purpose that cannot be achieved if Web posting is the only source of this information.

Even though the Department rejects Web posting as the sole means of disseminating notice to members, the Department believes that Web site posting is an effective, efficient, and inexpensive means to provide members with supplemental and continuing notice of their rights. Furthermore, the Department recognizes that union members, like other citizens, increasingly turn to the Internet to obtain basic information from, and transact business with, organizations to which they belong or otherwise interact. Accordingly, the Department has concluded that if a labor organization has a Web site it must include a notice of members' rights on the Web site. Web site posting is only a requirement for unions who maintain Web sites; unions without Web sites will not be required to develop them in order to satisfy the notice requirement.

Finally, one comment suggested that the Department should include on its Web site ''questions and answers'' that would more fully address union members' rights. The Department will be providing compliance assistance to unions and members and plans to add to the OLMS Web site a ''Frequently Asked Questions'' section relating to the CSRA standards of conduct.

3. Reproducing Notice in the Union's Constitution and Bylaws

The NPRM solicited comments on the following issues: (i) Whether a statement of members' rights should be required as an appendix to a union's constitution and bylaws, (ii) whether and how a union's constitution and bylaws are now made available to members, and (iii) whether including the notice in a union's constitution and bylaws and maintaining proof that each member had received a copy should provide a ''safe harbor.''

Comments were generally supportive of a rule requiring unions to incorporate the statement of a union member's rights in union constitutions and bylaws. Two organizations (SUPA and AUD) urged the Department to adopt the requirement that a summary of members' rights and officers' responsibilities be included as an appendix to the constitutions of covered labor organizations. The AUD explained that whenever members have problems with their unions, they turn to the constitution for guidance, and that requiring the inclusion of such rights would be a simple, effective, and inexpensive way to comply with the notice requirement. Other comments, although supporting the incorporation of the member's rights notice as an appendix to a union's constitution, expressed concern that union members encounter difficulty in obtaining copies of the union's constitution and bylaws.

Other comments rejected any rule requiring unions to incorporate the statement of a union member's rights in union constitutions and bylaws. NTEU expressed concern that requiring unions to include the notice in this manner ''interfere[s] with the union's internal affairs.'' NTEU also observed that ''such a requirement would probably not prove very effective in informing members of their rights as union members''; in its view, members are more likely to learn their rights by ''clicking on a button on the union's Web site that leads them directly to a statement of union members' rights.'' Other comments suggested that a union constitution was inappropriate as a resource to educate members about their rights because the documents may be lengthy and difficult to follow.

Four comments generally opposed a regulation that would allow unions a ''safe harbor'' by including a members' rights notice in their constitutions. One commenter argued that ''[t]o give someone a copy of the constitution and then expect the union to be relieved of its obligation forever is not a practical method of ensur[ing] that people know and continue to know or be aware of their right[s].'' This commenter suggested that a union could comply with the notice requirement if it ''gave out copies of the constitution once every three years, and alternated that with just a mailed notice.''

The Department is not persuaded that it would be appropriate to require unions to include a statement of members' rights as an appendix to a union's constitution and bylaws. In the Department's view, such a requirement, absent a more compelling showing than supplied by the comments, would be an unwarranted intrusion in the union's internal affairs. The constitution and bylaws provide the foundation for the union's existence and reflect the views of its founders and governing body on the essential terms of the union's governance. The Department believes that these considerations counsel against a Department-mandated requirement that unions include a statement of member rights in their constitutions. Furthermore, the comments about the utility and availability of the constitution have raised some questions about the sole reliance on an appendix to a union's constitution to apprise members of their rights. The Department is concerned about the assertions that union members have difficulty in obtaining copies of their union's constitution. The Department, however, is not persuaded by the argument that a union's choice to include a statement of rights as an appendix to its constitution would be infirm because of the length of the constitution or the impracticality of relying on it as a statement of a union member's rights. In the Department's view, a union would satisfy its obligation under the final rule if it chooses to mail the constitution with a statement of rights as an appendix to its members as the means of providing the required individual notification.

Furthermore, the Department has not been persuaded that the final rule should provide a ''safe harbor'' for unions that include notice of member rights in their constitutions or bylaws. As noted, the inclusion of a statement in a union's constitution, by itself, does not guarantee that the information has been conveyed to union members.

4. E-Mailing Notice to Union Members

The NPRM asked whether sending a notice by e-mail would be acceptable if members have provided their e-mail addresses to the union or the union is permitted to use an agency e-mail system to contact its members. The comments expressed three concerns about the use of e-mail: Its lack of availability to some members, the impermanency of individual e-mail addresses, and the difficulty of documenting the transmission and receipt of messages. Congressman Johnson and EFF urged that e-mail is acceptable only as a supplement, not an alternative, to formal written notice by regular mail. To avoid some potential problems, a commenter suggested use of the employer-agency's e-mail system because of its ability to provide receipt of delivery.

The Department believes that e-mail provides an acceptable method by which a union may provide notification to its members. E-mail can be an effective, efficient, and inexpensive means for providing members with notice of their rights. Just as a union that chooses to provide notice by U.S. mail must maintain a current list of member addresses, a union that chooses to send notice by e-mail must maintain an updated list of members' e-mail addresses. A labor organization that relies on e-mail to provide notice has the burden of proving that notice has been sent to an operational e-mail address of the member to whom the message is directed. For this reason, the Department encourages unions to maintain records in electronic or other format to show when and to whom the e-mails have been sent and notification that the e-mail has been received, or is undeliverable. Where a union does not have a member's e-mail address on file or an e-mail is ''returned'' as undeliverable, it must provide notification to the member by hand delivery or regular mail.

The Department does not require that a union utilize a member's personal e-mail address to provide notification. If an agency permits the union to use the agency e-mail system for this purpose, the union may choose to utilize this avenue of communication. If the union chooses to use the agency's system, it must document—either by its own means or the agency's—when and to whom the e-mails have been sent and that the e-mail has been received, or was ''returned'' as undeliverable. The Department, however, lacks the authority to direct an agency to permit the use of its e-mail system for such purpose, and the Department offers no view on whether an agency may or should permit such use.

F. Timing of the Notice

The NPRM asked: (i) Whether notice should be given to each member within a certain period of time after the effective date of the rule, (ii) how soon notice should be given to new members, (iii) how frequently a periodic notice

should be given, and (iv) whether inclusion of a members' rights notice in the notice of nominations and elections for 3, 4, and 5-year election cycles would be sufficient notice.

1. Initial Notice After the Rule Becomes Effective

The NPRM sought comment concerning what would constitute a reasonable amount of time to allow unions to provide the first notification to members under the proposed rule. Congressman Johnson and the AUD supported initial notice within a 90-day period after the effective date. The EFF stated that 30 to 60 days would be a sufficient time. While IFPTE and NFFE argued against any notice, they recommended that if the rule was issued that unions should be given one year to develop a notification method. An individual union official stated that unions should be allowed one year to provide notice. Neither the unions nor the union official explained why unions needed this amount of time. NTEU also recommended that unions be allowed one year to provide such notice; it explained that this amount of time would enable the union to establish an appropriate schedule for providing the notice at three-year intervals.

While some commenters supported a shorter period, in the Department's view, a provision that unions provide initial notification to members within 90 days of the rule's effective date allows unions a reasonable amount of time to prepare for, and comply with, the new requirement. Since the rule does not take effect until 30 days after publication, unions actually will have 120 days within which to prepare the notice to their members, determine the distribution method or methods, and update the necessary address lists. This timeframe allows national unions, if they so choose, sufficient time to prepare notice language, either to be mailed directly to their affiliates' members or to serve as a model for their affiliates' use in providing notice to members. Moreover, if a union chooses to use the Department's model notice, there will be no time involved in this step of the process. Unions are already required to maintain home addresses of union members in order to comply with the rules governing notice of elections. 29 CFR 458.29. Unions that maintain a Web site must comply with the additional requirement of posting the statement of members' rights on the Web site or provide a link to the notice posted on the OLMS Web site. The amount of time involved in accomplishing this task, as distinct from preparing the text of the notice, is estimated to be approximately 15 minutes, and thus does not materially affect the selection of a timeframe.

2. Notice to New Members

The NPRM sought comment concerning how soon a union would be required to provide notice to new members. Only one comment was received on this issue. Congressman Johnson suggested 90 days was a reasonable timeframe. The Department has determined that unions must provide notice to new members within 90 days of becoming a member.

As a matter of administrative practice, unions often choose to provide new members orientation materials relating to the union at or near the time of a member's formal admission to the union. It would be a reasonable practice for a union to provide notification of the member's union rights at that time. In other cases, a union might reasonably choose to leave this task to the national or international union to which it belongs, if any. In such case, there may be some time lag involved in national or international unions receiving new member information from a local, the processing of the information by the parent organization, and the mailing of a membership package to the new member. Ninety days should provide ample time for a union to provide the required notification to its new members.

The NPRM also sought comment on possible alternatives to providing individuals with a full statement of their rights at the time they become members. One commenter suggested that all members of a bargaining unit be provided a statement of the rights of union members. The Department declines this suggestion. There are only one or two provisions of the CSRA Union Member Rights notice that would arguably be of more than passing interest to nonmembers of the union. The added benefit gained by providing information to nonmembers would be greatly outweighed by the costs to unions in identifying, locating, and providing notice to these individuals. Furthermore, the portions of the CSRA for which the Assistant Secretary has responsibility concern requirements and prohibitions on unions in relation to their members, the membership's moneys, and affiliated unions. 5 U.S.C. 7120. These portions do not address a union's relationship with nonmembers in any substantial way. In addition, the analogous private sector requirement requires every labor organization to inform *its members* of the provisions of the LMRDA, see 29 U.S.C. 415, and the Assistant Secretary's rulemaking in this area is to conform generally with private sector principles, 5 U.S.C. 7120(c).

Two commenters referred to the completion of the Form SF 1187 by a prospective union member as a possible opportunity to apprise members of their rights. The SF 1187 has been developed by the Office of Personnel Management for use by federal employees, their employer, and unions to authorize a federal agency, at the employee's written direction, to deduct union dues from the employee's pay. One commenter noted that the form does not contain a statement of such rights and does not ask an employee to provide an e-mail address. The other commenter expressed concern that if the union used a handout that combined the Form SF 1187 and a notification of members' rights that the individual member would not retain a copy of the handout for his or her files. Notwithstanding these concerns, the Department believes that the signing of the Form SF 1187 may provide a good opportunity to notify individuals of their rights as union members. By keeping copies of the completed form and instructions the individual has a summary of his rights as a union member and the union has a record of providing notification of such rights to the individual. Individuals are competent to make their own choice about what documents to retain, and the Department cannot require a union to act as a guarantor that members actually retain a copy of documents provided to them. Thus, a union that chooses to distribute the required notice in conjunction with the Form SF 1187 will be deemed to have met its requirement to provide notice to new members, despite the individual's status as a nonmember at the time of receipt. Because it is important to both the individual and the union that they have a common understanding of their rights and obligations at or about the time the individual joins the union, the Department also will treat similar information provided by a union to a potential member, where properly documented, to satisfy its notification obligation.

3. Periodic Notice

The NPRM proposed that unions must inform members of their rights at least once every three years. The NRTWF argued that three years was too long an interval between notices because members do not exercise their rights on a three-year timetable. The NRTWF, EFF, and an individual union officer argued that notice should be given every year. The NRTWF noted that management in the Federal sector must inform employees of certain rights on an

annual basis under 5 U.S.C. 7114(a)(3). Congressman Johnson and the AUD supported the three-year notice interval, while noting that a shorter period might be appropriate. An individual commenter thought that notifying members every four or five years was sufficient provided that notices were required to be given in advance of union nomination and election periods. Interwoven with the question regarding the frequency of notification is the question of whether notification should be permitted or required as part of a union's required mailings in connection with its elections for officers. For local unions, such elections must be conducted not less often than every three years. 29 CFR 458.29.

The comments support a finding that union members should be informed and reminded of their rights on a recurring basis. The Department has determined to retain the requirement in the proposal that notice shall be provided to members not less than every three years. While some comments urged the Department to require annual notice, others stated that there should be no periodic notice requirement but, if required, intervals should be longer than three years. Many agreed that the three-year interval is administratively convenient because local unions may choose to mail the notice at the same time they mail notices of union officer elections. In the Department's view, three years is an appropriate interval to remind members of their rights; it ensures that members will receive notice at least once during the maximum timeframe allowed for local union officer elections, but does not carry the burden of yearly notification.

One commenter argued that the period of notice should correlate with the union's national election cycle. On that issue, the EFF supported sending out a rights notice along with the notice of elections, but only if members also received notice by some other method. The AUD noted that administrative convenience was served by allowing the notice to be sent with the election notice given the typical three-year election cycle. It added, however, that providing notice in this manner was not an effective way to reach union members who lack an active interest in the union's election. Congressman Johnson, the EFF, the AUD, and an individual commenter argued that a union should not be permitted to rely on this method, especially in the case of the four or five-year election cycles typical for national or intermediate bodies.

With regard to the question whether notification should be required or permitted in connection with a union's officer election notices, the Department has determined that unions should be permitted, but not required, to include the notice of members' rights with the statutorily-required notice of election. The Department is not persuaded that mailing the rights notice with the election notice will be less effective than notice provided by other means. Membership in an organization entails some obligations, and among them is the duty to read documents mailed to them by the organization.

The Department is not persuaded by a suggestion that a union should be unable to satisfy its CSRA Union Member Rights notice obligation by including a statement of rights in a union newsletter, distributed to all members. In the Department's view, notice included in a union publication is adequate as long as it is presented with sufficient prominence to attract the attention of a member receiving the publication. This is consistent with the Department's experience in administering a regulation permitting notice of elections to be included in union newspapers. *See* 29 CFR. 452.75.

G. Notice Provided by Another Labor Organization

The Department proposed that a union's duty to provide notification may be satisfied by notice provided to its members by another labor organization. For example, if Member A is a member of Federal Union, Local 1, the obligation of his local to provide notification is satisfied if it is provided by either Local 1, the Council of East Coast Locals (an intermediate body to which it is affiliated), or the National Federal Union. No objections to this proposal were received. The Department has concluded that a union may demonstrate compliance with the notice requirement if another union has provided the appropriate notice to all its members.

One comment suggested that a union should not be required to include a link on its Web site if the appropriate notice is posted on its parent or other affiliated union's Web site. The Department disagrees. As discussed, the Web site posting is required only of unions that choose to maintain Web sites. Where such Web sites exist, it is reasonable for union members to rely on those sites for basic information relating to their union. Therefore, a union that maintains a Web site must include notification on its site without regard to whether an affiliated union has provided written notification to its members or such affiliate has published the notification on its Web site.

H. Mechanism for Enforcing the Members' Rights Notice Requirement

The NPRM proposed enforcement of the notice requirement solely by OLMS with or without a complaint by a union member. The proposal also asked for comment on whether enforcement should be vested in individual union members. Relatively few comments were received on this point. NTEU endorsed the proposed method of enforcement. One union member noted that some people could not afford the expense of bringing a case, thus requiring that OLMS undertake prosecution as a matter of fairness.

The SUPA urged that enforcement authority should be vested in both OLMS and union members and suggested that members should be permitted to bring an action in U.S. District Court in a manner similar to that permitted under section 201(c) of the LMRDA. 29 U.S.C. 431(c). NFFE commented that the new rule would place additional demands on the resources of OLMS at a time when, in the union's ''understanding,'' OLMS is unable to undertake ''malfeasance investigations'' in a timely manner. NFFE acknowledged, however, that enforcement should reside with OLMS, not individuals, because litigation by individuals unnecessarily increases litigation costs for unions because of the potential for unsubstantiated lawsuits.

The CSRA, unlike the LMRDA, does not confer jurisdiction on Federal district courts. The Department cannot by regulation extend a private right of action to union members in Federal district court to vindicate their regulatory right to notice of the CSRA provisions. Furthermore, to the extent that SUPA's position would be satisfied by allowing a union member to prosecute an alleged violation in an adjudicatory proceeding before the Department, the Department believes that any benefit that may be gained is outweighed by the potential cost to unions and the Department's adjudicative resources from having to adjudicate claims that have not been preliminarily screened for merit by OLMS. Supporting this is the fact that although NFFE opposed vesting enforcement authority in OLMS on the ground that the Department ''appears to be incapable of completing financial malfeasance investigations in a timely manner,'' NFFE also pointed out that unions' litigation costs likely will be reduced by keeping enforcement solely in the control of OLMS because any frivolous complaints are ''weeded out'' at a cost savings to the unions and the Department's adjudicative resources.

In this same vein, a different comment argued that both an individual and OLMS should be able to prosecute an alleged violation of the notification requirement. The commenter would have the individual bring an allegation before an Administrative Law Judge (ALJ) as opposed to in U.S. District Court, as expressed by SUPA. Once again, the Department is not persuaded that individual enforcement is appropriate as an adjunct to OLMS prosecution. Under the proposed enforcement scheme, OLMS can proceed without a complaint, or a union member can file a complaint with OLMS about the failure of their union to comply with the notice requirement.

The enforcement procedure already is set out in the Department's regulations. An OLMS District Director may investigate pursuant to 29 CFR 458.50(b) when he or she believes it necessary in order to determine whether a violation has occurred or is about to occur. If a violation of this rule is discovered, the OLMS District Director will notify the union pursuant to 29 CFR 458.66(b) and will attempt to secure an agreement for appropriate remedial action pursuant to 29 CFR 458.66(c), which ordinarily will be the union's compliance with the notification requirement. If no agreement is reached with the union, the District Director will file a complaint with the DOL Chief Administrative Law Judge. The proceedings before the ALJ will be governed by sections 458.67 through 458.93, 29 CFR 458.67 through 458.93. The Standards of Conduct provisions of the CSRA (5 U.S.C. 7120) do not authorize monetary penalties or debarments for violations of its provisions. The practice under the CSRA is similar to the procedure under the LMRDA where the Secretary files an enforcement action in a U.S. District Court against a union that fails to file its required annual financial report. If the action is successfully prosecuted, the district court will issue an order requiring the union to file the report.

If members were given direct enforcement rights such as provided by section 458.54 of the regulations, 29 CFR 458.54, to lodge a bill of rights action, they would still have to file a complaint with an OLMS District Director, who would have to ''obtain such additional information as he deems necessary'' and then would refer the matter to the Chief ALJ if he found ''a reasonable basis for the complaint.'' The member would have the burden and expense of proving his or her allegations in a hearing before an ALJ. This scenario is avoided in the enforcement scheme selected here. Moreover, as discussed above, there is no persuasive reason to provide members a right to prosecute a complaint without an initial determination by OLMS that there exists a reasonable basis to the complaint.

Finally, in response to NFFE's assertion that there is an ''understanding that the Department appears to be incapable of completing financial malfeasance investigations in a timely manner,'' the Department notes that NFFE has provided no substantiation for its claim, which, in any event, is unfounded. Moreover, Congress has recently allocated increased resources to OLMS, which should alleviate any concern that OLMS investigations will be delayed by taking on additional enforcement responsibilities under this rule.

The Department has determined to retain the proposed enforcement procedure. OLMS will use the existing administrative mechanism in the standards of conduct regulations (29 CFR 458.66–459.5) for resolving complaints related to this rule. Where OLMS determines after investigation that a violation has occurred and has not been remedied, OLMS will institute enforcement proceedings against the labor organization before the Department's Office of Administrative Law Judges.

III. Regulatory Procedures

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this final rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Because compliance with the rule can be achieved at low cost to covered labor organizations, the rule is not likely to: (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. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. Because of its importance to the public, however, the rule was treated as a significant regulatory action and was reviewed by the Office of Management and Budget.

Prior to issuing the proposed rule, the Department sought the involvement of those individuals and organizations that will be affected by the rule, including officers and members of labor organizations that would be subject to the rule. It was determined that the rule will impose certain burdens associated with the requirement that labor organizations representing Federal employees must inform their members of the CSRA standards of conduct provisions and the regulations promulgated to carry out the purposes of the CSRA, 29 CFR 458.1–458.38. According to the latest available Office of Personnel Management figures, as of January 1, 2001, there were 1,043,479 federal employees in bargaining units, and these units were represented by 2,199 local unions. Not all of these employees belong to a union, but that number can be used as the maximum theoretical number of members who must be informed of their rights. Since unions are free to add the rights notice to the mandatory election notice that locals by law must mail to their members every three years, the Department assumes that unions will take advantage of this cost-effective method of distributing the notice. Under such circumstances, the cost to unions would, at most, entail the cost of 1,043,479 photocopies of the notice, at $.15 per page, resulting in an expenditure of $156,521 every three years, for annualized costs borne by all public sector unions of $52,174.

It is conceivable that the required notice will increase the weight of each piece of mail to the next highest ounce, thus resulting in a $.24 fee for an extra ounce of first class postage for each envelope. This additional mailing cost would amount at most to $250,435 every three years, for an annualized cost of $83,478. Summing the maximum copying costs and the maximum additional postage costs results in an additional $406,956 expenditure every three years, and a maximum total annualized cost for all unions of $135,652. Stated otherwise, the annualized cost to unions would be $.13 per member. Intermediate and national labor organizations would not have to provide separate notice as, pursuant to purposed section 458.4(b), they could rely on mailings made by their subordinate locals. (Or conversely, it could be the national or international that chooses to undertake the notification and bear the costs associated with it either directly or by charging the cost back to the affiliates).

The approximately 2,199 local unions would be subject to an annualized average maximum cost of $61.68. Finally, unions that maintain a Web site would be required to create a link to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act or the union's own notice. The Department has no data on the number of unions that maintain a Web site. In addition to the 2,199 local unions, the Office of Personnel Management reports 80 national and international unions and associations that have, directly or through local units, exclusive recognition with departments and agencies of the Executive Branch. Thus it is theoretically possible that 2,279 unions would be required to create such a link. Assuming that the median annual salary of a webmaster is $80,000 and the creation of a link would take 15 minutes, the one-time labor cost of this requirement would be $22,790, or $10 per union.

None of the commenters disputed the accuracy of the burden estimates set forth in the NPRM. NFFE claimed that the new rule would place an undue burden on unions but did not document this general claim and did not dispute the accuracy of the OLMS projections. By contrast, the AUD commented that the financial burden imposed by the rule would amount to ''mere pennies'' per union member covered. And the form comments received stated: ''[w]hatever small amount it costs the unions to perform this vital function is a small price to pay for the benefit [obtained].''

Small Business Regulatory Enforcement Fairness Act

The Department has concluded that this final rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, et seq.). It will not likely 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, 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.

Executive Order 13132: Federalism

The Department has reviewed this final rule in accordance with Executive Order 13132, regarding federalism, and has determined that the rule does not have ''federalism implications.'' The economic effects of the rule are not substantial, and it has no ''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.''

Regulatory Flexibility Act

The final rule would not have a significant economic impact on a substantial number of small business entities. The rule will have only an insignificant impact on any covered labor organization. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule has no substantial impact on any small business entity and, therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

Paperwork Reduction Act

This final rule will impose certain minimal burdens associated with informing members of their rights. As noted in proposed section 458.4, a labor organization may satisfy its obligation by either using language supplied by the Department or devising its own language as long as the notice accurately states all of the CSRA standards of conduct provisions. Under the regulations implementing the Paperwork Reduction Act, ''[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public'' is not considered a ''collection of information'' under the Act. 5 CFR 1320.3(c)(2). Therefore, the notice is not subject to the Paperwork Reduction Act.

Executive Order 12988: Civil Justice Reform

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities. The proposal specifies clearly the effect of the rule on existing rules and the provisions affected.

Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

The Department certifies that this final rule does not impose substantial direct compliance costs on Indian tribal governments.

Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights, because it does not interfere with private property rights protected under the Fifth Amendment of the Constitution.

Environmental Impact Assessment

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 29 CFR Part 458

Administrative practice and procedure, Labor unions, Democratic rights of labor organization members, Reporting and recordkeeping requirements, Standards of conduct for labor organizations.

Text of Final Rule

■ Accordingly, the Department amends 29 CFR Chapter IV as set forth below.

PART 458—STANDARDS OF CONDUCT

■ 1. The authority citation of part 458 is revised to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C.

1351(a)(1); Secretary's Order No. 4–2001, 66 FR 29,656, May 31, 2001.

■ 2. A new § 458.4 is added to read as follows:

§ 458.4 Informing members of the standards of conduct provisions.

(a) Every labor organization subject to the requirements of the CSRA, the FSA, or the CAA shall inform its members concerning the standards of conduct provisions of the Acts and the regulations in this subchapter. Labor organizations shall provide such notice to members by October 2, 2006 and thereafter to all new members within 90 days of the time they join and to all members at least once every three years. Notice must be provided by hand delivery, U.S. mail or e-mail or a combination of the three as long as the method is reasonably calculated to reach all members. Such notice may be included with the required notice of local union elections. Where a union newspaper is used to provide notice, the notice must be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the notice in a particular issue is readily apparent to each member.

(b) A labor organization may demonstrate compliance with the requirements of paragraph (a) of this section by showing that another labor organization provided an appropriate notice to all of its members during the necessary time frame.

(c) Labor organizations may use the Department of Labor publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act (available on the OLMS Web site at *http://www.dol.gov/esa/regs/compliance/olms/CSRAFactSheet.pdf* for the pdf version and *http://www.dol.gov/esa/regs/compliance/olms/CSRAFactSheet.htm* for the html version) or may devise their own language as long as the notice accurately states all of the CSRA standards of conduct provisions as set forth in the fact sheet.

(d) If a labor organization has a Web site, the site must contain a conspicuous link to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act or, alternatively, to the labor organization's own notice prepared in accordance with paragraph (c) of this section.

Signed at Washington, DC, this 24th day of May 2006.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Signed at Washington, DC, this 24th day of May 2006.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. E6–8626 Filed 6–1–06; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF DEFENSE

[DOD–2006–HA–0089]

32 CFR Part 199

RIN 0720–AA93

Office of the Secretary; TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2005; TRICARE Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to implement sections 711 and 715 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA for FY05), Public Law 108–375. Specifically, that legislation makes young dependents of deceased Service members eligible for enrollment in the TRICARE Dental program when the child was not previously enrolled because of age, and authorizes post-graduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association to provide dental treatment to dependents who are 12 years of age or younger and who are covered by a dental plan established under 10 U.S.C. 1076a. This adopts the interim rule published on September 21, 2005 (70 FR 55251).

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

ADDRESSES: TRICARE Management Activity, TRICARE Operations/Dental Division, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681–0039. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

Opportunity for Young Child Dependent of Deceased Member To Become Eligible for Enrollment in a TRICARE Dental Plan

Currently, military members may enroll dependent children of any age in the TRICARE Dental Program (TDP), but many members choose not to enroll young children until they are automatically enrolled at four years of age. Unfortunately, when a member on active duty for a period of more than thirty days or a member of the Ready Reserve (i.e., Selected Reserve and Individual Ready Reserve) dies, dependent children less than four years of age who are not enrolled in the TDP at the time of the member's death are ineligible for enrollment for the three-year TDP survivor's benefit. The NDAA for FY05 corrects this inequity by giving young dependent children of deceased Service members the opportunity to become eligible for enrollment in the TDP although they were not previously enrolled due to their age.

Professional Accreditation of Military Dentists

Currently, § 199.13(a)(2)(iii) of this part excludes dependents of active duty, Selected Reserve and Individual Ready Reserve members enrolled in the TRICARE Dental Program (TDP) from obtaining benefit services provided by the TDP in military dental care facilities except for emergency treatment, dental care provided outside the United States, and services incidental to non-covered services. Due to insufficient numbers of pediatric patients available for treatment in DoD's training facilities, the uniformed services faced significant problems with program accreditation and pediatric dental training. The Services had difficulty maintaining accreditation of post-graduate training programs because of a lack of pediatric dental patients with the proper dental case mix required for training. In addition, without adequate case numbers and case complexity, residents who at completion of their training were assigned overseas were not always fully trained to manage and treat pediatric dental patients.

Section 715 of the NDAA for FY05 provides the uniformed services with authority to maintain American Dental Association accreditation standards for certain military dental specialty training programs that require treatment of pediatric patients and to provide pediatric training to meet requirements for the delivery of authorized dental care to children accompanying sponsors at OCONUS locations. The statute

authorizes the Services to treat in their facilities a limited number of pediatric dental patients enrolled in the TDP. The Services have estimated their pediatric patient load requirements to sustain training facilities at 500–600 patients annually per Service. Only those patients age 12 years or younger meeting training needs and accepted for care in DoD's training programs will be treated in those programs to the maximum of 2,000 patients annually across DoD. To ensure strict compliance with the amended statute, Health Affairs will allocate specific numbers of patient training cases to each Service Point of Contact (POC). Service POCs will implement registries to track the number of patients served on a daily basis to ensure that the respective patient case caps are not exceeded. Each service will forward a semi-annual report to the Dental Care Division, TRICARE Management Activity. An annual report will be submitted at the end of each fiscal year to the Assistant Secretary of Defense for Health Affairs.

II. Review of Public Comments

The Interim Final Rule was published in the **Federal Register** on September 21, 2005 (70 FR 55251). We received no public comments.

III. Regulatory Procedures

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

We have examined the impact of the proposed rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Dental program, Dental health, Health care, Health insurance, Military personnel.

PART 199—[AMENDED]

■ Accordingly, the interim rule amending 32 CFR part 199 which was published on September 21, 2005 (70 FR 55251), is adopted as a final rule without change.

Dated: May 26, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5043 Filed 6–1–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DOD–2006–HA–0090]

32 CFR Part 199

RIN 0720–AA90

Office of the Secretary; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Transitional Assistance Management Program; Early Eligibility for TRICARE for Certain Reserve Component Members

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises requirements and procedures for the Transitional Assistance Management Program, which was temporarily revised by section 704 of the National Defense Authorization Act for Fiscal Year 2004 (NDAA–04) (Pub. L. 108–136) and section 1117 of the Emergency Supplemental Appropriations Act for the Reconstruction of Iraq and Afghanistan, 2004 (Emergency Supplemental) (Pub. L. 108–106), which revisions were made permanent by section 706(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA–05) (Pub. L. 108–375). In addition, it establishes requirements and procedures for implementation of the earlier TRICARE eligibility for certain reserve component members authorized by section 703 of NDAA–04 and section 1116 of the Emergency Supplemental, which provisions were made permanent by section 703 of NDAA–05. The rule adopts the interim rule published in the **Federal Register** on March 16, 2005 (70 FR 12798).

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

ADDRESSES: TRICARE Management Activity, TRICARE Operations: 5111 Leesburg Pike, Ste. 810; Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Jody Donehoo, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 681–0039. Questions regarding payment of specific claims under the TRICARE allowable charge method should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. *Overview of the Enhanced Health Care Benefits for Reservists and Their Family Members.* An interim final rule was published in the **Federal Register** on March 16, 2005 (70 FR 12798–12805) that addressed three provisions of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA–05) (Pub. L. 108–375) that enhance health care benefits for reservists and their family members. Two of the three provisions in that interim final rule are addressed in this final rule. The third provision that established requirements and procedures for implementation of TRICARE Reserve Select will be addressed in a separate interim final rule, incorporating the changes required by the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163).

The first of the two provisions addressed in this final rule is section 706(a) of NDAA–05, which makes permanent the temporary revisions to the Transitional Assistance Management Program that were enacted in section 704 of the National Defense Authorization Act for Fiscal Year 2004 (NDAA–04) (Pub. L. 108–136) and section 1117 of the Emergency Supplemental Appropriations Act for the Reconstruction of Iraq and Afghanistan, 2004 (Emergency Supplemental) (Pub. L. 108–106). The second of the two provisions addressed in this final rule is section 703 of the NDAA–05, which makes permanent the earlier TRICARE eligibility for certain reserve component members that was authorized by section 703 of NDAA–04

and section 1116 of the Emergency Supplemental.

These provisions represent significant enhancements to the health care benefits available to reservists and their eligible family members. They focus particularly on reservists and guardsmen activated in support of a contingency operation after September 11, 2001. Prior to the statutory changes enacted since November 2003, reservists and their families received TRICARE health care benefits when activated for more than 30 consecutive days. Now, TRICARE benefits begin up to 90 days prior to activation for those who receive delayed-effective-date orders, and coverage is extended to a full 180 days after a period of active service in support of a contingency operation. These changes provide for an easier transition to and from civilian life.

B. *Public Comments.* The interim final rule was published in the **Federal Register** on March 16, 2005. We received no public comments on the two provisions addressed in this Final Rule.

II. Provisions of the Rule Regarding the Transitional Assistance Management Program

A. *Eligibility under the Transitional Assistance Management Program (TAMP)* (paragraph 199.3(e)).

1. *Provisions of Interim Final Rule.* Section 706(a) of NDAA–05 makes permanent revisions to the Transitional Assistance Management Program, which was temporarily revised by section 704 of NDAA–04 and section 1117 of the Emergency Supplemental. Based on these enactments, several categories of armed forces members are eligible for transitional health care after serving on active duty. These include:

1. A member who is involuntarily separated from active duty;

2. A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 consecutive days;

3. A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305 in support of a contingency operation; or

4. A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

The spouse and children of the member are also eligible for TAMP benefits. TAMP benefits begin the day after the member is separated from active duty, and end 180 days later. Eligibility is determined by the armed forces.

2. *Analysis of Major Public Comments.* No public comments were received.

3. *Provisions of the Final Rule.* The final rule is consistent with the interim final rule.

B. *Beneficiary liability under TAMP.* (paragraph 199.4(f)(2)(vi)).

1. *Provisions of Interim Final Rule.* This paragraph establishes that TAMP beneficiaries (including the member) are subject to the TRICARE Standard (and Extra) deductible and cost sharing rules applicable to active duty family members.

2. *Analysis of Major Public Comments.* No public comments were received.

3. *Provisions of the Final Rule.* The final rule is consistent with the interim final rule.

III. Provisions of the Rule Regarding Early Eligibility for TRICARE for Certain Reserve Component Members

A. Eligibility (paragraph 199.3(b)(5)).

1. *Provisions of Interim Final Rule.* This paragraph incorporates requirements and procedures for implementation of the earlier temporary TRICARE eligibility for certain reserve component members authorized by section 703 of NDAA–04 and section 1116 of the Emergency Supplemental, which provisions were made permanent by section 703 of NDAA–05. Under this paragraph reserve component members issued delayed-effective-date orders for service in support of a contingency operation, and their family members, are eligible for TRICARE on the date the orders are issued, up to 90 days prior to the date on which the period of active duty of more than 30 consecutive days is to begin.

2. *Analysis of Major Public Comments.* There were no public comments.

3. *Provisions of the Final Rule.* The final rule is consistent with the interim final rule.

IV. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for pubic comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This final rule is not subject to any of those requirements because it would not have any of these substantial impacts. Any substantial impacts associated with implementation of transitional health care under the Transitional Assistance Management Program and the early eligibility for TRICARE for certain reserve component members are already determined by statute and are outside any discretionary action of DoD or effect of this regulation.

This rule, however, does address novel policy issues relating to implementation of a new medical benefits program for members of the armed forces. Thus, this rule has been reviewed by the Office of Management and Budget under E.O. 12866.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

■ Accordingly, the interim rule amending 32 CFR part 199 which was published on March 16, 2005 (70 FR 12798) is adopted as a final rule without change.

Dated: May 26, 2006.

L.M. Bynum,

OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 06–5042 Filed 6–1–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–051]

RIN 1625–AA00

Safety Zone: Norfolk Harbor Entrance Reach, Chesapeake Bay, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the vicinity of Norfolk Harbor Entrance Reach in support of diving operations being conducted to upgrade the Magnetic Silencing Facility at the U.S. Navy Degaussing Range. This action is intended to restrict vessel traffic from transiting within 200 yards of position 36–58–55 N/076–19–17 W in Norfolk Harbor Entrance Reach. The safety zone is necessary to protect divers from the hazards associated with the upgrade operations.

DATES: This rule is effective from 6 a.m. on May 22, 2006 to 9 p.m. on August 17, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–051 and are available for inspection or copying at the Norfolk Federal Building, 200 Granby Street, Suite 700, Norfolk, Virginia 23510, between 9:30 a.m. and 2 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Bill Clark, project officer, USCG Sector Hampton Roads, telephone number (757) 668–5580.

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 Coast Guard recently received notification from the U.S. Navy that divers would be conducting necessary repair and upgrade operations in the area of Norfolk Harbor Reach. This regulation is necessary in order to adequately protect the public during the diving operations, and therefore it is impracticable and contrary to the public interest to delay in publishing this rule. The operation will take place from May 22, 2006 to August 17, 2006 between the hours of 6 a.m. and 9 p.m. eastern time in Norfolk Harbor Entrance Reach. Due to the hazards posed by the diving operations, it is in the public interest to have these regulations in effect during this period.

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**. Because of the hazards associated with the diving operations, a limited access area is necessary to provide for the safety of the divers.

Background and Purpose

Between 6 a.m. and 9 p.m. eastern time, from May 22, 2006 to August 17, 2006, diving operations will be conducted in the vicinity of Norfolk Harbor Entrance Reach. In order to protect mariners during diving operations, a safety zone will be enforced. When the zone is being enforced, vessel traffic will be restricted from transiting within 200 yards of position 36–58–55 N/076–19–17 W in Norfolk Harbor Entrance Reach.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of Norfolk Harbor Entrance Reach. The regulated area will consist of all waters in Norfolk Harbor Entrance Reach within 200 yards of position 36–58–55 N / 076–19–17 W. Vessels will be restricted from transiting the area between 6 a.m. and 9 p.m. eastern time, from May 22, 2006 to August 17, 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).

Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly; and (iii) the Captain of the Port may authorize access to the safety zone.

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'' include 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. section 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit in that portion of Norfolk Harbor Entrance Reach between 6 a.m. and 9 p.m. eastern time, from May 22, 2006 to August 17, 2006. The safety zone will not be a significant impact on a substantial number of small entities, because the zone will only be in place for a limited period and maritime advisories will be issued so that mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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, we believe that this rule should be 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 & record keeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 Subpart C 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; 50 U.S.C. 191, 195; 46 U.S.C. Chapter 701; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064 and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add Temporary § 165.T05–051, to read as follows:

§ 165.T05–051 Safety Zone: Norfolk Harbor Entrance Reach, Chesapeake Bay, VA.

(a) *Location.* The following area is a safety zone: The waters within 200 yards of position 36–58–55 N / 076–19–17 W in the Captain of the Port, Hampton Roads zone as defined in 33 CFR 3.25–10.

(b) *Definition.* As used in this section, the term, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Contact Information.* The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555 or (757) 484–8192. The Coast Guard personnel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

(d) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia or the Caption of the Port Representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(e) *Effective period.* This section is effective from 6 a.m. on May 22, 2006 to 9 p.m. on August 17, 2006.

(f) *Enforcement period.* This section will be enforced from 6 a.m. to 9 p.m. during the effective period.

Dated: May 15, 2006.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E6–8545 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2003–0216; EPA–HQ–OAR–2005–0149; FRL–8178–5]

RIN 2060–AM27 and RIN 2060–AM88

Regulation of Fuel and Fuel Additives: Refiner and Importer Quality Assurance Requirements for Downstream Oxygenate Blending and Requirements for Pipeline Interface

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the reformulated gasoline (RFG) regulations to allow refiners and importers of reformulated gasoline blendstock for oxygenate blending, or RBOB, the option to use an alternative method of fulfilling a regulatory requirement to conduct quality assurance sampling and testing at downstream oxygenate blending facilities. This alternative method consists of a comprehensive program of quality assurance sampling and testing that would cover all terminals that blend oxygenate with RBOB in a specified reformulated gasoline covered area. The program would be carried out by an independent surveyor funded by industry. The program would be conducted pursuant to a survey plan, approved by EPA, that is calculated to achieve the same objectives as the current regulatory quality assurance requirement.

This direct final rule also largely codifies existing guidance for compliance by parties that handle pipeline interface with requirements for gasoline content standards, recordkeeping, sampling and testing. The rule also contains new provisions which provide additional flexibility for these regulated parties. It also establishes gasoline sulfur standards for transmix processors and blenders that are consistent with the sulfur standards for other entities, such as pipelines and terminals, that are downstream of refineries in the gasoline distribution system, and clarifies the requirements for transmix processors under the Mobile Source Air Toxics program.

DATES: This direct final rule is effective on August 1, 2006, without further notice unless we receive adverse comment by July 3, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of August 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR–2003–0216 for comments on the transmix provisions, and Docket ID No. EPA-HQ-OAR–2005–0149 for comments on the RBOB provisions, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741, Attention Docket ID No. EPA-HQ-OAR–2003–0216 or EPA-HQ-OAR–2005–0149, as appropriate.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR–2003–0216 or EPA-HQ-OAR–2005–0149, as appropriate, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. EPA-HQ-OAR–2003–0216 or EPA-HQ-OAR–2005–0149, as appropriate. Such deliveries are 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-OAR–2003–0216 or EPA-HQ-OAR–2005–0149, as appropriate. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to Section I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Chris McKenna, mailcode 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9037; fax number: 202–343–2802; e-mail address: *mckenna.chris@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this action to be non-controversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule is effective on August 1, 2006, without further notice unless we receive adverse comment by July 3, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendment, paragraph or section of the rule on which adverse comment was received will not take effect. We will address all public

comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of this rule for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of this rule.

General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production and importation of gasoline motor fuel. Regulated categories and entities affected by this action include:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.
Industry	484220 484230	4212 4213	Gasoline Carriers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

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

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

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

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

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

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

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

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

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

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

3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided by 40 CFR part 2.

Outline of This Preamble

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I. Refiner and Importer Quality Assurance Requirements for Downstream Oxygenate Blending

A. Background

The RFG regulations currently require RFG to contain a minimum of 2.0 weight percent oxygen. 40 CFR 80.41. To fulfill this requirement, oxygenate is added either at the refinery before the gasoline is certified by the refiner as meeting RFG requirements, or it is added downstream from the refinery at an oxygenate blending facility. As discussed in more detail below, refiners often wish to require that more than the minimum amount of oxygenate be added downstream in order to include the additional oxygenate in their emissions performance compliance calculations. Although Congress recently removed the oxygen requirement for RFG in the Clean Air Act,[1] we believe many refiners and importers may wish to continue to include oxygenate added downstream in their emissions compliance calculations. Under the current

[1] Energy Policy Act of 2005, Public Law 109–58 (HR6), section 1504(a), 119 STAT 594, 1076–1077 (2005). In accordance with the Energy Policy Act, EPA has issued a rule amending the RFG regulations for California to remove the 2.0 weight percent oxygen standard (71 FR 8965 (February 22, 2006)), and has proposed a similar rule that would be applicable in the rest of the country (71 FR 9070 (February 22, 2006)).

regulations, refiners must conduct a program of quality assurance testing at the downstream oxygenate blending facility in order to include the oxygenate in their compliance calculations. This rule provides an alternative QA requirement for these refiners and importers.

Under the current regulations, when oxygenate is to be added to produce RFG at a downstream oxygenate blending facility, refiners produce a product called reformulated gasoline blendstock for oxygenate blending, or RBOB. RBOB is certified by the refiner, or by an importer who imports RBOB, as complying with all of the RFG requirements except the minimum 2.0 weight percent oxygen requirement. The oxygenate blender is responsible for complying with the oxygen requirement when the oxygenate is added to the RBOB to produce RFG at the oxygenate blending facility.

Various oxygenates may be used to fulfill the oxygen requirement. Some oxygenates, such as methyl tertiary butyl ether, or MTBE, typically are added at the refinery. However, some oxygenates, such as ethanol, have a propensity to attract water, and, as a result, cannot be added at the refinery, particularly where the finished gasoline will be traveling through a pipeline on its way to terminals and retail gasoline stations. As a result, RFG containing ethanol is typically produced by blending the ethanol with RBOB at a blending facility downstream from the refinery that produced the RBOB.

Refiners and importers of RBOB are required to calculate compliance with the RFG emissions performance standards for VOC, NO_X and toxics by sampling and testing a hand blended mixture of the RBOB and the type and amount of oxygenate that the refiner or importer of the RBOB designates must be added downstream. The type and amount of oxygenate to be added downstream must be indicated on the product transfer documents that accompany the gasoline when it is transferred to the downstream oxygenate blender. The oxygenate blender is required to add the type and amount of oxygenate designated on the product transfer documents.

Under the current regulations, RBOB refiners and importers can designate either a specific type and specific amount of oxygenate to be added downstream, or they can designate one of two generic categories of RBOB: ''any-oxygenate'' RBOB or ''ether-only'' RBOB. 40 CFR 80.69(a)(8). Where the RBOB is designated as any-oxygenate RBOB, the refiner or importer must assume for purposes of its handblend that 2.0 weight percent ethanol will be added downstream. The downstream oxygenate blender may add any type of legal [2] oxygenate, to any-oxygenate RBOB in an amount sufficient to meet the minimum 2.0 weight percent requirement. Where the RBOB is designated as ether-only RBOB, the refiner or importer must assume for purposes of its handblend that 2.0 weight percent MTBE will be added downstream. The oxygenate blender may add any legal ether oxygenate to ether-only RBOB in an amount sufficient to meet the minimum 2.0 weight percent requirement.

Where a specific type and amount of oxygenate is designated for the RBOB rather than one of the two generic designations, the regulations require the refiner or importer to conduct downstream oversight quality assurance (QA) sampling and testing of the downstream oxygenate blending facility. 40 CFR 80.69(a)(7). This is to ensure that the specific type and amount of oxygenate that is designated, which typically is greater than the 2.0 weight percent requirement, in fact is added to the RBOB by the oxygenate blender. In addition, the refiner or importer must have a contract with the oxygenate blender which requires the blender to comply with the blending procedures specified by the RBOB refiner or importer and allows the refiner or importer to conduct the required QA sampling and testing. 40 CFR 80.69(a)(6). If the refiner or importer does not meet the contractual and quality assurance requirements and does not designate its RBOB as ether-only or any-oxygenate, the refiner or importer must assume for purposes of its handblend that 4.0 volume percent ethanol will be added to the RBOB downstream.

B. Need for Action

Recently, the states of New York and Connecticut promulgated state laws banning the use of MTBE in gasoline sold in these states. As a result, many refiners and importers that historically produced or imported RFG containing MTBE for the NY/CT RFG area currently produce or import RBOB for ethanol blending. Refiners in this area have indicated that, due to the complex gasoline marketplace in New York and Connecticut, it is extremely difficult, if not impossible, to track RBOB from the refinery where it is produced to the terminal where it is blended with ethanol in order the fulfill the downstream QA sampling and testing requirement. As a result, under the current regulations, refiners in the NY/CT RFG area are effectively precluded from producing an RBOB which requires a specific type and amount of oxygenate, such as 10 volume percent ethanol, and instead must produce a generic any-oxygenate RBOB, which does not require the refiner to conduct downstream QA testing at the ethanol blender facility.

As discussed above, for purposes of calculating compliance with RFG emissions performance standards, these refiners may then only include in their handblends ethanol in an amount which would result in gasoline having 2.0 weight percent ethanol (approximately 5.7 volume percent ethanol.) Some refiners have indicated that they will need to produce RBOB requiring 10 volume percent ethanol, which would allow them to include 10 volume percent ethanol for purposes of compliance calculations, in order to meet emissions performance standards. As a result, these refiners have asked EPA to allow use of an alternative method of meeting the downstream QA sampling and testing requirement.

For the reasons discussed below, we believe it is appropriate to provide refiners and importers who produce or import RBOB for the NY/CT RFG area with an alternative means of meeting the QA sampling and testing requirement. We also believe it is appropriate to provide this alternative to refiners and importers who produce or import gasoline RBOB for other RFG areas. As a result, this rule amends the RFG regulations to provide an alternative QA sampling and testing option which will be available to any RBOB refiner or importer in any RFG covered area. As indicated above, we believe that providing this alternative QA requirement will be appropriate even after the 2.0 weight percent minimum oxygen standard is removed.

C. This Action

This action provides RBOB refiners and importers the option to comply with an alternative QA requirement which consists of a program of sampling and testing designed to provide oversight of all terminals that blend ethanol with RBOB for use in a specified RFG covered area. Under this option, a refiner or importer must either arrange to have an independent surveyor conduct a program of compliance surveys, or participate in the funding of an organization which arranges to have independent surveyor conduct a program of compliance surveys. In either event, compliance

[2] Oxygenates that are allowed under EPA's ''substantially similar'' rule and any section 211(f) waiver that may apply.

surveys must be carried out by an independent surveyor pursuant to a survey plan calculated to achieve the same QA objectives as the current regulatory requirement. A detailed survey plan must be submitted to EPA for approval by September 1st of the year preceding the annual averaging period in which the alternative QA sampling and testing program would be implemented. The survey plan must include a methodology for determining when the survey samples will be collected, the location of the retail outlets where the samples will be collected, the number of samples to be included in the survey, and any other elements that EPA determines are necessary to achieve the same level of quality assurance as the current QA requirement.

Under this alternative QA option, the independent surveyor is required to obtain samples at retail stations in the RFG covered area in accordance with the survey plan and have the samples tested for type and amount of oxygenate. The sampling and testing conducted under this alternative QA option must be done in accordance with the provisions in §§ 80.8 and 80.46. The surveyor obtains from the retail outlet the product transfer documents associated with the gasoline, which will provide the surveyor with information regarding the type and amount of oxygenate that the gasoline is supposed to contain, and the terminal that conducted the oxygenate blending. The surveyor must notify EPA of any instance where the product transfer documents do not contain such information. If the test results show that the gasoline does not contain the type and/or the minimum amount of oxygenate indicated on the product transfer documents, the surveyor will ask the terminal determined to have supplied the gasoline to produce documentation of the blending instructions from the refiner or importer of the RBOB. The surveyor is required to notify EPA of any instances where the refiner's or importer's blending instructions indicate that the oxygenate blender did not add the type or minimum amount of oxygenate designated for the RBOB by the refinery or importer. The surveyor is required to submit to EPA a report which includes the information and data collected during the survey, and to maintain records associated with the surveys for five years.

This rule requires each refiner and importer who chooses to comply with the alternative QA requirement to take all reasonable steps to ensure that parties downstream from the refiner or importer cooperate with the program by allowing the independent surveyor to collect samples, and by providing to the independent surveyor copies of product transfer documents and other information regarding the source of any gasoline received, the destination of any gasoline distributed, the oxygenate blending instructions for RBOB, and the rate the oxygenate was blended. In partial satisfaction of the ''reasonable steps'' requirement, the rule requires the refiner or importer to include such a requirement in contractual agreements with its branded downstream facilities.

In addition, this rule requires parties downstream from a refiner or importer that complies with the alternative QA requirement to include on product transfer documents the type and amount of oxygenate contained in the gasoline and identification of the oxygenate blending terminal that blended the gasoline. This rule requires that the survey plan include a process for notifying all oxygenate blending terminals and other downstream parties in the affected area of the product transfer documentation requirement. Where a downstream party fails to receive notice of the product transfer requirement, the party must begin complying with the product transfer requirement upon notification by EPA.

We believe that use of this QA compliance alternative will result in oversight sampling and testing that is equivalent to the current regulatory QA requirement, and, in fact, may result in significantly superior QA oversight since the sampling and testing will be conducted by an independent surveyor in accordance with a comprehensive plan approved by EPA, rather than by individual refiners and importers. This rule will not have any adverse environmental impact, and will provide refiners and importers with additional flexibility in complying with the regulations. As a result, while this rulemaking was initiated in response to the compliance issues raised by refiners in the NY/CT area, we believe it is appropriate to provide this compliance alternative to refiners and importers supplying any RFG covered area. The rule, therefore, provides this QA compliance alternative to any RBOB refiner or importer in any RFG area who either arranges to have an independent surveyor conduct a program of compliance surveys, or who participates in the funding of an organization that arranges to have an independent surveyor conduct a program of compliance surveys, in accordance with the provisions in this rule.

Compliance with this QA alternative is optional. Refiners and importers may choose to comply with the existing QA requirement and not participate in a survey program. Refiners and importers who supply more than one RFG area may choose to participate in the survey program for one RFG area and comply with the existing QA requirement for another RFG area.

This rule adds a new paragraph (a)(11) to 40 CFR 80.69, which contains the provisions for the alternative QA requirement. This rule also amends § 80.77 to require parties to include on product transfer documents the information required under § 80.69(a)(11) as described above.

II. Requirements for Pipeline Interface

A. Background

Refined petroleum products that are transported by pipeline normally are pumped sequentially, as a continuous flow through the pipeline. As a result, some amount of mixing of adjacent product types normally occurs. The product in a pipeline between two adjacent volumes of petroleum product consists of a mixture of the two adjacent volumes and is called ''interface.'' Generally, interface is blended into the two adjoining products that created the interface. For example, half of the interface between premium and regular gasoline is blended into the premium gasoline and half into the regular gasoline (called a ''fifty percent cut'' or a ''mid-point cut.'') However, certain product types, such as jet fuel, are not mixed with any other product type, and all of the interface that contains jet fuel is blended into the other product (called a ''clean cut.'')

Where interface consists of a mixture of finished fuels that cannot be cut with adjoining product so as to produce a product that meets the specifications for a fuel that can be used or sold without further processing, the interface is called ''transmix''. Transmix is not blended into either of the two adjacent products transported by the pipeline, but is diverted by the pipeline as a distinct product into a separate storage tank. Transmix is generally transported via tank truck, pipeline or barge to a facility designed to separate the transmix into its fuel components. For example, where the transmix consists of gasoline and distillate fuel, the transmix may be transported to a ''transmix processing'' facility where the gasoline portion is separated from the distillate fuel. At locations where it is either relatively expensive or inconvenient to transport transmix to a transmix processing facility for separation, the transmix is sometimes blended into gasoline in very small amounts,

typically around 0.25 volume percent of the gasoline.

The reformulated gasoline (RFG) and anti-dumping requirements apply at any facility where gasoline is produced. *See* 40 CFR 80.2(h) and (i), 80.65(a), and 80.101. Gasoline most commonly is produced by processing crude oil at refineries, but it is also produced by other processes, such as combining blendstocks or adding blendstocks to finished gasoline. Gasoline is also produced when transmix is blended into gasoline, or when transmix is separated into gasoline and distillate fuel. Transmix blending is similar to adding blendstock to gasoline where the addition of the transmix, like blendstock, may change the properties of the gasoline. Similarly, the process of separating gasoline and distillate fuel may result in gasoline with different properties than the gasoline as originally certified by the refinery. Transmix processors and transmix blenders are refiners under the RFG/anti-dumping regulations, but EPA has historically provided transmix processors and transmix blenders flexibility in complying with the refiner requirements. This rule codifies some of the existing practices into EPA regulations, and also includes modifications reflecting EPA experience.

B. 1997 Notice of Proposed Rulemaking

On July 11, 1997, EPA proposed to add a new § 80.84 to the RFG/anti-dumping regulations at 40 CFR part 80 to clarify the manner in which interface, including transmix, would be treated under the RFG/anti-dumping regulations. The NPRM proposed requirements for designating different combinations of gasoline in interface. The NPRM also proposed requirements for transmix processors and transmix blenders that produce either RFG or conventional gasoline.

The NPRM proposed to allow parties to blend transmix into conventional gasoline provided that the transmix resulted from normal pipeline operations, and either there was no means of transporting the transmix to a transmix processor via pipeline or water, or there was an historical practice of blending transmix at the facility before 1995. The rate of transmix blending was limited to the greater of 0.25 volume percent or the demonstrated blending rate in 1994. The NPRM proposed to allow transmix to be blended into RFG provided that the transmix resulted from normal pipeline operations, there was no means of transporting the transmix to a transmix processing facility via pipeline or water, and the party was unable to blend the transmix into conventional gasoline. The rate of transmix blending into RFG was limited to a maximum of 0.25 volume percent. The NPRM also proposed requiring transmix blenders to carry out a program of periodically sampling and testing of the RFG subsequent to transmix blending to ensure that the downstream standards were met.

The NPRM proposed to require transmix processors who designate the gasoline produced from the transmix (such gasoline is one type of transmix gasoline product, or TGP) as conventional gasoline to exclude the TGP from anti-dumping compliance calculations for the transmix processing facility, but to include any blendstocks added to the TGP since such blendstocks would not previously have been included in any refinery's compliance calculations. The NPRM proposed to require transmix processors who designate the gasoline produced from transmix as RFG to include the TGP, as well as any blendstocks used, in the RFG compliance calculations for the transmix processing facility to ensure that the gasoline produced using the transmix meets all RFG standards.

Parties have been processing and blending transmix in accordance with EPA guidance which describes similar treatment of interface and transmix as that outlined in the July 11, 1997 NPRM. (*See Reformulated Gasoline and Anti-dumping Questions and Answers* (November 12, 1996)). Our experience since the guidance was issued indicates that the approach taken in the guidance is mostly appropriate, but that some revisions are warranted. EPA is also aware, from recent discussions with several pipeline operators, that volumes of transmix may increase as pipelines begin transporting ultra-low sulfur diesel fuel. EPA had anticipated that transporting ultra-low sulfur diesel would require greater volumes of diesel to be cut as interface into other higher-sulfur distillate fuels such as heating oil and jet fuel. However, some pipelines have indicated they intend to change their product sequencing by transporting volumes of ultra-low sulfur diesel between volumes of gasoline, in order to minimize sulfur contamination of the ultra-low sulfur diesel. This change increases the number of gasoline/diesel interfaces cut to transmix, and increase the overall volume of transmix. Pipeline operators have also indicated that transporting ultra-low sulfur diesel fuel will cause them to generate transmix at locations where they have not historically generated transmix.

In this rule, we are including the provisions in § 80.84, which were previously proposed in the July 11, 1997 NPRM, with certain changes made in response to the comments we received on the NPRM, as discussed below. We believe it is appropriate to include in this rule the provisions in § 80.84 given the length of time since they were originally proposed, and to include changes made in response to prior comments. We have also added several new provisions in this rule clarifying, and in some instances expanding, the flexibilities available to transmix processors and transmix blenders for complying with the RFG/antidumping regulations. This rule also includes modest recordkeeping requirements in §§ 80.74 and 80.104 which would require parties that handle interface and transmix to keep records verifying that the requirements of § 80.84 were met. In addition, this rule includes provisions for transmix processors and transmix blenders related to gasoline sulfur and air toxics. This rule only addresses gasoline produced by transmix processors and transmix blenders. Distillate fuel produced by transmix processors and transmix blenders is addressed in the diesel sulfur regulations under 40 CFR part 80, subpart I.

EPA believes the flexibilities available in this rule are appropriate given the unique roles that transmix processors and transmix blenders fill in the petroleum products distribution system. Although transmix processors and transmix blenders are refiners under EPA's regulations, almost all of the gasoline and distillate fuel they produce is derived from fuel which has already been produced and certified by an upstream refinery. Thus, this rule allows transmix processors the flexibility to exclude from their antidumping compliance calculations conventional gasoline that they recover directly from transmix, since the conventional gasoline has already been accounted for in the compliance calculations of an upstream refinery. Similarly, this rule allows transmix processors to only have to meet the downstream sulfur standards for gasoline they recover directly from transmix, since the gasoline has already been accounted for in the compliance calculations of an upstream refinery. However, transmix processors must comply with all refiner standards at each of their transmix processing facilities for any blendstocks they add to gasoline. Lastly, this rule allows transmix blenders to blend transmix into gasoline without restriction on

location or rate, provided the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit, and that the gasoline meets all applicable downstream standards.

C. Pipelines

This rule includes designations for pipeline interface that are consistent with the designations in EPA's current guidance and the 1997 NPRM. The designations for pipeline interface are primarily intended to ensure that pipelines cut their interfaces in a manner that maintains the quality of any RFG or VOC-controlled gasoline transported by a pipeline. For example, interfaces between volumes of RFG and conventional gasoline should be cut into the conventional gasoline to maintain the quality of the RFG. Regardless of gasoline product designation, all gasoline containing interface must meet all downstream standards, including but not limited to any standards and requirements that apply downstream of the refinery in 40 CFR part 80 and the Clean Air Act.

D. Transmix Processors

1. Comments on the 1997 Notice of Proposed Rulemaking

EPA received a number of comments on the 1997 NPRM regarding transmix processors. One commenter said that the definition of transmix should be changed since transmix processors and transmix blenders sometimes process or blend mixtures of fuels that were unintentionally combined in tanks. Although such mixtures are similar in composition to transmix, they do not fit the definition of transmix proposed in the 1997 NPRM, which specified that transmix must be generated in a pipeline. EPA agrees that a product that in composition is similar to transmix, and that is produced by unintentionally mixing gasoline and distillate fuel in tanks, should be afforded the same treatment as transmix product generated in a pipeline. EPA also understands that transmix may include mixtures of gasoline and distillate fuel produced through normal operational activities at pipelines and terminals, such as draining tanks, or draining piping and hoses used to transfer gasoline or distillate fuel to tanks or trucks, or from a safety relief valve discharging to protect equipment from overpressuring. As a result, § 80.84(e) in this rule specifically allows such products to be covered under the transmix provisions.

EPA is aware that some transmix processors and transmix blenders may also be adding feedstocks to their transmix that were not produced from normal pipeline interface, or from inadvertently mixing gasoline and distillate fuel in tanks, or through normal operational activities at pipelines and terminals. Mixing other feedstocks in transmix prior to processing may cause these other feedstocks to be inappropriately accounted for under the antidumping regulations and gasoline sulfur regulations, as discussed later. The flexibility provided in this rule extends only to transmix composed of pipeline interface, mixtures of gasoline and distillate fuel that were unintentionally combined in a tank, and mixtures of gasoline and distillate fuel produced through normal operational activities at pipelines and terminals. A transmix processor or transmix blender who adds feedstocks derived from any other sources to their transmix must comply with all the standards applicable to a refiner under EPA's regulations for all the gasoline they produce during a compliance period, including but not limited to any standards and requirements in 40 CFR part 80 and the Clean Air Act. Transmix processors that add feedstocks from any other sources should also take extra care to be sure that they are complying with Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921–6939(e), and any state provision authorized pursuant to section 3006 of RCRA, 42 U.S.C. 6926.

One commenter said that the 1997 NPRM should clarify that the transmix processing requirements do not apply to transmix processed by a crude oil refinery where the transmix is received into a crude or other feedstock stream and is not separated before it is added to other feedstocks. EPA believes that the regulations in this rule are clear in this regard, since they specifically apply to persons who separate transmix at a transmix processing facility. The term ''transmix processing facility'' is defined as excluding refineries that ''produce gasoline by processing crude oil''. Such refineries must comply with all existing refiner requirements, and would not be eligible to take advantage of the flexibilities available in this rule.

Some commenters said that they do not know the source of the transmix and, therefore, would not know the original designation of the gasoline portion of the transmix (*e.g.*, RFG, conventional gasoline, blendstocks). The commenters said that the transmix processor should not be required to track and segregate transmix generated from different types of gasoline or blendstocks. This rule does not require a transmix processor to track and segregate transmix. However, § 80.65 requires the transmix processor to designate the gasoline portion (*i.e.*, conventional gasoline, RFG, or RBOB) that is separated from the distillate fuel.

One commenter said that, under previous guidance, EPA provided for the exclusion of the transmix-based portion of conventional gasoline from anti-dumping compliance calculations as an option, whereas in the 1997 NPRM, the exclusion is mandatory. The commenter believes the exclusion should be optional. Another commenter believes that transmix processing improves the quality of the gasoline separated from transmix by removing more heavy aromatics and sulfur compounds and improving E300 distillation point, and therefore, TGP should be included in compliance calculations for conventional gasoline to give credit for the improvements. EPA agrees with the commenters, and this rule modifies the 1997 NPRM to allow the exclusion of the TGP from anti-dumping compliance calculations to be optional, provided the TGP meets all of the downstream standards for conventional gasoline. However, in order to prevent transmix processors from selectively including only high quality TPG batches in their compliance calculations, while excluding those of low quality, transmix processors must consistently include or exclude TGP in their compliance calculations during each annual compliance period, with one exception.

The exception occurs if transmix contains gasoline blendstocks that are derived from pipeline interface. EPA understands that some pipelines transport gasoline blendstocks, and that these pipelines may cut interfaces containing gasoline blendstock to a transmix tank. If a transmix processor produces conventional gasoline from transmix containing gasoline blendstocks and was allowed to exclude the TGP from their anti-dumping compliance calculations, the finished conventional gasoline would not be included in any refiner's anti-dumping compliance calculations. Thus, if a transmix processor produces conventional gasoline at a transmix processing facility from transmix containing gasoline blendstocks derived from pipeline interface, the transmix processor must consistently include all TGP produced during a compliance period in their antidumping compliance calculations for that transmix processing facility. As discussed previously, if transmix processors add any feedstocks to their transmix that were not produced from normal pipeline interface, or from inadvertently mixing gasoline and distillate fuel in tanks, or through

normal operational activities at pipelines and terminals, they must comply with all standards applicable to refiners under EPA's regulations for all the gasoline they produce during a compliance period. This rule also requires any RFG or RBOB produced by a transmix processor to be included in the RFG compliance calculations for the transmix processing facility.

This rule also modifies the 1997 NPRM by treating TGP as a blendstock when the transmix processor mixes the TGP with other blendstock(s) to produce conventional gasoline. In this situation, the TGP would be included in compliance calculations for the resulting conventional gasoline. We believe it is appropriate to treat TGP as a blendstock rather than as a previously certified gasoline in this situation, since the TGP is likely to have undergone changes as a result of having been interfaced with another product and separated through transmix processing. For example, one transmix processor indicated that their TGP could not be directly sold as gasoline because it does not meet standards for octane or Reid vapor pressure. This approach is consistent with the approach taken in both the 1997 NPRM and the Question and Answer guidance with regard to RFG, where TGP is required to be included in compliance calculations when it is mixed with blendstock to produce RFG.

Where TGP is sold as a blendstock, the transmix processor must exclude the TGP from compliance calculations, with one exception. The exception is when the transmix processor sells the TGP to an oxygenate blender as a blendstock which becomes conventional gasoline solely upon the addition of an oxygenate, such as ethanol or MTBE. In this circumstance, the transmix processor must include the TGP in compliance calculations. This exception does not apply if the TGP is combined with any other non-oxygenated blendstocks to produce conventional gasoline. Thus, in order for a transmix processor to properly account for any TGP sold as a blendstock in compliance calculations for a transmix processing facility, the transmix processor must clearly state on the TGP product transfer documents whether or not the TGP may only be combined with an oxygenate to produce conventional gasoline. This approach is consistent with the anti-dumping regulations at § 80.101(d)(3), which require blendstocks that become conventional gasoline solely upon the addition of an oxygenate to be included in anti-dumping compliance calculations for the refiner that produced the blendstock.

Transmix processors also sometimes blend sub-octane TGP with previously certified premium gasoline (PCG) to produce regular gasoline. Transmix processors which blend sub-octane TGP with premium PCG to produce conventional gasoline must include the TGP in compliance calculations for the transmix processing facility, but may meet the sampling and testing requirements in one of three ways. First, the transmix processor may directly measure the properties of the TGP and treat each volume of TGP blended with PCG as a separate batch for purposes of compliance calculations. As a second alternative, the transmix processor may measure the volume and properties of the PCG prior to blending with the TGP, then measure the volume and properties of the gasoline subsequent to blending with the TGP, and calculate the volume and properties of the TGP by subtracting the volume and properties of the PCG from the volume and properties of the gasoline subsequent to blending. As a third alternative, the transmix processor may demonstrate compliance using the procedures in § 80.101(g)(9). Where TGP is mixed with previously certified gasoline to produce RFG or RBOB, the transmix processor must demonstrate compliance using the procedures in § 80.65(i).

One commenter said that EPA should allow transmix processors to blend oxygenates and other blendstocks into transmix-based conventional gasoline to produce RFG. This rule addresses this comment by allowing transmix processors to treat their TGP as a blendstock, and combine the TGP with other blendstocks to produce either conventional or reformulated gasoline. In this situation, the transmix processor must fulfill all the requirements and standards for RFG that apply to a refiner.

2. Issues Not Addressed in the 1997 NPRM

a. Gasoline Sulfur

In the preamble to the gasoline sulfur regulations, EPA indicated that the Agency would establish requirements for transmix processors in a future rulemaking (65 FR 6800, February 10, 2000). Therefore, as part of this rulemaking, EPA is also including requirements for transmix processors and transmix blenders under the gasoline sulfur regulations at 40 CFR part 80, subpart H.

As under the RFG/anti-dumping rule, transmix processors and transmix blenders are refiners under the gasoline sulfur regulations. As a result, transmix processors and transmix blenders are subject to the refinery sulfur standards under § 80.195 of the gasoline sulfur regulations. However, for reasons discussed below, we believe it is appropriate that such parties be held to the gasoline sulfur standards applicable to downstream parties under §§ 80.210 and 80.220 of the gasoline sulfur regulations, and not be held to the more stringent refinery standards in § 80.195.

As indicated above, transmix processors generally do not control their feedstock, but receive mixtures of products from upstream refineries. The gasoline portion of transmix may be relatively high in sulfur if it was originally produced by a small refiner, a refiner producing gasoline for use in the Geographic Phase-in Area (GPA), or a refiner who has been given a temporary hardship extension to produce relatively high sulfur gasoline. As a result, holding transmix processors to the downstream sulfur standards rather than the more stringent refinery standards will provide transmix processors the flexibility to recover gasoline originally produced by small refiners, refiners of GPA gasoline, or temporary hardship refiners. To ensure compliance with the applicable downstream sulfur standards, transmix processors will be required to test any gasoline produced from transmix for sulfur content.

Under this rule, transmix processors who add blendstocks not derived from transmix to their recovered gasoline will be required to meet all of the requirements and standards that apply to refiners under 40 CFR part 80, subpart H, for such blendstocks. Where certain requirements are met, the transmix processor may use sulfur test results from the blendstock supplier for purposes of meeting the sampling and testing requirements under the sulfur rule.

As mentioned previously, EPA has learned that some transmix processors have added feedstocks to their transmix, before the transmix is processed, that are not produced from pipeline interface, or from mixtures of gasoline and distillate fuel unintentionally combined in a tank, or from normal operations at pipelines and terminals. Transmix processors that use these other feedstocks must meet all EPA standards applicable to a refiner for all the gasoline they produce during a compliance period, including the refinery level sulfur standards in 40 CFR 80.195. These transmix processors may not utilize the flexibilities in this rule because they have chosen to use feedstocks that have not been previously accounted for by a refinery in the production of gasoline. When the

transmix is processed, the previously compliant gasoline present in the transmix and the other feedstocks both distill out of the transmix together as a fungible product, and the transmix processor cannot distinguish exactly which portion of the TGP was derived from previously compliant gasoline and which was derived from other feedstocks. Thus, EPA is limiting the flexibility allowed by this rule to gasoline produced from transmix, only if the transmix was produced from pipeline interface, or from mixtures of gasoline and distillate fuel that were unintentionally combined in a tank, or from mixtures of gasoline and distillate fuel produced from normal operational activities at pipelines and terminals. Transmix processors who add any other material to their transmix must comply with all EPA standards applicable to a refiner for all the gasoline they produce during a compliance period, including the refinery level sulfur standards in 40 CFR 80.195.

This rule does, however, allow transmix processors that produce gasoline from pipeline interface to meet the less stringent downstream gasoline sulfur standards, even if the interface contains small amounts of gasoline blendstocks that are transported via pipeline as a normal part of pipeline operations. EPA believes it is appropriate to allow transmix processors that produce gasoline from these interface mixtures to meet the downstream sulfur standards because they do not have the same level of control over their transmix as the transmix processors that intentionally introduce other feedstocks into the production process. Furthermore, because the volume of gasoline blendstocks in the transmix will be relatively small and since the gasoline will still have to meet downstream standards, EPA believes the environmental consequences of allowing these transmix processors to meet the less stringent downstream sulfur standard should be negligible.

This rule adds a new § 80.213 to the gasoline sulfur regulations. This section contains the additional requirements for demonstrating compliance with the gasoline sulfur rule discussed above for refiners who process or blend transmix in accordance with the provisions in § 80.84. EPA believes that the additional requirements for transmix processors and transmix blenders in § 80.213 are necessary to maintain the flexibility of the current practices regarding transmix, and will not result in any adverse environmental consequences. This rule also adds modest recordkeeping requirements to § 80.365 which require parties to retain records of any sampling and testing required under § 80.213.

b. Air Toxics

The mobile source air toxics (MSAT) rule (66 FR 17230, March 29, 2001) requires the annual average toxics performance of a refinery's or importer's gasoline to be at least as clean as the average of its gasoline during the three-year baseline period 1998–2000. The MSAT requirements apply separately to RFG and to conventional gasoline. MSAT compliance is determined from the same gasoline data used by a refiner to determine its compliance with the RFG or anti-dumping requirements. As a result, only gasoline which would be included in the RFG or anti-dumping compliance determination of a refiner is included in the refiner's MSAT baseline and compliance determinations.

Most, if not all, transmix processors have unique individual MSAT baselines. Under MSAT, those with unique individual MSAT baselines (§ 80.915) are subject to their MSAT baseline up to their associated MSAT baseline volume (§ 80.850). Gasoline production above the MSAT baseline volume is subject to either the RFG toxics performance standard (§ 80.41) or to the refiner's anti-dumping standard (§ 80.91). Because these standards are equal to or less stringent than the refiner's MSAT baseline, they offer some flexibility to the refiner's overall compliance with its MSAT standard. Because gasoline demand is increasing, EPA expects that this provision will provide most refiners with some degree of MSAT compliance flexibility. The MSAT rules also provide for limited credit and deficit carryover, allowing refiners to weather slightly off years with better toxics performance in an adjacent year (§ 80.815). Finally, because all refiners are subject to MSAT standards which are typically more stringent than the RFG toxics performance standard or their individual anti-dumping standard, it is likely that the gasoline portion of the transmix is also cleaner with respect to toxics performance than it was during the baseline period 1998–2000, thus providing some immediate flexibility to transmix processors and transmix blenders.

This action clarifies that any gasoline or blendstock a transmix processor includes in their RFG or anti-dumping compliance determination is also included in their MSAT compliance calculations. Also, EPA has recently proposed to replace the existing MSAT regulations with a standard that would limit the benzene content of gasoline to an annual average of 0.62 percent by volume for most refiners, beginning in 2011. See 71 FR 15803 (March 29, 2006). The proposed toxics regulations exempt transmix processors from the new benzene standard for any gasoline they recover from transmix, but require transmix processors to meet the standard for any blendstocks they add to transmix.

E. Transmix Blenders

1. Comments on the 1997 Notice of Proposed Rulemaking

One commenter was concerned that the sampling and testing procedures in the 1997 NPRM for blends of transmix and RFG, which would be performed after blending the transmix, may not prevent the release of noncompliant RFG in the distribution system. For reasons discussed below, however, EPA believes that commercial standards limit transmix blending to such small percentages, that blending transmix in RFG will cause essentially no change in the emissions performance of the RFG. This rule will specifically require that all gasoline produced by transmix blenders have an endpoint less than 437 degrees Fahrenheit. As described below, as a practical matter, EPA believes that this endpoint standard will effectively prevent the blending of transmix into gasoline from causing any appreciable changes in gasoline emissions performance.

One commenter said that the 1996 Question and Answer guidance regarding transmix blended into conventional gasoline requires that the transmix be blended at a rate no greater than the historical rate that was used by the pipeline, whereas the NPRM provided that the transmix be blended at a rate no greater than the historical rate at the terminal or 0.25 volume percent, whichever is greater. The commenter said the NPRM did not cover a situation where, historically, transmix was moved through a pipeline to a terminal that is no longer used for blending transmix, and the transmix is currently moved through the same pipeline but blended at an intermediate terminal which historically had not been used for blending transmix. The commenter recommended that the language in the Q&A guidance, which covers this situation by allowing blending at the historical rate used by the pipeline rather than by the terminal, be adopted in the regulations.

We believe the Q&A guidance is consistent with the 1997 NPRM in stating that if a pipeline stops blending transmix at a terminal, that the pipeline may not begin blending transmix at a second terminal at a rate equal to the

first terminal's blending rate. The Q&A guidance states: ''* * * the transmix must be present in a terminal from which there is no out-bound pipeline or water transportation by which the transmix could be transported to a transmix processor, or the pipeline's historical practice *at the terminal* [emphasis added] (the practice beginning at least before January, 1994) has been to blend all transmix into conventional gasoline without further processing.'' This language indicates that the criteria regarding historical practice applies to the terminal in which the transmix was blended by the pipeline. Where a pipeline blends transmix at more than one terminal, the historical practice criterion would apply separately to each of the pipeline's terminals at which transmix is blended. However, as described below, this rule would change this approach.

2. These Requirements

This rule eliminates the historical practice criterion for determining amounts of transmix to be blended into conventional gasoline and the locations where this may occur, and also eliminates the 0.25 volume percent limit for blending transmix in reformulated gasoline. This rule instead allows transmix to be blended into conventional or reformulated gasoline in any location and in any amount, provided the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit,[3] and meets all other applicable downstream standards. As EPA's diesel sulfur regulations begin phasing in, transmix will be generated at new locations. EPA believes it is appropriate to allow the flexibility to blend transmix into gasoline at locations which have not historically blended transmix, provided the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit, and the gasoline meets all other applicable downstream standards. In addition, EPA believes it is appropriate to use gasoline endpoint to regulate transmix blending because it takes into account the quality of the transmix-blended gasoline. The historical practice criterion for conventional gasoline and the 0.25 volume percent limit for RFG were crude approaches that did not account for the variability of transmix and its effect on the gasoline into which it was blended.

EPA believes that blending small percentages of transmix in gasoline should be allowed at any facility, provided the facility takes appropriate steps to ensure that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit. Transmix typically contains significant percentages of distillate fuels such as diesel fuel or heating oil, and distillate fuels have higher boiling points and much lower octane ratings than gasoline. EPA's existing guidance regarding transmix blending reflected a concern that blending excessive amounts of transmix in gasoline could have an appreciable effect on emissions. However, EPA believes that where transmix is blended at sufficiently low percentages, such that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit, the emissions effect of blending transmix in gasoline will be negligible.

In addition to affecting gasoline endpoint and octane, blending transmix in gasoline also affects parameters in EPA's complex model, the model used to ensure that imported or produced gasoline complies with EPA standards. Although the complex model does not use gasoline endpoint or octane to predict gasoline emissions, the complex model does use several other gasoline parameters to predict gasoline emissions. These parameters include sulfur content, benzene content, aromatics content, olefin content, oxygen content, Reid vapor pressure (RVP), and two distillation points (E200 and E300). Compared to gasoline, the distillate fuel portion of transmix contains much less benzene, olefins, and oxygen (typically zero for all three parameters), has a much lower RVP, may contain a moderately greater percentage of aromatics, has significantly lower (typically zero) E200 and E300 distillation points, and may contain more sulfur.

EPA is primarily concerned with the effect of transmix blending on average gasoline sulfur content. Beginning in 2006, EPA's gasoline sulfur regulations specify that all gasoline produced by most refineries or imported by each importer must contain an annual average sulfur content of 30 ppm or less, in order to help significantly reduce emissions from gasoline-powered vehicles.[4] Transmix may contain significant percentages of high sulfur distillate fuel such as heating oil, nonroad diesel or jet fuel, and blending transmix containing high sulfur distillate fuels into gasoline could cause an increase in the sulfur content of the gasoline.

EPA believes, for two reasons, that the potential increase in gasoline sulfur due to blending transmix into gasoline would be so small, that the effect on emissions from gasoline engines would be negligible. The first reason is that the percentage of transmix that can be blended into gasoline is significantly limited by the amount of distillate fuel in the transmix. Distillate fuels have much higher boiling points than gasoline, so transmix blenders must limit the addition of transmix so that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit. Refiners already have to meet the ASTM endpoint standard under the ''substantially similar'' requirements for gasoline (56 FR 5352, February 11, 1991). Consequently, transmix which contains relatively high percentages of distillate fuel must be blended into gasoline at relatively low percentages so that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit.

The second reason is that EPA anticipates that the distillate fuel portion of transmix will contain significantly less sulfur beginning June, 2006, when the sulfur standard for highway diesel fuel drops sharply from 500 to 15 parts per million (ppm). Beginning in June, 2006, EPA estimates that the national average sulfur content of transmix will drop from approximately 800 ppm to 141 ppm, using product sulfur levels and pipeline product sequencing arrangements from Chapter 7 of the Regulatory Support Document (RSD) for the nonroad diesel sulfur regulations. Blending 0.25 volume percent transmix containing 141 ppm sulfur into gasoline raises the sulfur level of the gasoline by only approximately 0.3 ppm. Although the percentage of gasoline that is blended with transmix is anticipated to increase under this rule, EPA anticipates that transmix will be blended at no more than 0.25 volume percent on average nationwide, and that the overall average increase in gasoline sulfur from transmix blending will have a negligible

[3] 437 degrees Fahrenheit is the maximum allowable endpoint for gasoline specified in ASTM's standard for automotive spark-ignition engine fuel, D 4814–88. Gasoline endpoint is measured using ASTM D86–01. ASTM D86–01 measures the percentage of a gasoline sample that evaporates, as a function of temperature, as the sample is heated up under controlled conditions. Endpoint is the temperature at which all the volatile portion of a gasoline sample is evaporated. ASTM D4814–88 specifies a maximum allowable endpoint of 437 degrees Fahrenheit in order to limit the amount of higher-boiling point compounds that can be present in the gasoline.

[4] Gasoline produced by most refineries or imported by each importer must also contain no more than 80 ppm sulfur per gallon beginning in 2006. However, EPA has allowed flexibility for some refiners to be able to produce gasoline that is higher on both an average basis and a per gallon basis through December 31, 2010.

impact on emissions from gasoline engines. Using EPA's model for calculating emissions from vehicle fleets for a given year (MOBILE 6.2.03), EPA estimates that blending 0.25 volume percent transmix in gasoline would change emissions of various pollutants by only −0.2 to 0.3 percent.

EPA believes that the effect of blending transmix in gasoline at relatively low percentages will have a similarly small effect on other complex model parameters, such that the consequent effect on gasoline emissions will also be negligible. Since gasoline toxics emissions are primarily affected by benzene, and the distillate fuel portion of transmix typically contains no benzene, transmix-blended gasoline is not expected to produce any more toxics than gasoline which does not contain transmix. Similarly, since evaporative emissions are primarily affected by RVP, and the distillate fuel portion of transmix has a much lower RVP than gasoline, volatile emissions from transmix-blended gasoline are not expected to be any greater than volatile emissions from gasoline which does not contain transmix.

EPA is aware that the physical properties of gasoline and transmix can vary due to a variety of factors, which affect the percentage of transmix that can be blended into gasoline, without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit. For example, gasoline that is produced for use during colder winter months often has an endpoint which is lower than the endpoint of gasoline produced during warmer summer months. Similarly, reformulated gasoline often has an endpoint which is lower than the endpoint of conventional gasoline produced during the same time of the year. Gasoline which has a relatively low endpoint compared to the ASTM standard can be blended with a greater percentage of distillate fuel without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit. Additionally, the properties of the transmix itself can vary widely due to the practices of the pipeline or terminal that produced the transmix. If transmix contains a relatively high percentage of gasoline, a relatively greater percentage of transmix can be blended into gasoline without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit, since the transmix itself is already mostly composed of gasoline. Alternatively, if transmix contains a relatively high percentage of distillate fuel, the percentage of transmix that can be blended into gasoline without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit is relatively low. EPA is not including any requirements in this rule to list additional information on product transfer documents identifying gasoline or transmix properties. However, as described below, EPA is requiring transmix blenders to maintain a quality assurance program.

EPA also understands that distillate fuel can potentially be blended more than once into the same volume of gasoline through transmix blending and other normal pipeline operations. Blending transmix multiple times into the same volume of gasoline can cause an excessive cumulative percentage of transmix to be blended into the gasoline, and cause the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit. For example, a pipeline or terminal may blend transmix into gasoline, then send the gasoline to another pipeline or terminal which may blend transmix into the gasoline a second time. Similarly, as part of normal pipeline operation, pipeline operators may cut an interface between adjacent volumes of gasoline and distillate fuel directly into the gasoline volume. Cutting distillate fuel directly into gasoline has an effect on gasoline properties similar to the effect of blending transmix directly into the gasoline (gasoline endpoint increases and octane decreases). A downstream pipeline or terminal could then subsequently blend transmix into the same volume of gasoline which already contains distillate fuel from the interface cut. EPA is not including any requirements in this rule to list any additional information on product transfer documents identifying whether gasoline has been blended with transmix or any distillate fuel. EPA believes that the requirement that gasoline produced by transmix blenders meet the 437 degree Fahrenheit endpoint standard will prevent any potentially deleterious effects from successive transmix blending. However, as described below, EPA is proposing that transmix blenders maintain a quality assurance program designed to ensure compliance with the endpoint standard.

This rule requires transmix blenders to maintain a quality assurance program that will ensure that the endpoint of transmix-blended gasoline does not exceed 437 degrees Fahrenheit, and that the transmix-blended gasoline will comply with the downstream standards for conventional or reformulated gasoline. As a part of this quality assurance program, transmix blenders must either sample and test transmix-blended gasoline at certain frequencies to determine the end-point of the gasoline, or submit a petition to EPA documenting how their quality assurance program ensures that the endpoint of their transmix-blended gasoline will not exceed 437 degrees Fahrenheit, and that the transmix-blended gasoline meets all EPA downstream standards for conventional or reformulated gasoline.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this direct final rule does not satisfy the criteria stated above. As a result, this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. It would not have an annual effect on the economy of $100 million or more and is not expected to have any adverse economic effects as described in the Order. This direct final rule does not raise issues of consistency with the actions taken or planned by other agencies, would not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

B. Paperwork Reduction Act

The modifications to the RFG information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements

are not enforceable until OMB approves them.

This rule addresses certain adverse impacts on refiners and importers of RBOB under the current rule and provides these refiners and importers with additional flexibility to comply with the regulations. The flexibility afforded under this rule is optional. Modest information collection requirements in the form gasoline surveys of oxygenate blending facilities are required for those parties who avail themselves of the flexibility provided in this rule. It is estimated that refiners and importers who choose this option will save, at a minimum, half of the cost they would incur if they complied with the existing QA requirements.

The estimated total hourly burden per respondent for the gasoline surveys is 20 hours. The estimated total hourly burden for all respondents is 700 hours (35 respondents maximum). The hourly cost is estimated to be $71 per hour. The total estimated cost per respondent for the gasoline surveys is $1,420. The total estimated cost for all respondents is $49,700. In addition, the gasoline survey requirement is estimated to require purchase of services costs to industry of approximately $220,000, assuming that refiners and importers in all potentially affected RFG areas choose the compliance option under this rule.

This rule provides flexibility for transmix processors and transmix blenders to produce gasoline under certain circumstances without having to meet all of EPA's standards for refiners. Transmix processors are allowed to recover gasoline from transmix that does not need to be included in their compliance calculations, under certain circumstances. Transmix blenders are provided with the additional flexibility to blend transmix at any rate and at any location, provided the endpoint of their transmix-blended gasoline does not exceed 437 degrees Fahrenheit. However, in order to ensure the endpoint of the transmix-blended gasoline does not exceed 437 degrees, transmix blenders will be required to either test every batch of transmix-blended gasoline or submit a petition to EPA documenting that they maintain an oversight program that will prevent the endpoint of transmix-blended gasoline from exceeding 437 degrees. These requirements codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards.

EPA estimates that approximately 25 transmix blenders will submit one-time petitions for approval of their quality testing programs. One transmix blender estimated that they would need 1–2 person-weeks to prepare a petition for EPA approval. For calculating the burden and cost of this rule, EPA has estimated that the average labor cost will be $71/hour, and that each petition will take 2 person-weeks (80 hours) to prepare. Multiplying the average labor cost by the total time required to prepare each petition (80 hours) by the total number of petitions (25) results in a total respondent cost of $142,000.

The information under this rule will be collected by EPA's Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation (OAR), and by EPA's Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance (OECA). The information collected will be used by EPA to evaluate compliance with the requirements under the RFG and antidumping programs, and gasoline sulfur program. This oversight by EPA is necessary to ensure attainment of the air quality goals of the RFG and antidumping programs, and gasoline sulfur program.

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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this direct final rule.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This direct final rule will not have any adverse economic impact on small entities. This direct final rule codifies existing guidance for the RFG and antidumping regulations, and establishes provisions in the gasoline sulfur regulations (65 FR 6698, February 10, 2000) that allow transmix processors and transmix blenders more flexibility for compliance. The direct final rule establishes gasoline sulfur standards for transmix processors and blenders that are consistent with the sulfur standards for other entities, such as pipelines and terminals, that are downstream of refineries in the gasoline distribution system, and clarifies the requirements for transmix processors under the Mobile Source Air Toxics program. These requirements codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. This direct final rule also provides refiners and importers with an alternative compliance option for fulfilling a requirement to conduct downstream sampling and testing at oxygenate blender facilities. We have therefore concluded that this direct final rule will

relieve regulatory burden for all small entities subject to the RFG regulations.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of 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.

This direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector that would result in expenditures of $100 million or more. This rule provides refiners and importers of gasoline with additional flexibility in complying with regulatory requirements. As a result, this rule will have the overall effect of reducing the burden of the RFG regulations on these regulated parties. These requirements also codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct 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. This rule provides refiners and importers of gasoline with additional flexibility in complying with regulatory requirements. These requirements also codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. The requirements of the rule will be enforced by the Federal government at the national level. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' 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 direct 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. This rule applies to gasoline refiners and importers of gasoline. This action contains certain modifications to the federal requirements for RFG, and will not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is not economically significant and does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Acts That Significantly Affect Energy Supply, Distribution, or Use

This direct final rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. This direct final rule provides refiners and importers of gasoline with additional flexibility in complying with regulatory requirements. These requirements also codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. As a result, this rule may have a positive effect on gasoline supplies.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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.

This direct final rule does not establish new technical standards within the meaning of the NTTAA. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

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

K. Clean Air Act Section 307(d)

This rule is subject to section 307(d) of the CAA. Section 307(d)(7)(B) provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

IV. Statutory Provisions and Legal Authority

Statutory authority for the fuel controls set in this direct final rule comes from sections 211 and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 25, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 is revised to read as follows:

Authority: 42 U.S.C. 7414, 7545, 7542, and 7601(a).

■ 2. Section 80.69 is amended by adding paragraph (a)(11) to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

* * * * *

(a) * * *

(11) Any refiner or importer who produces or imports RBOB may comply with the following alternative quality assurance requirement instead of the contract and quality assurance sampling and testing requirements in paragraphs (a)(6) and (a)(7) of this section:

(i) To comply with the alternative quality assurance requirement under this paragraph (a)(11), a refiner or importer must either arrange to have an independent surveyor conduct a comprehensive program of annual compliance surveys, or participate in the funding of an organization which arranges to have an independent surveyor conduct a comprehensive program of annual compliance surveys, to be carried out in accordance with a survey plan which has been approved by EPA.

(ii) The annual compliance surveys under this paragraph (a)(11) shall be:

(A) Planned and conducted by an independent surveyor that meets the requirements in § 80.68(c)(13)(i);

(B) Conducted at retail gasoline outlets in a specified reformulated gasoline covered area;

(C) Representative of all reformulated gasoline being dispensed in the specified reformulated gasoline covered area; and

(D) Designed to achieve at least the same level of quality assurance required under paragraph (a)(7) of this section.

(iii) The compliance survey program shall require the independent surveyor conducting the surveys to:

(A) Obtain gasoline samples in accordance with the survey plan approved under this paragraph (a)(11), or immediately notify EPA of any refusal of retail outlets to allow samples to be taken;

(B) Test or arrange for the samples to be tested for type and amount of oxygenate;

(C)(*1*) Obtain the product transfer documents associated with the gasoline sample from the retail outlet; or immediately notify EPA of any refusal of any party to provide product transfer documents that should be within their possession; and

(*2*) Immediately notify EPA of any case where the product transfer documents obtained from the retail outlet do not contain the information required in paragraph (a)(11)(vii)(A) of this section, or any case where the gasoline does not contain the type and/or minimum amount of oxygenate stated on the product transfer documents;

(D) Where the test results indicate that the gasoline does not contain the type and/or minimum amount of oxygenate stated on the product transfer documents:

(*1*) Determine the oxygenate blending facility that supplied the gasoline; and

(*2*) Obtain from the oxygenate blender documentation of the refiner's or importer's oxygenate blending instructions for the gasoline;

(E) Immediately notify EPA of any case where the test results obtained by the independent surveyor indicate that the gasoline does not contain the type and/or minimum amount of oxygenate designated for the RBOB in the refiner's or importer's blending instructions;

(F) Immediately notify EPA of any instances where a refiner, importer, terminal, distributor, carrier or retail

outlet fails to cooperate in the manner described in paragraph (a)(11)(vi) of this section.

(G) Submit to EPA a report of each survey, within thirty days following completion of the survey, such report to include the following information:

(*1*) The identification of the person who conducted the survey;

(*2*) An attestation by an officer of the surveyor company that the survey was conducted in accordance with the survey plan and that the survey results are accurate;

(*3*) Identification of the party(ies) for whom the survey was conducted;

(*4*) The identification of the covered area surveyed;

(*5*) The dates on which the survey was conducted;

(*6*) The address of each facility at which a gasoline sample was collected and the date of collection;

(*7*) The results of the analyses of the samples for type and amount of oxygenate;

(*8*) The name and address of each laboratory where the gasoline samples were analyzed;

(*9*) A description of the methodology utilized to select the locations for sample collection and the number of samples collected; and

(*10*) For any samples excluded from the survey, a justification for such exclusion.

(H) Maintain all records relating to the surveys conducted under this paragraph (a)(11) for a period of at least 5 years; and

(I) At any time permit any representative of EPA to monitor the conduct of the surveys, including sample collection, transportation, storage, and analysis.

(iv) A survey plan under this paragraph (a)(11) must include:

(A) Identification of the party(ies) for whom the survey is to be conducted;

(B) Identification of the independent surveyor;

(C) A methodology for determining:

(*1*) When the samples will be collected;

(*2*) The sample collection locations; and

(*3*) The number of samples to be collected during the annual compliance period;

(D) A process for notifying oxygenate blenders and other downstream parties in the affected RFG area of the product transfer documentation requirements in paragraph (a)(11)(vii)(A) of this section; and

(E) Any other elements determined by EPA to be necessary to achieve the level of quality assurance required under paragraph (a)(11)(ii)(D) of this section.

(v) Any sampling and testing pursuant to a survey plan under this paragraph (a)(11) must be conducted in a manner consistent with the applicable provisions of §§ 80.8 and 80.46.

(vi)(A) Each refiner and importer who participates in the alternative quality assurance program under this paragraph (a)(11) must take all reasonable steps to ensure that each oxygenate blender, distributor, carrier and retail outlet cooperates in this program by allowing the independent surveyor to collect samples and by providing to the independent surveyor and/or EPA, upon request, copies of product transfer documents and other records or information regarding the source of any gasoline received, the destination of any gasoline distributed, the oxygenate blending instructions for the RBOB, and the rate (volume %) that oxygenate was blended into the gasoline.

(B) Reasonable steps under paragraph (a)(11)(vii) of this section must include, but typically should not be limited to, contractual agreements with any branded facilities of the refiner or importer, including any terminals, distributors, carriers and retail outlets, which require the branded facility to cooperate with the independent surveyor and/or EPA in the manner described in paragraph (a)(11)(vii)(A) of this section.

(vii)(A) Any terminal that blends oxygenate with RBOB which is produced or imported by any refiner or importer that complies with the alternative quality assurance requirement under this paragraph (a)(11), and any parties downstream from such oxygenate blending terminal, must include on product transfer documents information regarding the type and amount of oxygenate contained in the gasoline and identification of the oxygenate blending facility that blended the gasoline.

(B) If a party downstream from a refiner or importer that complies with the alternative quality assurance requirement under this paragraph (a)(11) fails to receive notice of the requirements in paragraph (a)(11)(vii)(A) of this section, upon notification from EPA, the party must thereafter comply with the requirements in paragraph (a)(11)(vii)(A) of this section.

(viii) The procedure for obtaining EPA approval of a survey plan under this paragraph (a)(11), and for revocation of any such approval, are as follows:

(A) A detailed survey plan which complies with the requirements of this paragraph (a)(11) must be submitted to EPA, no later than September 1 of the year preceding the calendar year in which the surveys will be conducted;

(B) The survey plan must be signed by a responsible corporate officer of the refiner or importer, or responsible officer of the organization which arranges to have an independent surveyor conduct a program of compliance surveys, as applicable; and

(C) The survey plan must be sent to the following address: Director, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6406J), Washington, DC 20460;

(D) EPA will send a letter to the party submitting a survey plan under this section, either approving or disapproving the survey plan;

(E) EPA may revoke any approval of a survey plan under this section for cause, including an EPA determination that the approved survey plan has proved to be inadequate in practice or that it was not diligently implemented;

(F) The approving official for an alternative quality assurance program under this section is the Director of the Transportation and Regional Programs Division, Office of Transportation and Air Quality.

(G) Any notifications required under this paragraph (a)(11) must be directed to the official designated in paragraph (a)(11)(viii)(F) of this section.

(ix)(A) No later than December 1 of the year preceding the year in which the surveys will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan;

(B) No later than December 15 of the year preceding the year in which the surveys will be conducted, EPA must receive a copy of the contract with the independent surveyor, proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account, and, if placed into an escrow account, a copy of the escrow agreement, to be sent to the official designated in paragraph (a)(11)(viii)(F) of this section.

(x) A failure of any refiner or importer to fulfill or cause to be fulfilled any of the requirements of this paragraph (a)(11) will cause the option to use the alternative quality assurance requirements under this paragraph (a)(11) to be void *ab initio.*

* * * * *

■ 3. Section 80.74 is amended by adding paragraph (b)(10) to read as follows:

§ 80.74 Recordkeeping requirements.

* * * * *

(b)* * *

(10) In the case of any interface or transmix used to produce reformulated gasoline or RBOB under § 80.84, records that reflect the results of any sampling and testing of RFG or RBOB required under § 80.84.

(i) Pipelines must keep records showing that interface was designated in the proper manner, according to the designations listed in § 80.84(b)(1);

(ii) Transmix processors and transmix blenders must keep records showing that their transmix meets the definition in § 80.84(a)(2), or contains gasoline and distillate fuel only from the sources listed in § 80.84(e);

(iii) Transmix processors must keep records showing the volumes of reformulated gasoline or RBOB recovered from transmix and the type and amount of any blendstock added, if applicable; and

(iv) Transmix blenders must keep records showing compliance with the quality assurance program and/or sampling and testing requirements in § 80.84(d)(2) or (d)(3), and for each batch of reformulated gasoline or RBOB with which transmix is blended, the volume of the batch, and the volume of transmix blended into the batch;

* * * * *

■ 4. Section 80.77 is amended by revising paragraphs (g)(2)(iv)(B) and (g)(3), and adding paragraph (g)(4) to read as follows:

§ 80.77 Product transfer documentation.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(B) Beginning on January 1, 1998, for VOC-controlled gasoline, the VOC emissions performance minimum.

(3) Identification of VOC-controlled reformulated gasoline or RBOB as gasoline or RBOB which contains ethanol, or which does not contain any ethanol; and

(4) For transfers of custody of gasoline subject to the provisions of § 80.69(a)(11), the information required to be included on product transfer documents under § 80.69(a)(11)(vii)(A).

* * * * *

■ 5. Section 80.84 is added to subpart D to read as follows:

§ 80.84 Treatment of interface and transmix.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Interface* means a volume of petroleum product generated in a pipeline between two adjacent volumes of non-identical petroleum product that consists of a mixture of the two adjacent products.

(2) *Transmix* means an interface that does not meet the specifications for a fuel that can be used or sold, and that is composed solely of any combination of:

(i) Previously certified gasoline (including previously certified gasoline blendstocks that become gasoline solely upon the addition of an oxygenate);

(ii) Distillate fuel; or

(iii) Gasoline blendstocks that are suitable for use as a blendstock without further processing.

(3) *Transmix gasoline product*, or *TGP*, means the gasoline or gasoline blendstock that is produced when transmix is separated into distillate fuel and either gasoline or gasoline blendstock. Gasoline blendstock here includes blendstock that becomes gasoline solely upon the addition of an oxygenate (such as RBOB).

(4) *Transmix processing facility* means any refinery that produces TGP from transmix by distillation or other refining processes, but does not produce gasoline by processing crude oil.

(5) *Transmix processor* means any person who owns, leases, operates, controls or supervises a transmix processing facility.

(6) *Transmix blending facility* means any facility which produces gasoline by blending transmix into gasoline.

(7) *Transmix blender* means any person who owns, leases, operates, controls or supervises a transmix blending facility.

(b) *Designation of gasoline interface by pipeline operators.* (1) Gasoline interface mixtures containing the products below shall be designated by pipeline operators in the following manner:

(i) Interface mixtures of reformulated gasoline or RBOB, and conventional gasoline shall be designated as conventional gasoline;

(ii) Interface mixtures of VOC-controlled reformulated gasoline and non-VOC-controlled reformulated gasoline shall be designated as non-VOC-controlled RFG;

(iii) Interface mixtures of RBOB and reformulated gasoline shall be designated as RBOB; and

(iv) Interface mixtures of reformulated gasoline or RBOB, and blendstock shall be designated as blendstock.

(2) Regardless of gasoline product designation, all gasoline containing interface must meet all downstream standards, including but not limited to any standards and requirements that apply downstream of the refinery in this part and the Clean Air Act.

(c) *Transmix processing*—(1) *TGP sold without further mixing with blendstocks or previously certified gasoline.* (i) Where the TGP meets all standards and requirements that apply to conventional gasoline downstream from the refinery, including but not limited to any standards and requirements in this part and the Clean Air Act, and the TGP is designated and sold as conventional gasoline, the transmix processor may exclude the TGP from compliance calculations for the transmix processing facility under this part Subpart E of this part. Except as required in paragraph (c)(4) of this section, the transmix processor must either include every batch or exclude every batch of this TGP from their compliance calculations for each compliance period;

(ii) Where the TGP is sold as a blendstock, the transmix processor must exclude the TGP from compliance calculations. Pursuant to § 80.101(d)(3), however, TGP which becomes gasoline solely upon the addition of an oxygenate must be included in the compliance calculations for the transmix processing facility under subpart E of this part.

(iii) Where the TGP is designated and sold as reformulated gasoline or RBOB, the transmix processor must fulfill all requirements and standards that apply to a refiner under subpart D of this part and must include the reformulated gasoline or RBOB produced from the transmix in compliance calculations for the transmix processing facility under subpart D of this part.

(2) *TGP blended with blendstocks.* Where the transmix processor mixes the TGP with blendstock(s) to produce reformulated or conventional gasoline or RBOB, the TGP is treated as a blendstock and the transmix processor must fulfill all requirements and standards that apply to a refiner under subpart D or E of this part, as appropriate, and include the gasoline produced in compliance calculations for the transmix processing facility under subpart D or E of this part, as appropriate.

(3) *TGP blended with previously certified gasoline.* (i) Where the TGP meets all the standards and requirements that apply to conventional gasoline downstream from the refinery, including but not limited to any standards and requirements of this part and the Clean Air Act, and the transmix processor mixes the TGP with any previously certified gasoline to produce conventional gasoline, the TGP may be

excluded from compliance calculations for the transmix processing facility under subpart E of this part. Except as required in paragraph (c)(4) of this section, the transmix processor must either include every batch or exclude every batch of this TGP from compliance calculations for the transmix processing facility for each compliance period.

(ii) Where the TGP does not meet all standards that apply to conventional gasoline downstream from the refinery, including but not limited to any standards and requirements of this part and the Clean Air Act, and the transmix processor mixes the TGP with any previously certified gasoline to produce conventional gasoline, the TGP is treated as a blendstock and the transmix processor must fulfill all requirements and standards for a refiner under subpart E of this part, for the TGP, and include the TGP in the compliance calculations for the transmix processing facility under subpart E of this part.

(iii) The sampling and testing required under paragraph (c)(3)(ii) of this section may be met using one of the following methods:

(A) Sample and test the TGP prior to blending with previously certified gasoline to determine the volume and properties of the TGP and include each volume of TGP blended with previously certified gasoline as a separate batch in compliance calculations for the transmix processing facility; or

(B) Determine the volume and properties of the previously certified gasoline prior to blending with the TGP and measure the volume and properties of the gasoline subsequent to blending with the TGP. Calculate the volume and properties of the TGP by subtracting the volume and properties of the previously certified gasoline from the volume and properties of the gasoline subsequent to blending, and include each volume of TGP blended with previously certified gasoline as a separate batch in compliance calculations for the transmix processing facility; or

(C) Comply with the requirements in § 80.101(g)(9).

(iv) Where the transmix processor mixes the TGP with any previously certified gasoline to produce reformulated gasoline or RBOB, the TGP is treated as a blendstock and the transmix processor must fulfill all requirements and standards for a refiner under subpart D of this part, for the TGP, and include the TGP in the compliance calculations for the transmix processing facility under subpart D of this part, using the procedures in § 80.65(i).

(4) *Additional requirements for conventional gasoline produced with transmix containing blendstocks.* Notwithstanding paragraphs (c)(1)(i) and (c)(3)(i) of this section, if gasoline is produced at a transmix processing facility from any transmix containing gasoline blendstocks, the transmix processor must include every batch of gasoline produced from transmix in compliance calculations for the transmix processing facility under subpart E of this part for the entire compliance period.

(d) *Transmix blending.* Transmix blenders which fulfill all of the requirements in this paragraph (d) are exempt from the requirements and standards that apply to a refiner under subparts D and E of this part.

(1) Transmix may be blended into any previously certified gasoline, provided that:

(i) The endpoint of the final transmix-blended gasoline does not exceed 437 degrees Fahrenheit as measured by ASTM standard method D 86–01^{e1}, entitled ''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure'', which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm.*;

(ii) The final transmix-blended gasoline meets all applicable downstream standards; and

(iii) The transmix blender complies with the requirements in §§ 80.74(b)(10), 80.104(b) and 80.213.

(2) The transmix blender must maintain and follow a written quality assurance program designed to assure that the type and amount of transmix blended into previously certified gasoline will not cause violations of the applicable standards in paragraph (d)(1) of this section. Except as set forth in paragraph (d)(3) of this section, as a part of the quality assurance program, transmix blenders shall collect samples of gasoline subsequent to blending transmix, and test the samples to ensure the end-point temperature of the final transmix-blended gasoline does not exceed 437 degrees Fahrenheit, at one of the following rates:

(i) In the case of transmix that is blended in a tank, following each occasion transmix is blended; or

(ii) In the case of transmix that is blended by a computer controlled in-line blending system, the transmix blender shall collect composite samples of gasoline subsequent to blending transmix at a rate of not less than twice each calendar month during which transmix is blended.

(3) Any transmix blender may petition EPA for approval of a quality assurance program that does not include the minimum sampling and testing requirements in paragraph (d)(2) of this section. In order to seek such an exemption, the transmix blender shall submit a petition to EPA that includes:

(i) A detailed description of the quality assurance procedures to be carried out at each location where transmix is blended into previously certified gasoline, including a description of how the transmix blender proposes to determine the ratio of transmix that can be blended with previously certified gasoline without violating any of the applicable standards in paragraph (d)(1) of this section, and a description of how the transmix blender proposes to determine that the gasoline produced by the transmix blending operation meets the applicable standards.

(ii) If the transmix is blended by a computer controlled in-line blending system, the transmix blender shall also include all of the information required by refiners under § 80.65(f)(4)(i)(A).

(iii) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the submission is true to the best of his/her belief must accompany any submission under this paragraph.

(iv) Transmix blenders who seek an exemption under paragraph (d)(3) of this section must comply with any request by EPA for additional information or any other requirements that EPA includes as part of the exemption. However, they may withdraw their exemption petition or approved exemption at any time, upon notice to EPA.

(v) EPA reserves the right to modify the requirements of an exemption under paragraph (d)(3) of this section, in whole or in part, at any time, if EPA determines that the transmix blender's operation does not effectively or adequately control, monitor or document the end-point temperature of the gasoline produced, or if EPA

determines that any other circumstance exists which merits modification of the requirements of an exemption. If EPA finds that a transmix blender provided false or inaccurate information in any submission required for an exemption under this section, upon notification from EPA, the transmix blender's exemption will be void ab initio.

(4) In the event the test results for any sample collected pursuant to a quality assurance program indicate the gasoline does not comply with any of the applicable standards in paragraph (d)(1) of this section, the transmix blender shall:

(i) Immediately take steps to stop the sale of the gasoline that was sampled;

(ii) Take steps which are reasonably calculated to determine the cause of the noncompliance and to prevent future instances of noncompliance;

(iii) Inform EPA of the noncompliance; and

(iv) If the transmix was blended by a computer controlled in-line blending system, increase the rate of sampling and testing to a rate of not less than once per week and continue the increased frequency of sampling and testing until the results of ten consecutive samples and tests indicate the gasoline complies with applicable standards, at which time the sampling and testing may be conducted at the original frequency;

(5) Any transmix blender who blends transmix into previously certified gasoline and who does not meet the requirements under this paragraph (d) shall meet all requirements and standards that apply to a refiner under subparts D and E of this part, other than this section and §§ 80.74(b)(10), and 80.104(b).

(e) The provisions of paragraphs (c) and (d) of this section also apply to mixtures of gasoline and distillate fuel:

(1) Produced by unintentionally combining gasoline and distillate fuel in a tank.

(2) Produced from normal business operations at terminals or pipelines, such as gasoline or distillate fuel drained from a tank, or drained from piping or hoses used to transfer gasoline or distillate fuel to tanks or trucks, or gasoline or distillate fuel discharged from a safety relief valve.

(f) Any transmix processor or transmix blender who adds a feedstock to their transmix other than gasoline, distillate fuel or gasoline blendstocks from pipeline interface must meet all requirements and standards that apply to a refiner under subparts D and E of this part, other than this section and §§ 80.74(b)(10), and 80.104(b), for all gasoline they produce during a compliance period.

■ 6. Section 80.104 is amended by revising the introductory text, paragraph (a) introductory text and paragraph (b), and adding paragraph (c) to read as follows:

§ 80.104 Recordkeeping requirements

Any parties in the gasoline distribution network shall maintain records containing the information as required by this section.

(a) For any refiner or importer, beginning in 1995, for each averaging period:

* * * * *

(b) For all parties described in this section that produce and distribute gasoline, in the case of any interface or transmix used to produce conventional gasoline under § 80.84, records that reflect the results of any sampling and testing of conventional gasoline under § 80.84.

(1) Pipelines must keep records showing that the interface was designated in the proper manner according to the designations listed in § 80.84(b)(1).

(2) Transmix processors and transmix blenders must keep records showing that their transmix meets the definition in § 80.84(a)(2), or contains gasoline and distillate fuel only from the sources listed in § 80.84(e).

(3) Transmix processors must keep records showing the volumes of conventional gasoline recovered from transmix and the type and amount of any blendstock added, if applicable.

(4) Transmix blenders must keep records showing compliance with the quality assurance program and/or sampling and testing requirements in § 80.84(d)(2) or (d)(3) for each batch of conventional gasoline with which transmix is blended, the volume of the batch, and the volume of transmix blended into the batch.

(c) All parties in the gasoline distribution network shall retain the documents required in this section for a period of five years from the date the conventional gasoline or blendstock is produced or imported, and deliver such documents to the Administrator of EPA upon the Administrator's request.

■ 7. Section 80.213 is added to read as follows:

§ 80.213 What alternative sulfur standards and requirements apply to transmix processors and transmix blenders?

Transmix processors and transmix blenders, as defined in § 80.84(a), may comply with the following requirements instead of the requirements and standards otherwise applicable to a refiner under subpart H of this part.

(a) Any transmix processor who recovers transmix gasoline product (TGP), as defined in § 80.84(a), from transmix through transmix processing under § 80.84(c) must show through sampling and testing, using the methods in § 80.330, that the TGP meets the applicable sulfur standards under § 80.210 or § 80.220, prior to the TGP leaving the transmix processing facility.

(1) The applicable sulfur standard is the standard in § 80.210(b); or

(2) If the TGP sulfur is greater than the standard in § 80.210(b), and the transmix processor has product transfer documents that prove the TGP was originally produced by a small refiner, hardship refiner, or for use in the GPA, the applicable sulfur standard for the TGP is the downstream sulfur standard corresponding to the original gasoline.

(b) The sampling and testing required under paragraph (a) of this section shall be conducted following each occasion TGP is produced.

(c) Any transmix processor who produces gasoline by adding blendstock to TGP must, for such blendstock, comply with all requirements and standards that apply to a refiner under subpart H of this part, and must meet the applicable downstream sulfur standards under § 80.210 or § 80.220 for the gasoline produced by blending blendstock and TGP, prior to the gasoline leaving the transmix processing facility.

(d) Any transmix processor who produces gasoline by blending blendstock into TGP may meet the sampling and testing requirements of subpart H of this part as follows:

(1)(i) Sample and test the blendstock when received at the transmix processing facility, using the methods specified in § 80.330, to determine the volume and sulfur content, and treat each volume of blendstock that is blended into a volume of TGP as a separate batch for purposes of calculating and reporting compliance with the applicable annual average and per-gallon cap sulfur standards in § 80.195 or § 80.216, as applicable; or

(ii) Use sulfur test results of the blendstock supplier provided that the following requirements are met:

(A) Sampling and testing by the blendstock supplier is performed using the methods specified in § 80.330;

(B) Testing for the sulfur content of the blendstock in the supplier's storage tank must be conducted subsequent to the last receipt of blendstock into the supplier's storage tank from which the transmix processor is supplied;

(C) The transmix processor must obtain a copy of the blendstock supplier's test results, at the time of each transfer of blendstock to the transmix processor, that reflect the sulfur content of each load of blendstock supplied to the transmix processor;

(D) The transmix processor must conduct a quality assurance program of sampling and testing for each blendstock supplier. The frequency of blendstock sampling and testing must be one sample for every 500,000 gallons of blendstock received or one sample every 3 months, whichever results in more frequent sampling; and

(E) If any of the requirements of this paragraph (d)(1)(ii) are not met, in whole or in part, for any blendstock blended into TGP, that blendstock is deemed in violation of the gasoline sulfur standards in § 80.195.

(2) Sample and test each batch of gasoline produced by blending blendstock into TGP, using the methods specified in § 80.330, to determine the sulfur content of the batch.

(3) The sulfur content of each batch of gasoline produced by blending blendstock into TGP must be no greater than the downstream sulfur standard under § 80.210 or § 80.220 applicable to the designation of the TGP; and

(4) Gasoline produced by blending blendstock into TGP must be properly identified on product transfer documents in accordance with the provisions of § 80.210 or § 80.220, as applicable.

(e) Any transmix blender who produces gasoline by blending transmix, or mixtures of gasoline and distillate fuel described in § 80.84(e), into previously certified gasoline under § 80.84(d) must meet the applicable downstream sulfur standards under § 80.210 or § 80.220 for the gasoline produced by blending transmix and previously certified gasoline.

(f) Any transmix processor or transmix blender who adds feedstocks to their transmix other than gasoline, distillate fuel, or gasoline blendstocks from pipeline interface must meet all requirements and standards that apply to a refiner under subpart H of this part, other than § 80.213, for all gasoline they produce during a compliance period.

■ 8. Section 80.365 is amended by adding paragraph (b)(8) to read as follows:

§ 80.365 What records must be kept?

* * * * *

(b) * * *

(8) In the case of parties who process transmix, records of any sampling and testing required under § 80.213.

* * * * *

■ 9. Section 80.840 is added to subpart J to read as follows:

§ 80.840 What requirements apply to transmix processors?

Any transmix processor who produces gasoline or gasoline blendstock from transmix, or recovers gasoline or gasoline blendstock from transmix through transmix processing under § 80.84 (c) shall include such gasoline or gasoline blendstock in the baseline and compliance calculations of this subpart to the same extent such gasoline or gasoline blendstock must be included in compliance calculations under subpart D of this part for reformulated gasoline and RBOB, and under subpart E of this part for conventional gasoline, according to the requirements specified in § 80.84(c).

[FR Doc. 06–5051 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1544, 1546, and 1548

[Docket No. TSA–2004–19515; Amendment Nos. 1520–4, 1540–7, 1542–2, 1544–5, 1546–2, and 1548–2]

RIN 1652–AA23

Air Cargo Security Requirements; Correction

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the **Federal Register** on May 26, 2006. That rule enhances and improves the security of air cargo transportation by requiring airport operators, aircraft operators, foreign air carriers, and indirect air carriers to implement security measures in the air cargo supply chain as directed under the Aviation and Transportation Security Act. The final rule also amends the applicability of the requirement for a ''twelve-five'' security program for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to those aircraft with a maximum certificated takeoff weight of more than 12,500 pounds to conform to recent legislation. TSA listed an incorrect compliance date in certain sections of parts 1544, 1546, and 1548 dealing with security threat assessments and a mandatory security program requirement for operators. This document adds the correct compliance date to these sections.

DATES: Effective October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Tamika McCree, Office of Transportation Sector Network Management (TSA–28), Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202; (571–227–2632); *tamika.mccree@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2006, TSA published a final rule in a separate Part II of the **Federal Register** (71 FR 30478), revising various regulations to enhance and improve the security of air cargo transportation. Although TSA listed the correct compliance dates in the **DATES** section of the final rule preamble, we incorrectly listed the compliance date dealing with security threat assessments in §§ 1544.228(d), 1546.213(d), 1548.5(a), and 1548.16(a), and a mandatory security program requirement in § 1548.15(d) for operators. This document corrects the date in these sections from the incorrect date of November 22, 2006, to the correct date of December 1, 2006.

Correction

In rule FR Doc. 06–4800, published on May 26, 2006 (71 FR 30478), make the following corrections:

§ 1544.228 [Corrected]

■ 1. On page 30511, in the second column, in § 1544.228 Access to Cargo: Security threat assessments for cargo personnel in the United States, at the end of paragraph (d), remove the date ''November 22, 2006'' and add in its place, the date ''December 1, 2006''.

§ 1546.213 [Corrected]

■ 2. On page 30512, in the third column, in § 1546.213 Access to Cargo: Security threat assessments for cargo personnel in the United States, at the end of paragraph (d), remove the date ''November 22, 2006'' and add in its place, the date ''December 1, 2006''.

§ 1548.5 [Corrected]

■ 3. On page 30513, in the second column, in § 1548.5 Adoption and implementation of the security program, at the end of paragraph (a), remove the date ''November 22, 2006'' and add in its place, the date ''December 1, 2006''.

§ 1548.15 [Corrected]

■ 4. On page 30516, in the second column, in § 1548.15 Access to Cargo: Security threat assessments for individuals having unescorted access to cargo, at the end of paragraph (d), remove the date ''November 22, 2006'' and add in its place, the date ''December 1, 2006''.

§ 1548.16 [Corrected]

■ 5. On page 30516, in the second column, in § 1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity, at the end of paragraph (a), remove the date ''November 22, 2006'' and add in its place, the date ''December 1, 2006''.

Issued in Arlington, Virginia, on May 26, 2006.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. E6–8584 Filed 6–1–06; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. No. 060204C]

Endangered and Threatened Species: Final Listing Determinations for Elkhorn Coral and Staghorn Coral; Correction

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

ACTION: Final rule; correction.

SUMMARY: We, the National Marine Fisheries Service, are correcting a previously published **Federal Register** rule that contained inadequate data. The citations were inadvertently omitted from the table in this rule that published in the **Federal Register** on May 9, 2006.

DATES: This correction is effective June 2, 2006.

FOR FURTHER INFORMATION CONTACT: Marta Nammack, (301)713–1401.

SUPPLEMENTARY INFORMATION: In the May 9, 2006, issue of the **Federal Register**, we published a final rule to implement our determination to list elkhorn (Acropora palmata) and staghorn (A. cervicornis) corals as threatened species under the Endangered Species Act (ESA) of 1973. The table printed in this rule contained inadequate data.

§ 223.102 [Corrected]

■ On pages 26862 through 26872, correct the table in § 223.102 to read as follows:

BILLING CODE 3510–22–S

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
Marine Mammals				
Guadalupe fur seal	Arctocephalus townsendi	Wherever found – U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo)	50 FR 51252; Dec 16, 1985	NA
Steller sea lion	Eumetopias jubatus	Eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude	55 FR 13488; Apr 10, 1990 55 FR 50006; Dec 4, 1990 62 FR 30772; Jun 5, 1997	58 FR 45278; Aug 27, 1993 64 FR 14067; Mar 23, 1999
Sea Turtles				
green turtle[2]	Chelonia mydas	Wherever found, except where listed as endangered under §224.101(c); circumglobal in tropical and temperate seas and oceans	43 FR 32808; Jul 28, 1978	63 FR 46701; Sep 2, 1998 64 FR 14067; Mar 23, 1999
loggerhead turtle[2]	Caretta caretta	Wherever found; circumglobal in tropical and temperate seas and oceans	43 FR 32808; Jul 28, 1978	NA
olive ridley turtle[2]	Lepidochelys olivacea	Wherever found, except where listed as endangered under §224.101(c); circumglobal in tropical and temperate seas.	43 FR 32808; Jul 28, 1978	NA
Fishes				
green sturgeon - southern DPS	Acipenser medirostris	U.S.A., CA. The southern DPS includes all spawning populations of green sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.		

Gulf sturgeon	Acipenser oxyrinchus desotoi	Wherever found.	56 FR 49653; Sep 30, 1991	68 FR 13370; Mar 19, 2003
Ozette Lake sockeye	Oncorhynchus nerka	U.S.A.- WA, including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: the Umbrella Creek and Big River sockeye hatchery programs.	64 FR 14528; Mar 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
Central Valley spring-run Chinook	Oncorhynchus tshawytscha	U.S.A.- CA, including all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River, as well as the Feather River Hatchery spring-run Chinook program.	64 FR 50394; Sep 16, 1999 70 FR 37160; Jun 28, 2005	70 FR 52488; Sep 2, 2005
California Coastal Chinook	Oncorhynchus tshawytscha	U.S.A.- CA, including all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs.	64 FR 50394; Sep 16, 1999 70 FR 37160; Jun 28, 2005	70 FR 52488; Sep 2, 2005

Upper Willamette River Chinook	Oncorhynchus tshawytscha	U.S.A.- OR, including all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: the McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock #24), Marion Forks/North Fork Santiam River (ODFW stock #21), South Santiam Hatchery (ODFW stock #23) in the South Fork Santiam River, South Santiam Hatchery in the Calapooia River, South Santiam Hatchery in the Mollala River, Willamette Hatchery (ODFW stock #22), and Clackamas hatchery (ODFW stock #19) spring-run Chinook hatchery programs.	64 FR 14308; Mar. 24 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
Lower Columbia River Chinook	Oncorhynchus tshawytscha	U.S.A.- OR, WA, including all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River, as well as seventeen artificial	64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005

		propagation programs: the Sea Resources Tule Chinook Program, Big Creek Tule Chinook Program, Astoria High School (STEP) Tule Chinook Program, Warrenton High School (STEP) Tule Chinook Program, Elochoman River Tule Chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule Chinook Program, Kalama Tule Chinook Program, Washougal River Tule Chinook Program, Spring Creek NFH Tule Chinook Program, Cowlitz spring Chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring Chinook Program, Kalama River spring Chinook Program, Lewis River spring Chinook Program, Fish First spring Chinook Program, and the Sandy River Hatchery (ODFW stock #11) Chinook hatchery programs.		
Puget Sound Chinook	Oncorhynchus tshawytscha	U.S.A.- WA, including all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as twenty-six artificial propagation programs: the Kendal Creek Hatchery, Marblemount Hatchery	64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005

		(fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Issaquah Hatchery, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Diru Creek, Clear Creek, Kalama Creek, George Adams Hatchery, Rick's Pond Hatchery, Hamma Hamma Hatchery, Dungeness/Hurd Creek Hatchery, Elwha Channel Hatchery Chinook hatchery programs.		
Snake River fall-run Chinook	Oncorhynchus tshawytscha	U.S.A.- OR, WA, ID, including all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run Chinook hatchery programs.	57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992 70 FR 37160; Jun 28, 2005	58 FR 68543; Dec 28, 1993
Snake River spring/summer-run	Oncorhynchus tshawytscha	U.S.A.- OR, WA, ID, including all naturally spawned populations of	57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992	58 FR 68543; Dec 28, 1993 64 FR 57399; Oct 25, 1999

Chinook		spring/summer-run Chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins, as well as fifteen artificial propagation programs: the Tucannon River conventional Hatchery, Tucannon River Captive Broodstock Program, Lostine River, Catherine Creek, Lookingglass Hatchery, Upper Grande Ronde, Imnaha River, Big Sheep Creek, McCall Hatchery, Johnson Creek Artificial Propagation Enhancement, Lemhi River Captive Rearing Experiment, Pahsimeroi Hatchery, East Fork Captive Rearing Experiment, West Fork Yankee Fork Captive Rearing Experiment, and the Sawtooth Hatchery spring/summer-run Chinook hatchery programs.	70 FR 37160; Jun 28, 2005	
Southern Oregon/Northern California Coast coho	Oncorhynchus kisutch	U.S.A.- CA, OR, including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock #52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs.	62 FR 24588; May 6, 1997 70 FR 37160; Jun 28, 2005	64 FR 24049; May 5, 1999
Lower Columbia	Oncorhynchus kisutch	U.S.A.- OR, WA, including all	70 FR 37160; Jun 28, 2005	NA

River coho		naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon, as well as twenty-five artificial propagation programs: the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Kalama River Type-N Coho Program, Kalama River Type-S Coho Program, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Eagle Creek National Fish Hatchery, Sandy Hatchery, and the Bonneville/Cascade/Oxbow	

		complex coho hatchery programs.		
Columbia River chum	Oncorhynchus keta	U.S.A.- OR, WA, including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs.	64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
Hood Canal summer-run chum	Oncorhynchus keta	U.S.A.- WA, including all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: the Quilcene NFH, Hamma Hamma Fish Hatchery, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs.	64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
South-Central California Coast Steelhead	Oncorhynchus mykiss	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005

		County, California, to (but not including) the Santa Maria River.		
Central California Coast Steelhead	Oncorhynchus mykiss	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, Californian (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California.	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005
California Central Valley Steelhead	Oncorhynchus mykiss	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries.	63 FR 13347; Mar. 19, 1998 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005
Northern California Steelhead	Oncorhynchus mykiss	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in California coastal river basins from Redwood Creek in Humboldt County, California, to the Gualala River, inclusive, in Mendocino County, California.	65 FR 36074; June 7, 2000 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005

Upper Willamette River Steelhead	Oncorhynchus mykiss	U.S.A.- OR, including all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive.	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005
Lower Columbia River Steelhead	Oncorhynchus mykiss	U.S.A.- OR, WA, including all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, Oregon, and from the Little and Big White Salmon Rivers, Washington.	63 FR 13347; Mar 19, 1998 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005
Middle Columbia River Steelhead	Oncorhynchus mykiss	U.S.A.- OR, WA, including all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.	57 FR 14517; Mar 25, 1999. 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005
Snake River Basin Steelhead	Oncorhynchus mykiss	U.S.A.- OR, WA, ID, including all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington,	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005

Marine Invertebrates		northeast Oregon, and Idaho.		
Elkhorn coral	Acropora palmata	Wherever found. Includes United States – Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean – Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.	71 FR 26852, May 9, 2006	NA
Staghorn coral	Acropora cervicornis	Wherever found. Includes United States – Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean – Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.	71 FR 26852, May 9, 2006	NA
Marine Plants				
Johnson's seagrass	Halophila johnsonii	Wherever found. U.S.A. - Southeastern FL between Sebastian Inlet and north Biscayne Bay.	63 FR 49035; Sep 14, 1998	65 FR 17786; Apr 5, 2000

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).
[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

Authority: 16 U.S.C. 1531 1543; subpart B,§ 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

Dated: May 16, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–4988 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 71, No. 106
Friday, June 2, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23500; Directorate Identifier 2005–NE–46–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines (IAE) V2500 Series 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) for IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, and V2528–D5 turbofan engines. This proposed AD would require repetitive monitoring of N2 vibration on all IAE V2500 series engines to identify engines that might have a cracked high pressure turbine (HPT) stage 2 air seal. This proposed AD results from a report that HPT stage 2 air seals have developed cracks. We are proposing this AD to prevent uncontained failure of the HPT stage 2 air seal.

DATES: We must receive any comments on this proposed AD by August 1, 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 International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510.

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: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7152; 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–2005–23500; Directorate Identifier 2005–NE–46–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, 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 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

This proposed AD would require repetitive monitoring of N2 vibration on all IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, and V2528–D turbofan engines, to identify engines that might have a cracked HPT stage 2 air seal. Although there have been 24 recorded cracks of HPT stage 2 air seals, this proposed AD results from a report that HPT stage 2 air seal that developed cracks in the front snap fillet radius. The cracks propagated to the extent that parts of the seal fractured into several pieces. No terminating action to this proposed AD currently exists. We are proposing this AD to prevent uncontained failure of the HPT stage 2 air seal.

Relevant Service Information

We have reviewed and approved the technical contents of IAE Service Bulletin (SB) V2500–ENG–72–0500, dated July 25, 2005, and IAE SB V2500–ENG–72–0501, dated July 25, 2005, that describe procedures for repetitive monitoring of N2 vibration on all IAE V2500 A1/A5 and V2500–D5 engines.

Differences Between the Proposed AD and the Manufacturer's Service Information

IAE SB V2500–ENG–72–500 states that the majority of airplanes fitted with V2500 series engines have onboard data recording equipment that will detect and record N2 vibration. This proposed AD would require that all airplanes with V2500 series engines in revenue service comply with the requirement to monitor N2 vibration, using the onboard monitoring equipment.

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 repetitive monitoring of N2 vibration on all IAE V2500 A1/A5 and V2500–D5 engines to identify engines that might have a cracked HPT stage 2 air seal. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 1,022 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 workhours per engine to perform the proposed actions, and that the average labor rate is $80 per workhour. Required parts would cost about $97,040 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $99,338,400.

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 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:

International Aero Engines: Docket No. FAA–2005–23500; Directorate Identifier 2005–NE–46–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 1, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, and V2528–D5 turbofan engines. These engines are installed on, but not limited to, Airbus A319–132, A320, and Boeing MD–90 airplanes.

Unsafe Condition

(d) This AD results from a report that HPT stage 2 air seals developed cracks in the front snap fillet radius. We are issuing this AD to prevent uncontained failure of the HPT stage 2 air seal.

Compliance

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

Monitoring N2 Vibration on All IAE V2500–A1 and V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 Engines

(f) For IAE V2530–A5 and V2533–A5 engines operated at 30,000 or 33,000 pounds of thrust, or for V2522–A5, V2524–A5, V2527–A5, V2527E–A5, and V2527M–A5 engines that have ever operated in the 30,000 or 33,000 pound thrust range, begin monitoring for N2 vibration trend if the HPT stage 2 air seal reaches 4,000 cycles-since-new (CSN) or more.

(g) For IAE V2500–A1 and V2522–A5, V2524–A5, V2527–A5, V2527E–A5, and V2527M–A5 engines operated below 30,000 pounds of thrust, begin monitoring for N2 vibration trend if the HPT stage 2 air seal has reached 6,000 CSN.

(h) Monitor for N2 vibration trend every 200 CSN as follows:

(1) Look for an increasing trend that has a slope of 0.001 units per cycle or greater, *e.g.*, 0.3 units or greater increase over 300 cycles.

(2) If these trends are observed, remove the HPT stage 2 air seal within 100 cycles.

(3) If the front fillet radius of the HPT stage 2 air seal is cracked, remove the HPT stage 1 disk, the HPT stage 2 disk, and the HPT rear air seal.

(i) Use Section 3. Accomplishment Instructions of IAE Service Bulletin (SB) V2500–ENG–72–0500, dated July 25, 2005, to gather and monitor the steady state cruise N2 vibration data.

Monitoring N2 Vibration on All IAE V2525–D5 and V2528–D5 Engines

(j) For all IAE V2500–D5 series engines, begin monitoring for N2 vibration trend if the HPT stage 2 air seal reaches 6,000 CSN or more.

(k) Monitor for N2 vibration trend every 200 CSN as follows:

(1) Look for an increasing trend that has a slope of 0.0007 Normalized Units (NU) per cycle, *e.g.*, 0.3 NU or greater increase over 425 cycles.

(2) If these trends are observed, remove the HPT stage 2 air seal within 100 cycles.

(3) If the front fillet radius of the HPT stage 2 air seal is cracked, remove the HPT stage 1 disk and the HPT rear air seals.

(l) Use Section 3. Accomplishment Instructions of IAE SB V2500–ENG–72–0501, dated July 25, 2005, to gather and monitor the steady state cruise N2 vibration data.

Removal of HPT Stage 2 Air Seal and Other Parts, If Necessary

(m) For all engines, when the HPT stage 2 air seal reaches 2,000 CSN, remove the HPT stage 2 air seal at the next separation of the HPT stage 1 and 2 rotors.

(n) The Accomplishment Instructions of IAE SB V2500–72–0500, dated July 25, 2005, IAE SB V2500–ENG–72–0501, dated July 25, 2005 and IAE SB V2500–ENG–72–0502, dated March 15, 2006, provide information on removing and replacing the HPT stage 2 air seal.

Alternative Methods of Compliance

(o) 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

(p) None.

Issued in Burlington, Massachusetts, on May 26, 2006.

Diane Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–8562 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24641; Directorate Identifier 2006–CE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10, S10–V, and S10–VT Sailplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Stemme GmbH & Co. KG Models S10, S10–V, and S10–VT sailplanes. This proposed AD would require you to inspect the connection between the aileron push-rod and the connecting shaft to determine if a safety washer is installed. If there is no safety washer installed, this proposed AD would require you to modify the aileron control assembly. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are proposing this AD to prevent a loose bearing in the aileron control lever, which could result in separation of the aileron control system. Separation of the aileron control system could lead to loss of aileron control.

DATES: We must receive comments on this proposed AD by June 29, 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.
- Governmentwide 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.

For service information identified in this proposed AD, contact STEMME AG, Flugplatzstraβe F 2, Nr. 7, D–15344 Strausberg, Germany; telephone: + 49.33.41/36 12 – 0; facsimile: + 49.33.41/36 12 – 30; e-mail: *P.Ellwanger@stemme.de.*

FOR FURTHER INFORMATION CONTACT: Gregory A. Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–24641; Directorate Identifier 2006–CE–27–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA that an unsafe condition may exist on all Stemme GmbH & Co. KG (Stemme) Models S10, S10–V, and S10–VT sailplanes. The LBA reports that, during production, a loose bearing was found on the control lever of a powered Stemme S10 sailplane.

Additional inspections of other levers revealed that a bearing might become loose during operation on the powered sailplane.

The only joint that may disengage because of a loose bearing is the connection between the aileron control rod, part number (P/N) 10SQ–RMB, and the connecting shaft, P/N 10SQ–RMW. All other connections between the push-rods and levers on the affected sailplanes are held in a fork-design that does not allow the joints to disengage because of a loose bearing.

This condition, if not corrected, could result in a loose bearing in the aileron control lever, which could cause separation of the aileron control system. Separation of the aileron control system could lead to loss of aileron control.

Relevant Service Information

We have reviewed Stemme Service Bulletin Document Number: A31–10–069, Am.–Index 01.a, dated September 10, 2004.

The service information describes procedures for:

- Inspecting the bearing of the joint between the push-rod and the connecting shaft for correct position and tight fit;
- Inspecting all connections in the control system with circular caulked hinge or ball bearing to verify that the bearing is in the middle of the part where it is installed;
- Inspecting the joint between the aileron control rod, P/N 10SQ–RMB, and the connecting shaft, P/N 10SQ–RMW, for the installation of a safety washer, P/N DIN 440–06; and
- Modifying the aileron control system if a safety washer is not installed.

Foreign Airworthiness Authority Information

The LBA classified this service bulletin as mandatory and issued German AD Number D–2004–443, dated September 27, 2004, to ensure the continued airworthiness of these sailplanes in Germany. These Stemme Models S10, S10–V, and S10–VT sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we have examined the LBA's findings, evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design that are certificated for operation in the United States.

This proposed AD would require you to inspect the joint between the aileron control rod, P/N 10SQ–RMB, and the connecting shaft, P/N 10SQ–RMW, to

determine if a safety washer is installed. If a safety washer is not installed, this proposed AD would require you to modify this area by replacing the joint bolt (P/N LN9037–06042), installing a safety washer (P/N D440–06), and installing washer (P/N 10M–282).

Costs of Compliance

We estimate that this proposed AD would affect 105 sailplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour × $80 per hour = $80.	N/A	$80	105 × $80 = $8,400.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of sailplanes that may need this replacement:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $80 per hour = $160	$30	$160 + $30 = $190.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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 AD:

Stemme GmbH & Co. KG: Docket No. FAA–2006–24641; Directorate Identifier 2006–CE–27–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by June 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category:

Model	Serial No.
S10	10–03 through 10–56.
S10–V	14–001 through 14–030 (including all converted versions 14–003M through 14–056M).
S10–VT	11–001 through 11–089.

Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent a loose bearing in the aileron control lever, which could result in separation of the aileron control system. Separation of the aileron control system could lead to loss of aileron control.

Compliance

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

Actions	Compliance	Procedures
(1) Inspect the joint between the aileron control rod, part number (P/N) 10SQ–RMB (or FAA-approved equivalent part number), and the connecting shaft, P/N 10SQ–RMW (or FAA-approved equivalent part number), to determine if a safety washer, P/N DIN 440–06 (or FAA-approved equivalent part number), is installed.	Within the next 20 hours time-in-service after the effective date of this AD.	Follow Stemme Service Bulletin Document Number: A31–10–069, Am.-Index 01.a, dated September 10, 2004.
(2) If after the inspection required in paragraph (e)(1) of this AD, you can positively determine that a safety washer, P/N DIN 440–06 (or FAA-approved equivalent part number), is installed between the joint in the aileron control rod and the connecting shaft, no further action in required.	Not applicable	Not applicable.
(3) If after the inspection required in paragraph (e)(1) of this AD, you cannot positively determine that a safety washer is installed between the joint in the aileron control rod and the connecting shaft, do the following: (i) Install a safety washer, P/N DIN 440–06 (or FAA-approved equivalent part number); (ii) Replace the existing bolt with bolt, P/N LN9037–06042 (or FAA-approved equivalent part number), from the modification kit; and (iii) Install washer, P/N 10M–282 (or FAA-approved equivalent part number).	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow Stemme Service Bulletin Document Number: A31–10–069, Am.-Index 01.a, dated September 10, 2004.

Actions	Compliance	Procedures
(4) 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.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Gregory A. Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (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) German AD Number D–2004–443, dated September 27, 2004, and Stemme Service Bulletin Document Number: A31–10–069, Am.-Index 01.a, dated September 10, 2004, also address the subject of this AD. To get copies of the service information referenced in this AD, contact STEMME AG, Flugplatzstraβe F 2, Nr. 7, D–15344 Strausberg, Germany; telephone: + 49.33.41/36 12 – 0; facsimile: + 49.33.41/36 12 – 30. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2006–24641; Directorate Identifier 2006–CE–27–AD.

Issued in Kansas City, Missouri, on May 24, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8609 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24003; Airspace Docket No. 06–AAL–12]

Proposed Revision of Class E Airspace; Adak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Adak, AK. A Special Standard Instrument Approach Procedure (SIAP) is being amended and a special departure procedure is being developed for the Adak Airport. Adoption of this proposal would result in revision of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Adak, AK.

DATES: Comments must be received on or before July 17, 2006.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–24003/ Airspace Docket No. 06–AAL–12, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–24003/Airspace Docket No. 06–AAL–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at Adak, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Adak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended one Special SIAP and developed a Special departure procedure for the Adak Airport. The Special SIAP is the Instrument Landing System (ILS) or Localizer (LOC)/Distance Measuring Equipment (DME) Runway (RWY) 23, Amdt 2. The Special Departure Procedure is unnamed. This action would modify the Class E controlled extending upward from 700 ft. and 1,200 ft. above the surface near the Adak Airport. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Adak Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Adak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Adak, AK [Revised]

Adak Airport, AK
(Lat. 51°52′41″ N., long. 176°38′46″ W.)
Mount Moffett NDB
(Lat. 51°52′19″ N., long. 176°40′34″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Adak Airport and within 5.2 miles northwest and 4.2 miles southeast of the 060°(T)/053°(M) bearing of the Mount Moffett NDB extending from the 7-mile radius to 11.5 miles northeast of the Adak Airport; and that airspace extending upward from 1,200 feet above the surface within an 11-mile radius of the Adak Airport, and within 16 miles of the Adak Airport extending clockwise from the 033°(T)/)026°(M) bearing of the Mount Moffett NDB.

* * * * *

Issued in Anchorage, AK, on May 19, 2006.

Anthony M. Wylie,

Area Director, Flight Service Information Office (AK).

[FR Doc. 06–5027 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–135866–02]

RIN 1545–BA93

Section 1248 Attribution Principles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1248 of the Internal Revenue Code (Code) that provide guidance for determining the earnings and profits attributable to stock of controlled foreign corporations (or former controlled foreign corporations) that are (were) involved in certain nonrecognition transactions. The proposed regulations are necessary in order to supplement and clarify existing guidance in the regulations under section 1248. The proposed regulations affect persons subject to the regulations under section 1248, as well as persons to which regulations under other Code provisions, such as section 367(b), apply to the extent that those regulations incorporate the principles of the proposed regulations. In addition, the proposed regulations provide that with respect to the sale by a foreign partnership of the stock of a corporation, the partners in such foreign partnership shall be treated as selling or exchanging their proportionate share of the stock of such corporation for purposes of section 1248.

DATES: Written or electronic comments and requests for a public hearing must be received by August 31, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–135866–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–135866–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–135866–02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael Gilman at (202) 622–3850 (not a toll-free number); concerning the submissions of comments and request for hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov* (preferred) or at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1248(a) of the Code provides that certain gain recognized on the sale or exchange of stock of a foreign corporation by a United States person will be included in the gross income of that person as a dividend if: (1) The foreign corporation was a controlled foreign corporation at any time during the five-year period ending on the date of the sale or exchange; and (2) the United States person owned or is considered to have owned, within the meaning of section 958, 10 percent or more of the total combined voting power of the foreign corporation at any time during that five-year period (section 1248 shareholder). The amount of gain included in income as a dividend under section 1248(a) is limited to the earnings and profits attributable to the stock that is sold or exchanged which were accumulated in taxable years of the foreign corporation beginning after December 31, 1962, and during the period or periods the stock was held by the United States person while the foreign corporation was a controlled foreign corporation. A distribution treated as an exchange of stock is also included. See § 1.1248–1(b). In addition, section 1248 may also apply to certain distributions of the stock of a foreign corporation as provided under section 1248(f).

The section 1248 regulations provide for both a simple case method and a complex case method for computing a controlled foreign corporation's earnings and profits attributable to stock disposed of in a transaction to which section 1248 applies. See §§ 1.1248–2 and 1.1248–3. A taxpayer may use the simple case method under § 1.1248–2, which requires few adjustments in the earnings and profits calculation under section 1248, if it meets several criteria (e.g., the foreign corporation has only one class of stock and a constant number of shares outstanding on each day of each post-1962 taxable year which falls within the relevant holding period). If these criteria are not satisfied, a taxpayer must use the complex case method under § 1.1248–3. The complex case method provides additional rules to address situations involving multiple classes of stock, changes in a shareholder's ratable share of a corporation's earnings and profits, and other complicating factors.

Under § 1.1248–1(a), the period of ownership of stock of a United States person for purposes of attributing earnings and profits to that stock includes the period that the United States person actually held the stock or is considered to have held such stock pursuant to section 1223. Section 1223(1) provides that the period for which the taxpayer has held property received in an exchange, shall include the period for which the taxpayer held the property exchanged if the property received in the exchange has the same basis in whole or in part in the taxpayer's hands as the property exchanged. Section 1223(2) provides that the period for which the taxpayer is considered to have held property acquired shall include the period for which that property was held by any other person if the property acquired has the same basis in whole or in part in the taxpayer's hands as it would have in the hands of that other person.

Section 1248(c)(2) generally provides that, if the United States person selling, exchanging, or distributing stock in a foreign corporation has the required ownership interest in lower-tier foreign corporations, certain earnings and profits of those lower-tier foreign corporations will be attributed to stock of the foreign corporation that the U.S. person sells, exchanges, or distributes. For this provision to apply, the United States person must have owned or be considered to have owned, within the meaning of section 958, 10 percent or more of the total combined voting power of the lower-tier foreign corporation at any time during the five-year period preceding the sale.

Although section 1248(a) applies only to sales or exchanges of stock in a foreign corporation by a United States person, section 964(e) applies section 1248 principles to certain dispositions of stock in a foreign corporation by a controlled foreign corporation. Section 964(e)(1) provides that if a controlled foreign corporation that owns stock in a foreign corporation sells or exchanges such stock, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been included under section 1248(a) if the controlled foreign corporation were a United States person.

Section 367(b) addresses certain exchanges described in sections 351, 354, 355, 356, and 361 that do not involve a transfer of property described in section 367(a). One of the underlying policies of section 367(b) is the preservation of the potential application of section 1248. See H.R. Rep. No. 94–658, 94th Cong., 1st Sess., at 242 (November 12, 1975). Regulations under section 367(b) require certain exchanging shareholders to include in income as a deemed dividend the section 1248 amount attributable to stock of a foreign corporation as a result of an acquisition by a foreign corporation of the stock or assets of a foreign corporation in an exchange described in section 351 or a reorganization described in section 368(a)(1). For example, an exchanging shareholder must include the section 1248 amount attributable to the stock exchanged in income if the exchange results in its loss of status as a section 1248 shareholder. See § 1.367(b)–4(b)(1). For this purpose, the section 1248 amount generally is determined by reference to the amount that would be included in income as a dividend under section 1248 and the regulations under that section if the stock were sold by the exchanging shareholder. See § 1.367(b)–2(c).

Explanation of Provisions

A. Scope

The Treasury Department and the IRS believe that it is important that the section 1248 regulations make explicit that only the appropriate amount of earnings and profits are attributed to stock of a foreign corporation for purposes of section 1248 following relevant nonrecognition transactions. The proposed regulations provided in § 1.1248–8 supplement and clarify the existing rules under §§ 1.1248–2 and 1.1248–3. The results obtained under the proposed regulations are consistent with the results provided under section 1248 and the existing regulations under sections 367(b) and 1248. However, some taxpayers have raised concerns that those existing regulations may attribute an excessive amount of earnings and profits to stock after certain nonrecognition transactions. The Treasury Department and the IRS believe that this view is not a correct interpretation of the existing regulations. Nevertheless, in order to remove this uncertainty, the proposed regulations clarify how the principles of section 1248 should be applied so that a section 1248 shareholder or a foreign corporation to which section 964(e) applies includes the appropriate amount in income as a dividend upon the sale or exchange of stock of a current or former controlled foreign corporation.

The proposed regulations provide rules for accurately attributing earnings and profits to stock of a foreign corporation that is received by an exchanging shareholder, or received by an acquiring corporation, pursuant to one or more restructuring transactions in which the holding period of such stock is determined by application of section 1223(1) or 1223(2), and in which the exchanging shareholder is not required, as a result of the exchange, to include in income the section 1248 amount pursuant to § 1.367(b)–4(b). The proposed regulations also provide rules for attributing earnings and profits to stock of a foreign corporation that participates in a restructuring transaction that is held by a non-exchanging shareholder in such a restructuring transaction.

For purposes of the proposed regulations, a restructuring transaction is a transaction that qualifies as a nonrecognition transaction (within the meaning of section 7701(a)(45)) under section 351, 354, 356, or 361. The proposed regulations provide special rules for liquidations described in section 332 and consequently, these transactions are not included in the definition of a restructuring transaction. An exchanging shareholder is defined in the proposed regulations as a person that, in a restructuring transaction qualifying for nonrecognition under section 354, 356, or 361(a), exchanges stock of an acquired corporation for stock in either a foreign acquiring corporation or a foreign corporation that is in control of the acquiring corporation. In a restructuring transaction qualifying for nonrecognition under section 351, the proposed regulations define an exchanging shareholder as a person that exchanges property (including stock) for stock in a foreign acquiring corporation. An acquiring corporation is defined in the proposed regulations as a corporation that, in a restructuring transaction, acquires the stock or assets of an acquired corporation. For purposes of the proposed regulations, a foreign corporate shareholder is a foreign corporation that owns stock of another foreign corporation, and has a section 1248 shareholder that is also a section 1248 shareholder of the other foreign corporation. A non-exchanging shareholder is defined in the proposed regulations as a person that, at the time of the restructuring transaction, is either a section 1248 shareholder or a foreign corporate shareholder of the acquiring corporation and that is not an exchanging shareholder with respect to that corporation.

The proposed regulations also set forth rules for the attribution of earnings and profits for purposes of section 1248 with respect to stock of a foreign corporation that receives assets and liabilities of a foreign corporation in a complete liquidation described in section 332 if the foreign distributee is a foreign corporate shareholder of the liquidating corporation. In addition, the proposed regulations provide that with respect to the sale by a foreign partnership of the stock of certain foreign corporations, the partners in such foreign partnership shall be treated as selling or exchanging their proportionate share of the stock of such corporations for purposes of section 1248. Finally, the proposed regulations provide additional rules to ensure the proper attribution of earnings and profits to stock of controlled foreign corporations or foreign corporate shareholders as a result of certain nonrecognition transactions.

B. Attribution of Earnings and Profits to Stock in a Foreign Corporation as a Result of a Restructuring Transaction

1. Earnings and Profits Attributable to the Stock That an Exchanging Shareholder Receives

Some taxpayers have expressed concern that an excessive amount of earnings and profits could be attributed to stock that an exchanging shareholder receives in a restructuring transaction under the existing section 1248 regulations through the application of the holding period rules of section 1223(1). For example, in a transaction described in section 351, a domestic corporation (DC1) contributes property to a foreign acquiring corporation (FA) in exchange for 80 percent of the voting stock in FA. Prior to the transaction, FA was wholly owned by another domestic corporation (DC2). Assume in the transaction that DC1 does not recognize gain under section 367(a) and the regulations under that section or include income under section 367(b) and the regulations under that section. The basis of the stock in FA received by DC1 in the transaction will be determined pursuant to section 358, and in determining DC1's holding period in the FA stock, DC1 will include, under section 1223(1), the period DC1 held the property it contributed to FA. Some taxpayers incorrectly interpret the existing section 1248 regulations to require that, if DC1 subsequently sells or exchanges the FA stock received in the restructuring transaction, the earnings and profits accumulated by FA before

the transaction (i.e., before DC1's period of actual ownership of the FA stock), but within the section 1223(1) holding period, are attributed to the FA stock received and sold by DC1. This interpretation would result in the inappropriate attribution of such accumulated earnings and profits to the FA stock held by both DC2 and DC1 (if DC2 sells or exchanges its FA stock, the accumulated earnings and profits of FA that were attributed to the FA stock sold by DC1 would correctly be attributed under the existing section 1248 regulations to the FA stock held by DC2).

This interpretation of the existing section 1248 regulations is not correct and any such double attribution is not intended. However, to provide greater certainty, the proposed regulations clarify that excessive attribution of earnings and profits does not occur as a result of restructuring transactions. The proposed regulations provide that where an exchanging shareholder receives, in a restructuring transaction, stock in a foreign corporation, the holding period of which is determined under section 1223(1), and the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign corporation immediately after the restructuring transaction, the earnings and profits attributable to the stock the exchanging shareholder receives shall be determined on the basis of the type of property exchanged.

If the property exchanged is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder immediately before the transaction, the earnings and profits attributable to the foreign corporation stock received by the exchanging shareholder shall be determined in accordance with § 1.1248–2 or § 1.1248–3 (whichever is applicable) without regard to any portion of the section 1223(1) holding period in that stock that reflects periods prior to the restructuring transaction.

If, on the other hand, the property exchanged is stock in a foreign acquired corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder with respect to the foreign corporation immediately before the transaction, the proposed regulations provide that the earnings and profits attributable to the stock received by the exchanging shareholder shall equal the sum of the earnings and profits attributable to: (1) The stock of the foreign acquired corporation accumulated prior to the restructuring transaction; and (2) the stock of the foreign corporation that the exchanging shareholder receives in the restructuring transaction without regard to any portion of the section 1223(1) holding period in that stock that is prior to the restructuring transaction. The earnings and profits attributable to any portion of the section 1223(1) holding period in the foreign acquiring stock that is prior to the restructuring transaction remain attributable through the operation of the existing section 1248 regulations to the foreign acquiring stock held by non-exchanging shareholders. See proposed § 1.1248–8(b)(4) and (7), *Example 2.*

The proposed regulations provide an exception to this general rule, however, in certain triangular reorganizations involving a foreign issuing corporation that controls a domestic acquiring corporation. This exception applies, for example, where a United States person (DC) exchanges its stock in a foreign acquired corporation (FS) for stock of a foreign issuing corporation (FI) that controls the domestic acquiring corporation (DA) in a restructuring transaction (i.e., a triangular reorganization described in section 368(a)(1)(B)). To prevent the attribution of FS's pre-acquisition earnings and profits to stock owned by both DC and DA, the proposed regulations provide that the earnings and profits attributable to the FI stock received by DC shall consist solely of the earnings and profits attributable to the FI stock received (determined under § 1.1248–2 or § 1.1248–3, whichever is applicable, and proposed § 1.1248–8, if applicable) without regard to any portion of DC's section 1223(1) holding period in the FI stock received that includes periods of time prior to the restructuring transaction. See proposed § 1.1248–8(b)(7), *Example 5.* As discussed in paragraph (B)(2) of this preamble, the earnings and profits attributable to the FS stock for periods before the triangular reorganization generally are attributed to the FS stock owned by DA after the transaction.

2. Earnings and Profits Attributable to Stock in a Foreign Corporation That Certain Acquiring Corporations Receive

In addition to potential excessive attribution resulting from section 1223(1) holding periods discussed above, some taxpayers are concerned that an excessive amount of earnings and profits could be attributed to stock under the existing section 1248 regulations through the application of the section 1223(2) holding period rules to an acquiring corporation in a restructuring transaction. For example, in a transaction described in section 351, a foreign corporation (FP) that owns 100 percent of the stock of another foreign corporation (FS) and 100 percent of the stock of a domestic corporation (DC), transfers its FS stock to DC. Prior to the transaction, FP was not a section 1248 shareholder or a foreign corporate shareholder with respect to FS. DC's basis in the FS stock received by DC in the restructuring transaction will be determined pursuant to section 362, and in determining DC's holding period in the FS stock, DC will include, under section 1223(2), the period FP held the FS stock. Some taxpayers incorrectly interpret the existing section 1248 regulations to require that if DC subsequently sells or exchanges the FS stock received in the restructuring transaction, the earnings and profits accumulated by FS before the transaction (*i.e.*, before DC's period of actual ownership of the FS stock), but within the 1223(2) holding period, are attributed to the FS stock received and sold by DC. This interpretation would result in the attribution of earnings and profits to the FS stock held by DC even though such earnings and profits were accumulated by FS when it was not a controlled foreign corporation.

Such interpretation of the existing section 1248 regulations is not correct. However, to provide greater certainty, the proposed regulations clarify that excessive attribution of earnings and profits does not occur as a result of such transactions. The proposed regulations provide that where, in a restructuring transaction, an acquiring corporation receives stock in a foreign acquired corporation, the holding period of which is determined under section 1223(2), and the acquiring corporation is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign acquired corporation immediately after the restructuring transaction, the earnings and profits attributable to the foreign acquired corporation stock that the acquiring corporation receives shall be determined depending on whether the exchanging shareholder was a section 1248 shareholder or a foreign corporate shareholder with respect to the acquired corporation. If the exchanging shareholder is neither a section 1248 shareholder nor a foreign corporate shareholder with respect to the foreign acquired corporation immediately before the restructuring transaction, the proposed regulations provide that the earnings and profits attributable to the stock of the foreign acquired corporation shall be determined in accordance with § 1.1248–2 or § 1.1248–3 (whichever is

applicable) without regard to any portion of the section 1223(2) holding period in that stock that is prior to the restructuring transaction.

However, in a restructuring transaction where the acquiring corporation receives stock of a foreign acquired corporation with respect to which an exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder immediately before the transaction, the proposed regulations modify the approach discussed above in order to ensure the proper amount of earnings and profits is attributable to stock that the acquiring corporation receives. For example, assume a domestic corporation (DC1) has owned all the stock of a foreign corporation (FS) since its formation. In a transaction described in section 368(a)(1)(B), DC1 transfers all its FS stock to another domestic corporation (DC2), in exchange for DC2 voting stock. The section 1248 amount attributable to the FS stock is $100 but section 367(b) does not require DC1 to include it in income as a deemed dividend. See § 1.367(b)–4(a) (income inclusion rules only apply when there is a foreign acquiring corporation). If DC2 subsequently recognizes gain upon the sale or exchange of its stock in FS and if the earnings and profits attributable to that stock do not include the earnings and profits that accumulated before DC2's actual period of ownership, then those earnings and profits would escape inclusion in income as a dividend under section 1248.

To ensure the proper attribution of earnings and profits in these situations, the proposed regulations provide that where the stock exchanged in the restructuring transaction is stock of a foreign corporation, with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder immediately before the restructuring transaction, the earnings and profits attributable to the stock of the acquired corporation will be determined with regard to the portion of the section 1223(2) holding period in that stock that the exchanging shareholder took into account for purposes of attributing earnings and profits to that stock. See proposed § 1.1248–8(b)(7), *Example 3* and *Example 5.*

3. Earnings and Profits Attributable to Stock Held by a Non-Exchanging Shareholder

The proposed regulations generally provide that the earnings and profits attributable to stock of an acquiring corporation held by a non-exchanging shareholder immediately prior to a restructuring transaction continue to be attributed to such stock, and the earnings and profits of the acquired corporation accumulated prior to the restructuring transaction attributable to the stock of an acquired corporation are not attributed to the non-exchanging shareholder's stock in the acquiring corporation. See proposed § 1.1248–8(b)(7), *Example 2* and *Example 4.*

However, a special rule applies to a nonexchanging shareholder that owns stock in a foreign corporation that is both an acquiring corporation and an exchanging shareholder in the same restructuring transaction (i.e., an upstream merger). This rule is necessary because the acquiring corporation does not receive stock in exchange for its stock in the acquired corporation and, as a result, the general attribution rules in the proposed regulations would not preserve the earnings and profits attributable to such acquired corporation stock. For example, assume a domestic corporation (DC) owns all the stock of a controlled foreign corporation (CFC1), CFC1's only asset is 79 percent of the stock of another controlled foreign corporation (CFC2), and the other 21 percent of the CFC2 stock is owned by an unrelated party (X). Pursuant to a restructuring transaction described in section 368(a)(1)(C), CFC2 transfers all its assets to CFC1. In exchange, CFC1 assumes the liabilities of CFC2 and transfers to CFC2 voting stock representing 21 percent of the stock of CFC1. CFC2 distributes the voting stock to X and liquidates. In such a transaction, the earnings and profits attributable to the CFC1 stock held by DC (i.e., the nonexchanging shareholder) shall be the sum of the earnings and profits attributable to the stock of CFC1 (i.e., the foreign acquiring corporation) immediately before the restructuring transaction (including amounts attributed under section 1248(c)(2)) and the earnings and profits attributable to the stock of CFC1 accumulated after the restructuring transaction (including amounts attributed under section 1248(c)(2)). See proposed § 1.1248–8(b)(7), *Example 8.* Cf. proposed § 1.1248–8(c) (providing similar rules for liquidations described in section 332).

4. Reduction in Earnings and Profits Attributable to Stock to Prevent Multiple Inclusions with Respect to the Same Earnings and Profits

The proposed regulations require that, to the extent consistent with the principles of section 1248, adjustments to earnings and profits attributable to stock shall be made so that section 1223(1) and (2) and the proposed regulations are applied in a manner that results in earnings and profits being taken into account only once. Accordingly, the proposed regulations provide that upon the sale by a controlled foreign corporation of stock of another foreign corporation to which earnings and profits had been attributed under the rules of the proposed regulations, proportionate reductions shall be made to the earnings and profits attributed to the stock of the selling foreign corporate shareholder owned by a section 1248 shareholder. See proposed § 1.1248–8(b)(7), *Example 7.* For example, assume a section 1248 shareholder owns 80 percent of a controlled foreign corporation (CFC1) and an unrelated foreign person owns the remaining 20 percent of CFC1. The section 1248 shareholder receives the CFC1 stock in exchange for the stock of its wholly owned foreign subsidiary (CFC2) in a restructuring transaction described in section 368(a)(1)(B). Immediately before the transaction, $100 of earnings and profits is attributable to the CFC2 stock owned by the section 1248 shareholder. As previously discussed, the proposed regulations provide for the attribution of the $100 of CFC2's pre-acquisition earnings and profits to the CFC1 stock received by the section 1248 shareholder in the transaction and to the CFC2 stock received by CFC1 in the transaction. Assume that CFC2 accumulates another $100 of earnings and profits after the transaction, and in a subsequent year, CFC1 sells 30 percent of its stock in CFC2. If the requirements of section 964(e) are met, CFC1 will include in its gross income as a dividend $30 of CFC2's pre-acquisition earnings and profits and $30 of CFC2's post-acquisition earnings and profits. In order to prevent the attribution of a portion of these earnings and profits to the section 1248 shareholder's stock in CFC1, the proposed regulations provide that the earnings and profits attributable to the section 1248 shareholder's stock in CFC1 will be reduced by $54, $24 (80 percent of $30) of the earnings and profits accumulated by CFC2 after the restructuring transaction and $30 of the earnings and profits accumulated by CFC2 prior to the restructuring transaction.

5. Special Rule Regarding Section 381

The proposed regulations also provide a special rule in order to avoid possible double counting of earnings and profits as a result of the operation of section 381(a) in a restructuring transaction and the proposed rules. Under section 381, an acquiring corporation succeeds to and takes into account the earnings and

profits of the transferor or distributor corporation as of the close of the day of the transfer or distribution. Because the earnings and profits carry over from one corporation to another corporation at the close of the day, the same earnings and profits accumulated by the transferor or distributor corporation before the transaction could also be considered to have been accumulated by the transferee or distributee corporation after the transfer or distribution. For example, assume a domestic corporation (DC1) owns 100 percent of controlled foreign corporation (CFC1) that generates $100 of earnings and profits. CFC1 merges into another controlled foreign corporation (CFC2) in a reorganization described in section 368(a)(1)(A), and DC1 receives 25 percent of the CFC2 stock in exchange for its CFC1 stock in the merger. If, for purposes of section 1248, the $100 of earnings and profits of CFC1 is attributable to the CFC2 stock received by DC1, and is also taken into account by CFC2 pursuant to section 381, the same $100 of earnings and profits would be taken into account twice.

Except with respect to upstream mergers, the proposed regulations attribute the pre-acquisition earnings and profits of the transferor, where appropriate, to the stock received by the exchanging shareholder. Therefore, in order to prevent the double counting of earnings and profits, the proposed regulations provide that earnings and profits of another corporation to which the foreign corporation succeeded through the operation of section 381 will not be attributed to its stock. See proposed § 1.1248–8(b)(6) and (7), *Example 4*, and (c)(2) and (3).

6. Attribution of Earnings and Profits Following Certain Liquidations

Under the existing section 1248 regulations, issues have arisen as to whether the so-called hovering deficit rule under section 381(c)(2)(B) applies for purposes of attributing earnings and profits to stock of the foreign distributee corporation following certain liquidations of foreign corporations under section 332. The hovering deficit rule generally restricts access to certain deficits in earnings and profits following section 381 transactions. The Treasury Department and the IRS believe that the hovering deficit rule should not apply in these types of section 332 liquidations because section 1248(c)(2) generally provides for the attribution of a foreign subsidiary's earnings and profits (including any deficits) to the stock of its foreign parent. Thus, the foreign parent already had, in effect, access to the deficit of the foreign subsidiary pursuant to section 1248(c)(2) prior to the section 332 liquidation. In that case, application of the hovering deficit rule is not appropriate for section 1248 purposes.

Accordingly, the proposed regulations provide a special rule that clarifies application of the hovering deficit rule to a distributee foreign corporate shareholder in a section 332 liquidation. In this circumstance, the earnings and profits of the distributing foreign corporation to which the foreign distributee corporation succeeds through the operation of section 381 will not be taken into account by the foreign distributee for purposes of section 1248 and consequently, the hovering deficit rule will not apply. Instead, the proposed regulations provide a rule for attributing earnings and profits of the foreign liquidating corporation to the stock of the foreign distributee in such a liquidation that is consistent with the principles of section 1248(c)(2). In such a case, the earnings and profits attributable to the distributee stock shall be the sum of: (1) the earnings and profits attributable to the stock of the distributee immediately before the liquidation (including amounts attributed under section 1248(c)(2)); and (2) the earnings and profits attributable to the stock of the distributee accumulated after the liquidation (including amounts attributed under section 1248(c)(2)). See proposed § 1.1248–8(b)(7), *Example 3*, and (c).

C. Sale or Exchange of Stock by a Foreign Partnership

A domestic partnership is treated as a United States person for purposes of section 1248. See section 7701(a)(30)(B) and § 1.1248–1(a)(1). Accordingly, the sale by a domestic partnership of the stock of a foreign corporation is subject to section 1248(a). Section 1248 and the existing regulations do not, however, address specifically sales or exchanges of stock by foreign partnerships with United States persons as partners.

The legislative history of subchapter K of the Code provides that, for purposes of interpreting Code provisions outside of that subchapter, a partnership may be treated as either an entity separate from its partners or an aggregate of its partners, depending on which characterization is more appropriate to carry out the purpose of the particular Code section under consideration. H.R. Conf. Rep. No. 2543, 83rd Cong. 2d. Sess. 59 (1954). The purpose of section 1248 is to ensure that earnings and profits of controlled foreign corporations (or former controlled foreign corporations) are taxed as a dividend when certain United States persons recognize gain on the sale or exchange of stock in such corporations. In cases in which the United States person is a partner in a foreign partnership and recognizes income on the sale of stock of a foreign corporation by such foreign partnership, the purpose of section 1248 is fulfilled only if the partnership is treated as an aggregate for section 1248 purposes. Treatment of a foreign partnership as an entity, in contrast, could result in partners in the partnership inappropriately receiving capital gain treatment on the sale by the partnership of stock of the foreign corporation.

Thus, under proposed § 1.1248–1(a)(4), a foreign partnership is treated as an aggregate of its partners for purposes of section 1248(a). Under the proposed regulations, for example, the partners in a foreign partnership shall be treated as selling or exchanging their proportionate share of stock held by the foreign partnership. The proposed regulations also apply section 1248(a) in cases where the stock in a corporation that is sold or exchanged is held through tiers of foreign partnerships. This treatment of the foreign partnership as an aggregate, rather than as an entity, for purposes of applying section 1248 is necessary to reflect properly the attributable earnings and profits as a dividend.

D. Removal of Rule under § 1.367(b)–2(d)(3)(ii) Limiting Amounts Attributable to Holding Periods Determined under Section 1223

Section 1.367(b)–3 requires that an exchanging shareholder, as defined in § 1.367(b)–3(b)(1), include all the earnings and profits amount (as defined generally in § 1.367(b)–2(d)) in income as a deemed dividend (with respect to its stock in the foreign acquired corporation) when a domestic corporation acquires the assets of the foreign corporation in a section 332 liquidation or a section 368(a)(1) asset acquisition. Section 1.367(b)–2(d)(3)(ii) excludes, for purposes of determining the all earnings and profits amount, amounts attributable to holding periods determined under section 1223(2) during which there was no direct or indirect ownership by a United States person. Pursuant to § 1.367(b)–2(d)(3)(i)(A)(*1*), the all earnings and profits amount with respect to stock of a foreign corporation is determined according to the attribution principles of section 1248 and the regulations under that section. Since the rules of proposed § 1.1248–8(b)(2) conform to the rule set forth in § 1.367(b)–2(d)(3)(ii), the

proposed regulations remove paragraph (d)(3)(ii) from § 1.367(b)–2.

E. Revision of § 1.367(b)–4(d) Providing Rules for Subsequent Exchanges

Section 1.367(b)–4 applies to an acquisition by a foreign corporation of the stock or assets of a foreign corporation in an exchange described in section 351 or a reorganization described in section 368(a)(1). If the exchange meets certain criteria, an exchanging shareholder, as defined in § 1.367(b)–4(b)(1)(i)(A), must include in income as a deemed dividend the section 1248 amount attributable to the stock that it exchanges. If in a particular exchange, income is not required to be included pursuant to § 1.367(b)–4(b), § 1.367(b)–4(d) provides rules governing the attribution of earnings and profits to the stock received by the exchanging shareholder in the non-inclusion exchange for purposes of applying section 367(b) or section 1248 to subsequent sales or exchanges of that stock.

Because proposed § 1.1248–8 provides rules for the attribution of earnings and profits to stock with respect to the § 1.367(b)-4(b) non-inclusion exchanges, the proposed regulations remove the substantive rules and examples in § 1.367(b)–4(d) from the final regulations. In their place, taxpayers are referred to proposed § 1.1248–8.

F. Request for Comments

1. Attribution to Stock Shareholder Receives by Gift

The proposed regulations do not apply to determine the earnings and profits attributable to stock in a foreign corporation that a United States person receives as a gift. The Treasury Department and the IRS seek comments as to whether additional guidance is needed to address the attribution of earnings and profits with respect to stock of a foreign corporation that a United States person receives by gift.

2. Attribution of Earnings and Profits to Stock Shareholder Receives Under Section 355

The proposed regulations do not apply to determine the earnings and profits attributable to stock in a foreign corporation that a United States person receives in a distribution to which section 355 applies. The Treasury Department and the IRS seek comments as to whether additional guidance is needed to address the attribution of earnings and profits with respect to stock of a foreign corporation that a United States person receives in such distributions.

3. Effect on §§ 1.1248–4 and 1.1248–5

The proposed regulations do not address the interaction of proposed § 1.1248–8 with §§ 1.1248–4 and 1.1248–5. The Treasury Department and the IRS seek comments as to whether additional guidance on how the proposed regulations should affect those sections of the existing regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of 5 U.S.C. chapter 5 does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act, 5 U.S.C. chapter 6, does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Michael I. Gilman of the Office of Associate Chief Counsel (International) and Mark R. Pollard, formerly of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Sections 1.367(b)–2(c)(1) and (2) and (d)(3), and 1.367(b)–4(d) also issued under 26 U.S.C. 367(b)(1) and (2). * * *

Sections 1.1248–1(a)(1), (4), and (5), and 1.1248–8 also issued under 26 U.S.C. 1248(a) and (c)(1) and (2). * * *

§ 1.367(b)–2 [Amended]

Par. 2. Section 1.367(b)–2 is amended by:

1. Amending the last sentence of paragraph (c)(1)(ii) by removing the language ‘‘, as modified by § 1.367(b)–4(d) (as applicable)’’ and adding the language ‘‘. See § 1.1248–8.’’ in its place.

2. Removing *Example 4* in paragraph (c)(2).

3. Amending the last sentence of paragraph (d)(3)(i)(B)(*2*) by removing the language ‘‘, as modified by paragraph (d)(3)(ii) of this section and § 1.367(b)–4(d) (as applicable)’’ and adding the language ‘‘. See § 1.1248–8.’’ in its place.

4. Removing paragraph (d)(3)(ii).

5. Redesignating paragraph (d)(3)(iii) as paragraph (d)(3)(ii).

Par. 3. Section 1.367(b)–4(d) is revised to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

* * * * *

(d) *Rules for subsequent sales or exchanges.* If an exchanging shareholder (as defined in § 1.1248–8(b)(1)(iv)) is not required to include in income as a deemed dividend the section 1248 amount under paragraph (b) of this section in a section 367(b) exchange described in paragraph (a) of this section (non-inclusion exchange), then, for purposes of applying section 367(b) or section 1248 to subsequent sales or exchanges, and subject to the limitation of § 1.367(b)–2(d)(3)(ii) (in the case of a transaction described in § 1.367(b)–3), the determination of the earnings and profits attributable to the stock an exchanging shareholder receives in the non-inclusion exchange shall be determined pursuant to the rules of section 1248 and the regulations under that section.

Par. 4. Section 1.1248–1 is amended by:

1. Amending the first sentence of paragraph (a)(1) by removing the language ''(or was considered as held by reason of the application of section 1223)'' and adding the language ''(or was considered as held by reason of the application of section 1223, taking into account § 1.1248–8)'' in its place.

2. Adding a new third sentence in paragraph (a)(1).

3. Redesignating paragraph (a)(4) as paragraph (a)(5).

4. Adding new paragraph (a)(4).

5. Adding *Example 4* in newly designated paragraph (a)(5).

The additions read as follows:

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

(a) *In general.* (1) * * * See § 1.1248–8 for additional rules regarding the attribution of earnings and profits to the stock of a foreign corporation following certain nonrecognition transactions. * * *

* * * * *

(4) For purposes of paragraph (a)(1) of this section, stock of a corporation that is owned by a foreign partnership shall be considered as owned proportionately by its partners. Consequently, if a foreign partnership sells or exchanges stock of a corporation, the partners in such foreign partnership shall be treated as selling or exchanging their proportionate share of the stock of such corporation. Stock considered to be owned by a partner by reason of the application of the first sentence of this paragraph (a)(4) shall, for purposes of applying such sentence, be treated as actually owned by such partner.

(5) * * *

Example 4. (i) *Facts.* X, a domestic corporation, and Y, a foreign corporation that is not a controlled foreign corporation, are partners in foreign partnership Z. X has a 60% interest in Z, and Y has a 40% interest in Z. All parties are calendar year taxpayers. On January 1, year 1, Z forms foreign corporation H, a controlled foreign corporation that conducts a business in Country C. On December 31, year 2, Z sells all of the H stock for $600 when Z's adjusted basis in the stock is $100. Therefore, Z recognizes a gain of $500 on the sale, of which $300 is allocable to X as a 60% partner. At the time of the sale, H had $300 of earnings and profits, $180 of which (i.e., 60% of $300) is attributable to X's 60% share of the H stock.

(ii) *Analysis.* Pursuant to section 1248(a) and paragraphs (a)(1) and (4) of this section, X and Y are treated as selling 60% and 40%, respectively, of the H stock. X includes in its gross income as a dividend $180 of the gain recognized on the sale. Because Y is a foreign corporation that is not a CFC, neither section 1248 nor section 964 applies to the sale of Y's 40% share of the H stock.

(iii) *Alternative facts.* If, instead, X owned its 60% interest in Z through another foreign partnership, the result would be the same.

* * * * *

§§ 1.1248–2, 1.1248–3, 1.1248–7 [Amended]

Par. 5. In §§ 1.1248–2, 1.1248–3, and 1.1248–7, for each entry in the ''Section'' column, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place.

Section	Remove	Add
§ 1.1248–2(a)(1)	(or was considered to be held by reason of the application of section 1223).	(or was considered to be held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(a)(2)(ii)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(a)(3)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(c)(4)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(e)(1), introductory text	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(e)(2)	(or is considered as held by reason of the application of section 1223).	(or is considered as held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–2(e)(3)(i)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(a)(1)	(or was considered to be held by reason of the application of section 1223).	(or was considered to be held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(c)(1)(ii)	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(e)(2)(i)	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223).	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(e)(3)	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223).	(during the period such share, or block, was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(e)(5)	(or another person who actually owned the stock during such taxable year and whose holding of the stock is attributed by reason of the application of section 1223 to the person who sold or exchanged the stock).	(or another person who actually owned the stock during such taxable year and whose holding of the stock is attributed by reason of the application of section 1223, taking into account § 1.1248–8, to the person who sold or exchanged the stock).

Section	Remove	Add
§ 1.1248–3(e)(6), in both locations	by reason of the application of section 1223 to such person.	by reason of the application of section 1223 to such person, taking into account § 1.1248–8.
§ 1.1248–3(f)(2)(ii)	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(f)(5)(ii)	(during the period such stock was considered to be held by such person by reason of the application of section 1223).	(during the period such stock was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–3(f)(5)(iv)	(during the period such share (or block) was considered to be held by such person by reason of the application of section 1223).	(during the period such share (or block) was considered to be held by such person by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–7(b)(3)(i)	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–7(b)(3)(iii)	(or is considered to have held by reason of the application of section 1223).	(or is considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).
§ 1.1248–7(b)(4)	(or was considered to have held by reason of the application of section 1223).	(or was considered to have held by reason of the application of section 1223, taking into account § 1.1248–8).

Par. 6. Section 1.1248–8 is added to read as follows:

§ 1.1248–8 Earnings and profits attributable to stock following certain nonrecognition transactions.

(a) *Scope*. This section sets forth rules for the attribution of earnings and profits for purposes of section 1248 and § 1.1248–1(a)(1) and to supplement the rules in §§ 1.1248–2 and 1.1248–3 with respect to—

(1) *Stock that an exchanging shareholder receives, or an acquiring corporation receives, in restructuring transactions*. Except as otherwise provided in this paragraph (a), stock of a foreign corporation that an exchanging shareholder receives, or an acquiring corporation receives, pursuant to a restructuring transaction (as defined in paragraph (b)(1)(vii) of this section) in which the holding period of such stock is determined by application of section 1223(1) or 1223(2), whichever is appropriate. This section shall not apply to an exchange otherwise described in this paragraph (a)(1) if, as a result of the exchange, the exchanging shareholder is required to include in income as a deemed dividend the section 1248 amount pursuant to § 1.367(b)–4(b). See paragraphs (b)(2) and (3) of this section;

(2) *Nonexchanging shareholders*. Stock of a foreign corporation that participates in a restructuring transaction that is held by a non-exchanging shareholder (as defined in paragraph (b)(1)(vi) of this section) in the restructuring transaction. See paragraph (b)(4) of this section;

(3) *Application of section 381*. Stock of a foreign corporation that receives assets in a transfer to which section 361(a) applies in connection with a reorganization described in section 368(a)(1)(A), (C), (D), (F), or (G), or in a distribution to which section 332 applies, and to which section 381(c)(2)(A) and § 1.381(c)(2)–1(a) apply. See paragraph (b)(6) of this section; or

(4) *Section 332 liquidations*. Stock of a foreign corporation that receives the assets and liabilities of a foreign corporation in a complete liquidation described in section 332 if the foreign distributee is a foreign corporate shareholder (as defined in paragraph (b)(1)(v) of this section) of the liquidating corporation. See paragraph (c) of this section.

(b) *Earnings and profits attributable to stock following a restructuring transaction*—(1) *Definitions*. The following definitions apply for purposes of this section—

(i) *Acquired corporation* is a corporation whose stock or assets are acquired in exchange for stock in (or stock in and other property of) either the acquiring corporation or a foreign corporation that controls, within the meaning of section 368(c), the acquiring corporation in a restructuring transaction.

(ii) *Acquiring corporation* is a corporation that acquires the stock or assets of an acquired corporation in a restructuring transaction.

(iii) *Controlled foreign corporation* is a corporation described in section 957.

(iv) *Exchanging shareholder* is a person that exchanges—

(A) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 354, 356, or 361(a), stock in an acquired corporation for stock in either a foreign acquiring corporation or a foreign corporation that is in control, within the meaning of section 368(c), of an acquiring corporation (whether domestic or foreign); or

(B) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 351, property (including stock) for stock in a foreign acquiring corporation.

(v) *Foreign corporate shareholder* is a foreign corporation that—

(A) Owns stock of another foreign corporation; and

(B) Has a section 1248 shareholder that is also a section 1248 shareholder of the other foreign corporation.

(vi) *Non-exchanging shareholder* is, at the time the acquiring corporation participates in a restructuring transaction, either a section 1248 shareholder or a foreign corporate shareholder of the acquiring corporation that is not an exchanging shareholder with respect to that corporation.

(vii) *Restructuring transaction* is a transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 351, 354, 356, or 361.

(viii) *Section 1248 shareholder* is any United States person that satisfies the ownership requirements of section 1248(a)(2) and § 1.1248–1(a)(2) with respect to a foreign corporation.

(2) *Earnings and profits attributable to stock that an exchanging shareholder receives in a restructuring transaction*. Where, in a restructuring transaction, an

exchanging shareholder receives stock in a foreign corporation, the holding period of which is determined under section 1223(1), and the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign corporation immediately after the restructuring transaction, the earnings and profits attributable to the stock the exchanging shareholder receives shall be determined pursuant to the rules in paragraphs (b)(2)(i), (ii) and (iii) of this section.

(i) *Exchanging shareholder exchanges property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder*. Where the exchanging shareholder exchanges in a restructuring transaction property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder immediately before such transaction, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction shall be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(1) holding period in that stock that is prior to the restructuring transaction. See paragraph (b)(7), Example 1 of this section.

(ii) *Exchanging shareholder exchanges stock of a foreign corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder*. Except as provided in paragraph (b)(2)(iii) of this section, where the exchanging shareholder exchanges in a restructuring transaction stock of a foreign acquired corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder immediately before such restructuring transaction, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction shall be the sum of the earnings and profits attributable to—

(A) The stock of the foreign acquired corporation exchanged (determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, and this section, if applicable) that was accumulated before the restructuring transaction; and

(B) The stock of the foreign corporation that the exchanging shareholder receives in the restructuring transaction (determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, and this section, if applicable), without regard to any portion of the section 1223(1) holding period in that stock that is prior to the restructuring transaction. See paragraph (b)(7), *Example 2*, *Example 4*, and *Example 6* of this section.

(iii) *Exchanging shareholder receives stock in a foreign corporation that controls a domestic acquiring corporation*. Where the acquiring corporation is a domestic corporation and the exchanging shareholder receives in a restructuring transaction stock in a foreign corporation that controls (within the meaning of section 368(c)) the domestic acquiring corporation, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction shall consist solely of the amount of earnings and profits attributable to such stock (determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, and this section, if applicable) without regard to any portion of the section 1223(1) holding period in that stock that is prior to the restructuring transaction. See paragraph (b)(7), *Example 5* of this section.

(3) *Earnings and profits attributable to stock in a foreign corporation certain acquiring corporations receive in a restructuring transaction*. Where an acquiring corporation receives, in a restructuring transaction, stock in a foreign acquired corporation, the holding period of which is determined under section 1223(2), and the acquiring corporation is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign acquired corporation immediately after the restructuring transaction, the earnings and profits attributable to the foreign acquired corporation stock that the acquiring corporation receives shall be determined pursuant to the rules in paragraphs (b)(3)(i) and (ii) of this section.

(i) *Stock of a foreign corporation with respect to which the exchanging shareholder is neither a section 1248 shareholder nor a foreign corporate shareholder*. The earnings and profits attributable to the stock of the foreign acquired corporation that the acquiring corporation receives in a restructuring transaction where the exchanging shareholder is neither a section 1248 shareholder nor a foreign corporate shareholder with respect to that foreign acquired corporation immediately before the restructuring transaction shall be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(2) holding period in that stock that is prior to the restructuring transaction.

(ii) *Stock of a foreign corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder*. The earnings and profits attributable to the stock of a foreign acquired corporation that the acquiring corporation receives in the restructuring transaction where the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder with respect to that foreign corporation immediately before the restructuring transaction shall be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, with regard to the portion of the section 1223(2) holding period of the stock that the exchanging shareholder took into account for purposes of attributing earnings and profits to that stock (determined in accordance with this section). See paragraph (b)(7), *Example 3*, *Example 5*, and *Example 7* of this section.

(4) *Earnings and profits attributable to stock held by a non-exchanging shareholder in a foreign acquiring corporation*. (i) Except to the extent paragraph (b)(4)(ii) of this section applies, see § 1.1248–2 or § 1.1248–3 (whichever is applicable) and, as applicable, paragraph (b)(6) of this section for the determination of the earnings and profits attributable to the stock held by a non-exchanging shareholder in a foreign acquiring corporation. See also paragraph (b)(7), *Example 2* and *Example 4* of this section.

(ii) Where a non-exchanging shareholder holds stock in a foreign corporation that is also an exchanging shareholder and a foreign acquiring corporation in the same restructuring transaction—

(A) The earnings and profits attributable to such stock shall be the sum of the earnings and profits attributable to the stock of such foreign corporation immediately before the restructuring transaction (including amounts attributed under section 1248(c)(2)) and the earnings and profits attributable to the stock of the foreign acquiring corporation accumulated after the restructuring transaction (including amounts attributed under section 1248(c)(2)); and

(B) Paragraph (b)(6) of this section applies. See paragraph (b)(7), *Example 8* of this section.

(iii) Where the acquiring corporation is a foreign corporate shareholder with respect to stock of a foreign acquired corporation, paragraph (b)(3) of this section shall not apply for purposes of

determining the earnings and profits attributable to stock in the foreign acquiring corporation owned by a non-exchanging shareholder thereof (see section 1248(c)(2)). See paragraph (b)(7), *Example 6* of this section.

(5) *Reduction in earnings and profits attributable to stock to prevent multiple inclusions with respect to the same earnings and profits.* To the extent consistent with the principles of section 1248, adjustments to earnings and profits attributable to stock shall be made such that section 1223(1) and (2) and this section are applied in a manner that results in earnings and profits being taken into account only once. Thus, for example, when a controlled foreign corporation sells or exchanges all or part of the stock of another foreign corporation to which earnings and profits are attributable pursuant to this paragraph (b) or paragraph (c) of this section, proportionate reductions shall be made to the earnings and profits attributed to the stock of the selling foreign corporate shareholder owned by a section 1248 shareholder. See paragraph (b)(7), *Example 7* of this section.

(6) *Special rule regarding section 381.* Solely for purposes of determining the earnings and profits (or deficit in earnings and profits) attributable to stock pursuant to this paragraph (b), the earnings and profits of a corporation shall not include earnings and profits that are treated as received or incurred under section 381(c)(2)(A) and § 1.381(c)(2)–1(a). See paragraph (b)(7), *Example 4* of this section.

(7) *Examples.* The application of this paragraph (b) is illustrated by the following examples. Unless otherwise indicated, in the following examples assume that—

(i) There is no immediate gain recognition pursuant to section 367(a)(1) and the regulations under that section (either through operation of the rules or because the appropriate parties have entered into a gain recognition agreement under §§ 1.367(a)–3(b) and 1.367(a)–(8);

(ii) There is no income inclusion required pursuant to section 367(b) and the regulations under that section, and all reporting requirements in those regulations are complied with;

(iii) References to earnings and profits are to earnings and profits that would be includible in income as a dividend under section 1248 and the regulations under that section if stock to which the earnings and profits are attributable were sold or exchanged by its shareholder;

(iv) Each corporation has only a single class of stock outstanding and uses the calendar year as its taxable year; and

(v) Each transaction is unrelated to all other transactions.

Example 1. A section 351 exchange of property other than stock in a foreign corporation with respect to which the exchanging shareholder is either a section 1248 shareholder or a foreign corporate shareholder. (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC, a foreign corporation, since CFC's formation on January 1, year 3. On December 31, year 5, DC2, a domestic corporation unrelated to DC1, contributes property it has held since January 1, year 1, to CFC in exchange for voting stock of CFC in a restructuring transaction that is an exchange under section 351. The property that DC2 contributes is not stock in a foreign corporation with respect to which DC2 was either a section 1248 shareholder or a foreign corporate shareholder. DC2 receives 80% of the voting stock of CFC in the restructuring transaction and its holding period in that CFC stock, determined pursuant to section 1223(1), began on January 1, year 1. CFC has $100 of accumulated earnings and profits on December 31, year 5. On December 31, year 7, when the accumulated earnings and profits of CFC are $200, DC2, a section 1248 shareholder with respect to CFC, sells its CFC stock.

(ii) *Analysis.* Under paragraph (b)(2)(i) of this section, the earnings and profits attributable to the CFC stock sold by DC2 are $80. This amount consists of none of the $100 of earnings and profits accumulated by CFC before the restructuring transaction, and 80% of the $100 of earnings and profits of CFC accumulated after the restructuring transaction.

Example 2. A section 351 exchange of controlled foreign corporation stock by a United States person for stock in a controlled foreign corporation in a restructuring transaction. (i) *Facts.* The facts are the same as in *Example 1* except as follows. The property that DC2 contributes is 100% of the stock in CFC2, a foreign corporation. DC2 has owned all the stock of CFC2 since CFC2's formation on January 1, year 2, and CFC2 has $200 of earnings and profits as of December 31, year 5. CFC2 does not accumulate any additional earnings and profits from December 31, year 5, to December 31, year 7. On December 31, year 7, when the accumulated earnings and profits of CFC are $200, DC2, a section 1248 shareholder with respect to CFC, sells its CFC stock. Also on that date, DC1 sells its CFC stock.

(ii) *Analysis.* (A) *DC2 sale.* Pursuant to paragraph (b)(2)(ii) of this section, the earnings and profits attributable to the CFC stock sold by DC2 are $280. This amount consists of all of the $200 of earnings and profits of CFC2 accumulated before the restructuring transaction (see also section 1248(c)(2)), none of the $100 of earnings and profits accumulated by CFC before the restructuring transaction, and 80% of the $100 of earnings and profits of CFC accumulated after the restructuring transaction.

(B) *DC1 sale.* Pursuant to paragraph (b)(4) of this section, the earnings and profits attributable to the CFC stock sold by DC1, a non-exchanging shareholder in the restructuring transaction, are $120. This amount consists of all of the $100 of earnings and profits of CFC accumulated before the restructuring transaction, none of the $200 of earnings and profits of CFC2 accumulated before the restructuring transaction, and 20% of the $100 of earnings and profits of CFC accumulated after the restructuring transaction.

Example 3. A section 351 exchange of controlled foreign corporation stock by a United States person for stock in a domestic corporation in a restructuring transaction. (i) *Facts.* DC1, a domestic corporation, has owned all of the stock of CFC, a foreign corporation, since CFC's formation on January 1, year 1. DC1 has also owned all the stock of DC2, a domestic corporation, since DC2's formation on January 1, year 1. On December 31, year 2, DC1 contributes the stock of CFC to DC2 in exchange for stock in DC2 in a restructuring transaction that is an exchange described in section 351. On December 31, year 2, CFC has $100 of accumulated earnings and profits. DC2 has a basis in the CFC stock determined under section 362, and is considered to have held the CFC stock since January 1, year 1, pursuant to section 1223(2). On December 31, year 4, when the accumulated earnings and profits of CFC are still $100, DC2 sells its CFC stock.

(ii) *Analysis.* Under paragraph (b)(3)(ii) of this section, $100 of accumulated earnings and profits of CFC is attributable to the stock of CFC sold by DC2, even though DC2 did not hold the stock of CFC during the time CFC accumulated the earnings and profits.

Example 4. Acquisition of a controlled foreign corporation by a controlled foreign corporation in a reorganization described in section 368(a)(1)(C) (or section 368(a)(1)(B)). (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. DC2, a domestic corporation unrelated to DC1, has owned all of the stock of CFC2, a foreign corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that is a reorganization described in section 368(a)(1)(C), CFC1 transfers all of its assets to CFC2 in exchange for 25% of the voting stock of CFC2. CFC1 distributes the CFC2 stock to DC1 and the CFC1 stock is cancelled. DC1's holding period in the CFC2 stock, determined under section 1223(1), begins on January 1, year 1. On December 31, year 3, CFC1 has $100 of accumulated earnings and profits and CFC2 has $200 of accumulated earnings and profits. CFC2 succeeds to the $100 of CFC1 accumulated earnings and profits in the reorganization under section 381. From January 1, year 4 to December 31, year 5, CFC2 incurred a deficit in earnings and profits in the amount of ($200). On December 31, year 5, both DC1 and DC2 sell their stock in CFC2.

(ii) *Analysis.* (A) *DC1.* Pursuant to paragraph (b)(2)(ii) of this section, $50 of earnings and profits is attributable to the CFC2 stock sold by DC1. This amount

consists of $100 of CFC1's earnings and profits accumulated before the restructuring transaction, reduced by 25% of CFC2's ($200) post-restructuring transaction deficit in earnings and profits. None of the $200 of CFC2's earnings and profits accumulated by CFC2 prior to the reorganization is attributed to the CFC2 stock sold by DC1. Also, none of the earnings and profits CFC2 succeeded to under section 381 is attributed to the CFC2 stock sold by DC1, pursuant to paragraph (b)(6) of this section.

(B) *DC2.* Pursuant to paragraph (b)(4) of this section, there is $50 of accumulated earnings and profits attributable to the CFC2 stock sold by DC2. This amount consists of all of the $200 of CFC2's earnings and profits accumulated by CFC2 prior to the reorganization, reduced by 75% of CFC2's deficit in earnings and profits in the amount of ($200) incurred after the restructuring transaction. None of the $100 of CFC1 accumulated earnings and profits succeeded to under section 381 is attributable to the CFC2 stock sold by DC2, pursuant to paragraph (b)(6) of this section.

(C) *Section 368(a)(1)(B) reorganization.* If, instead of DC1 acquiring its 25% interest in CFC2 pursuant to a reorganization described in section 368(a)(1)(C), DC1 had transferred the stock of CFC1 to CFC2 in exchange for 25% of the voting stock of CFC2 in a reorganization described in section 368(a)(1)(B), the results would be the same as described in paragraphs (ii) (A) and (B) of this *Example 4.*

Example 5. Acquisition of the stock of a foreign corporation that controls a domestic acquiring corporation in a triangular reorganization described in section 368(a)(1)(C). (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 has owned all the stock of CFC2, a foreign corporation, since its formation on January 1, year 1. FC, a foreign corporation that is not a controlled foreign corporation, has owned all of the stock of DC2, a domestic corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that was a triangular reorganization described in section 368(a)(1)(C), CFC1 transfers all of its assets, including the CFC2 stock, to DC2 in exchange for 60% of the voting stock of FC. CFC1 transferred the voting stock of FC to DC1 and the CFC1 stock was cancelled. Pursuant to section 1223(1), DC1 is considered to have held the stock of FC since January 1, year 1. Under section 1223(2), DC2 is considered to have held the stock of CFC2 since January 1, year 1. On December 31, year 3, CFC1 has $100 of earnings and profits, CFC2 has $300 of earnings and profits, and FC has $200 of earnings and profits. DC1 includes the $100 all earnings and profits amount attributable to its CFC1 stock in income as a deemed dividend under § 1.367(b)–3 upon the exchange of CFC1 stock for FC stock. Pursuant to the lower tier earning exclusion of § 1.367(b)–2(d)(3)(ii), that amount does not include the $300 of earnings and profits of CFC2. From January 1, year 4, until December 31, year 5, FC (now a controlled foreign corporation) accumulates an additional $50 of earnings and profits. From January 1, year 4 until December 31, year 5, CFC2 accumulates an additional $100 of earnings and profits. On December 31, year 5, DC1 sells its stock in FC and DC2 sells its stock in CFC2.

(ii) *Analysis.* (A) *DC1.* Pursuant to paragraph (b)(2)(iii) of this section, there is $30 of earnings and profits attributable to the stock of FC sold by DC1. This amount consists of 60% of the $50 of earnings and profits accumulated by FC after the restructuring transaction, and none of the earnings and profits accumulated by CFC1, CFC2, or FC before the restructuring transaction.

(B) *DC2.* Pursuant to paragraph (b)(3)(ii) of this section, there is $400 of earnings and profits attributable to the stock of CFC2 sold by DC2. This amount consists of all of the earnings and profits accumulated by CFC2 during DC2's section 1223(2) holding period.

Example 6. Acquisition of the stock of a foreign corporation that controls a foreign acquiring corporation in a reorganization described in section 368(a)(1)(C). (i) *Facts.* DC1, a domestic corporation, has owned all the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 has owned all the stock of CFC2, a foreign corporation, since its formation on January 1, year 1. FC, a foreign corporation that is not a controlled foreign corporation, has owned all of the stock of FC2, a foreign corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that was a triangular reorganization described in section 368(a)(1)(C), CFC1 transfers all of its assets, including the CFC2 stock, to FC2 in exchange for 60% of the voting stock of FC. CFC1 transferred the voting stock of FC to DC1 and the CFC1 stock was cancelled. Pursuant to section 1223(1), DC1 is considered to have held the stock of FC since January 1, year 1. Under section 1223(2), FC2 is considered to have held the stock of CFC2 since January 1, year 1. On December 31, year 3, CFC1 has $100 of earnings and profits, CFC2 has $300 of earnings and profits, FC has $200 of earnings and profits, and FC2 has no earnings and profits. From January 1, year 4, until December 31, year 5, FC (now a controlled foreign corporation) accumulates an additional $50 of earnings and profits. From January 1, year 4 until December 31, year 5, CFC2 accumulates an additional $100 of earnings and profits. FC2, a controlled foreign corporation after the restructuring transaction, accumulates $100 of earnings and profits from January 1, year 4, until December 31, year 5. On December 31, year 5, DC1 sells its stock in FC.

(ii) *Analysis.* Pursuant to paragraphs (b)(2)(ii) and (b)(4)(iii) of this section, there is $550 of earnings and profits attributable to the stock of FC sold by DC1. This amount consists of all $400 of the CFC1 and CFC2 earnings and profits accumulated before the restructuring transaction (see also section 1248(c)(2)), and 60% of the $250 of the earnings and profits accumulated by FC, FC2, and CFC2 after the restructuring transaction.

Example 7. Acquisition of controlled foreign corporation stock by a controlled foreign corporation in a reorganization described in section 368(a)(1)(B), followed by a sale of the acquired stock by the acquiring controlled foreign corporation. (i) *Facts.* DC1, a domestic corporation, has owned all of the outstanding stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 has owned all of the outstanding stock of CFC3, a foreign corporation, since its formation on January 1, year 1. DC2, a domestic corporation unrelated to DC1, has owned all of the outstanding stock of CFC2, a foreign corporation, since its formation on January 1, year 2. On December 31, year 3, pursuant to a restructuring transaction that is a reorganization described in section 368(a)(1)(B), CFC1 transfers all of the stock of CFC3 to CFC2 in exchange for 40% of CFC2's stock. On December 31, year 3, CFC2 and CFC3 have, respectively, $40 and $20 of earnings and profits. On December 31, year 5, when the accumulated earnings and profits of CFC3 are $50 ($20 of earnings and profits as of December 31, year 3, plus $30 of earnings and profits generated from January 1, year 4, through December 31, year 5), CFC2 sells the stock of CFC3 in a transaction to which section 964(e) applies.

(ii) *Analysis.* (A) *CFC2.* Pursuant to paragraph (b)(3)(ii) of this section, there is $50 of earnings and profits attributable to the CFC3 stock sold by CFC2. This amount consists of the accumulated earnings and profits attributable to CFC2's entire section 1223(2) holding period in the CFC3 stock.

(B) *CFC1, DC2, and DC1.* Under paragraph (b)(5) of this section, the earnings and profits attributable to the CFC2 stock held by CFC1 and DC2, and the earnings and profits attributable to the CFC1 stock held by DC1, will be reduced (regardless of whether CFC2 recognizes gain on its sale of CFC3 stock).

(*1*) *CFC1.* The earnings and profits attributable to the CFC2 stock held by CFC1 will be reduced by $32, or the amount of earnings and profits as of December 31, year 5, that would have been attributable to the CFC2 stock held by CFC1 pursuant to paragraph (b)(2)(ii) of this section. This amount consists of all of the $20 of earnings and profits accumulated by CFC3 before the restructuring transaction and 40% of the $30 of earnings and profits accumulated by CFC3 after the restructuring transaction ($.40 \times \$30 = \$12$).

(*2*) *DC1.* The earnings and profits attributable to the CFC1 stock held by DC1 will also be reduced by $32, or the amount of earnings and profits that would have been attributable to the CFC1 stock held by DC1 as of December 31, year 5.

(*3*) *DC2.* The earnings and profits attributable to the CFC2 stock held by DC2 will be reduced by $18, or the amount of earnings and profits that would have been attributable to the CFC2 stock held by DC2 as of December 31, year 5, under paragraph (b)(4) of this section. This amount consists of 60% of the $30 ($.60 \times \$30 = \$18$) of earnings and profits accumulated by CFC3 after the restructuring transaction.

(C) *Partial sale by CFC2.* If, instead of selling 100% of the CFC3 stock, on December 31, year 5, CFC2 sells only 50% of its CFC3 stock, paragraph (b)(5) of this section requires CFC1 to reduce the earnings and profits of

CFC3 attributable to its CFC2 stock to $16. Similarly, DC1 would be required to reduce the earnings and profits of CFC3 attributable to its CFC1 stock by $16. Paragraph (b)(5) of this section also requires DC2 to reduce the CFC3 earnings and profits attributable to its CFC2 stock by $9. These reductions occur without regard to whether CFC2 recognizes gain on its sale of CFC3 stock.

Example 8. Acquisition of the assets of a lower-tier controlled foreign corporation by an upper-tier controlled foreign corporation in a restructuring transaction described in section 368(a)(1)(C). (i) *Facts.* DC, a domestic corporation, has owned all the stock of CFC1, a controlled foreign corporation, since its formation on January 1, year 1. CFC1 is a holding company that has owned 79% of the stock of CFC2, a controlled foreign corporation, since its formation on January 1, year 1. The other 21% of CFC2 stock is owned by X, an unrelated party. On December 31, year 1, CFC2 has $200 of earnings and profits. On December 31, year 1, CFC1 has no accumulated earnings and profits. On December 31, year 1, pursuant to a restructuring transaction described in section 368(a)(1)(C), CFC2 transfers all its properties to CFC1. In exchange, CFC1 assumes the liabilities of CFC2 and transfers to CFC2 voting stock representing 21% of the stock of CFC1. CFC2 distributes the voting stock to X and liquidates. The liabilities assumed do not exceed 20% of the value of the properties of CFC2. From January 1, year 2, to December 31, year 3, CFC1 accumulates $100 of earnings and profits. On December 31, year 3, DC sells its CFC1 stock.

(ii) *Analysis.* Pursuant to paragraphs (b)(4)(ii) of this section, there is $237 of earnings and profits attributable to DC's CFC1 stock. This amount consists of 79% of CFC2's $200 of earnings and profits accumulated before the restructuring transaction (see section 1248(c)(2)), and 79% of CFC1's $100 of earnings and profits accumulated after the restructuring transaction. Pursuant to paragraph (b)(6) of this section, none of CFC2's $200 of earnings and profits to which CFC1 succeeded under section 381 would be attributable to DC's CFC1 stock.

(c) *Earnings and profits attributable to stock of a foreign distributee corporation that is a foreign corporate shareholder with respect to a foreign liquidating corporation*—(1) *General rule.* If a foreign corporation (liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (distributee), and immediately before the liquidation the distributee was a foreign corporate shareholder with respect to the liquidating foreign corporation, the amount of earnings and profits attributable to the distributee stock, upon its subsequent sale or exchange will be determined under this paragraph (c)(1). The earnings and profits attributable will be the sum of the earnings and profits attributable to the stock of the distributee immediately before the liquidation (including amounts attributed under section 1248(c)(2)) and the earnings and profits attributable to the stock of the distributee accumulated after the liquidation (including amounts attributed under section 1248(c)(2)).

(2) *Special rule regarding section 381.* Solely for purposes of determining the earnings and profits (or deficit in earnings and profits) attributable to stock under this paragraph (c), the attributed earnings and profits of a corporation shall not include earnings and profits that are treated as received or incurred pursuant to section 381(c)(2)(A) and § 1.381(c)(2)–1(a).

(3) *Example.* (i) *Facts.* DC, a domestic corporation, has owned all of the stock of CFC1, a foreign corporation, since its formation on January 1, year 1. CFC1 is an operating company that has owned all of the stock of CFC2, a foreign corporation, since its formation on January 1, year 1. On December 31, year 2, CFC1 has $200 of accumulated earnings and profits and CFC2 has a ($200) deficit in earnings and profits. On December 31, year 2, CFC2 distributes all of its assets and liabilities to CFC1 in a liquidation to which section 332 applies. From January 1, year 3, until December 31, year 4, CFC1 accumulates no additional earnings and profits. On December 31, year 4, DC sells its stock in CFC1.

(ii) *Analysis.* Pursuant to paragraph (c)(1) of this section, there are no earnings and profits attributable to DC's CFC1 stock. This amount consists of the sum of the earnings and profits attributable to the CFC1 stock immediately before the liquidation (100% of the $200 accumulated earnings and profits of CFC1 and 100% of CFC2's ($200) deficit in earnings and profits) and the amount of earnings and profits accumulated after the section 332 liquidation (see also section 1248(c)(2)).

(d) *Effective date.* This section applies to income inclusions that occur on or after the date these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–8551 Filed 6–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–109–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia proposes to revise the Code of West Virginia (W. Va. Code) as amended by Senate Bill 461 concerning water rights and replacement, and to revise the Code of State Regulations (CSR) as amended by Committee Substitute for House Bill 4135 by adding a postmining land use of Bio-oil Cropland, and the criteria for approving bio-oil cropland postmining land use.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on July 3, 2006. If requested, we will hold a public hearing on the amendment on June 27, 2006. We will accept requests to speak at a hearing until 4 p.m. (local time), on June 19, 2006.

ADDRESSES: You may submit comments, identified by WV–109–FOR, by any of the following methods:

- E-mail: *chfo@osmre.gov*. Include WV–109–FOR in the subject line of the message;
- Mail/Hand Delivery: Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301; or
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of

Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE., Charleston, WV 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004. (By Appointment Only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated April 17, 2006 (Administrative Record Number WV–1462), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of State Committee Substitute for House Bill 4135, which amends CSR 38–2 by adding a postmining land use of Bio-oil Cropland and criteria for approving bio-oil cropland as an alternative postmining land use for mountaintop removal mining operations with variances from approximate original contour. Also submitted is State Senate Bill 461, which amends W. Va. Code section 22–3–24 relating to water rights and replacement. In its submittal of the amendment, the WVDEP stated that the codified time table for water replacement is identical to the one contained in the agency's policy dated August 1995 regarding water rights and replacement that is referenced in the Thursday, March 2, 2006, **Federal Register** (71 FR 10764, 10784–85).

The West Virginia Governor also signed Senate Bill 774, on April 4, 2006, which amends language concerning definitions, offices, and officers within the Department of Environmental Protection. The amendments to Senate Bill 774 are non-substantive and do not require OSM approval. Therefore, the amendments to Senate Bill 774 can take effect as provided therein on June 9, 2006.

West Virginia proposes the following amendments:

Senate Bill 461

Senate Bill 461, which was passed by the Legislature on March 11, 2006, and signed into law by the Governor on April 4, 2006, amends Article 3 of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). Specifically, section 22–3–24 concerning water rights and replacement, waiver of replacement is amended at subsection (c) by deleting the last sentence and by adding new subsections (d) and (h). As amended, section 22–3–24 provides as follows:

22–3–24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person's interest in water resources affected by a surface mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface mining operation, unless waived by the owner.

(c) There is a rebuttable presumption that a mining operation caused damage to an owner's underground water supply if the inspector determines the following: (1) Contamination, diminution or damage to an owner's underground water supply exists; and (2) a preblast survey was performed, consistent with the provisions of section thirteen-a of this article, on the owner's property, including the underground water supply, that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation.

(d) The operator conducting the mining operation shall: (1) Provide an emergency drinking water supply within twenty-four hours; (2) provide temporary water supply within seventy-two hours; (3) within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the measures and timetables to be utilized in establishing a permanent supply. The total time for providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply can not be completed within two years, the secretary may extend the time frame on [a] case-by-case basis; and (4) pay all reasonable costs incurred by the owner in securing a water supply.

(e) An owner aggrieved under the provisions of subsections (b), (c) or (d) of this section may seek relief in court or pursuant to the provisions of section five, article three-a of this chapter.

(f) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this section.

(g) The provisions of subsection (c) of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

(h) Notwithstanding the denial of the operator of responsibility for the damage of the owners [owner's] water supply or the status of any appeal on determination of liability for the damage to the owners [owner's] water supply, the operator may not discontinue providing the required water service until authorized by the division. Notwithstanding the provisions of subsection (g) of this section, on and after the effective date of the amendment and reenactment of this section during the regular legislative session of two thousand six, the provisions of this section shall apply to all mining operations for water replacement claims resulting from mining operations regardless of when the claim arose.

House Bill 4135

Committee Substitute for House Bill 4135, which was passed by the Legislature on March 11, 2006, and signed into law by the Governor on April 4, 2006, amends CSR 38–2 by authorizing the WVDEP to promulgate

legislative rules. Subsection 38–2–7.2.e is amended by adding new paragraph 38–2–7.2.e.1. As amended, subsection 38–2–7.2.e provides as follows:

7.2.e. Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included;

7.2.e.1. Bio-oil Cropland. Agricultural production of renewable energy crops through long-term intensive cultivation of close-growing commercial biological oil species (such as soybeans, rapeseed or canola) for harvest and ultimate production of bio-fuels as an alternative to petroleum based fuels and other valuable products;

New paragraph 38–2–7.3.d is added to provide as follows:

7.3.d. A change in postmining land use to bio-oil cropland constitutes an equal or better use of the affected land, as compared with pre-mining use for purposes of W. Va. Code 22–3–13(c) in the determination of variances of approximate original contour for mountaintop removal operations subject to section 38–2–7.8 of this rule;

New subsection 38–2–7.8, concerning Bio-oil Crop Land, is added to provide as follows:

7.8. Bio-oil Crop Land.

7.8.1. Criteria for Approving Bio-oil Cropland Postmining Land Use.

7.8.1.a. An alternative postmining land use for bio-oil cropland may be approved by the secretary after consultation with the landowner and or land management agency having jurisdiction over state or Federal lands: Provided, That the following conditions have been met.

7.8.1.a.1. There is a reasonable likelihood for the achievement of bio-oil crop production (such as soybeans, rapeseed or canola) as witnessed by a contract between the landowner and a commercially viable individual or entity, binding the parties to the production of bio-oil crops for a measurement period of at least two years after the competition [completion] of all restoration activity within the permitted boundaries;

7.8.1.a.2. The bio-oil crop reclamation plan is reviewed and approved by an agronomist employed by the West Virginia Department of Agriculture. The applicants shall pay for any review under this section;

7.8.1.a.3. The use does not present any actual or probable hazard to the public health or safety or threat of water diminution or pollution;

7.8.1.a.4. Bio-oil crop production is not:

7.8.1.a.4.A. Impractical or unreasonable;

7.8.1.a.4.B. Inconsistent with applicable land use policies or plans;

7.8.1.a.4.C. Going to involve unreasonable delays in implementation; or

7.8.1.a.4.D. In violation of any applicable law.

7.8.2. Soil reconstruction specifications for bio-oil crop postmining land use shall be established by the W. Va. Department of Agriculture in consultation with the U. S. Natural Resources Conservation Service and based upon the standards of the National Cooperative Soil Survey and shall include, at a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that constructed soils will have the capability of achieving levels of yield equal to, or higher that [than], those required for the production of commercial seed oils species (such as soybeans, rapeseed or canola) and meets [meet] the requirement of 14.3 of this rule.

7.8.3. Bond Release.

7.8.3.a. Phase I bond release shall not be approved until W. Va. Department of Agriculture certifies and the secretary finds that the soil meets the criteria established in this rule and has been placed in accordance with this rule. The applicants shall pay for any review under this section.

7.8.3.b. The secretary may authorize in consultation with the W. Va. Department of Agriculture, the Phase III bond release only after the applicant affirmatively demonstrates, and the secretary finds, that the reclaimed land can support bio-oil production; and there is a binding contract for production which meets the requirements of subdivision 7.8.1.a of this rule; and the requirements of paragraph 9.3.f.2 of this rule are met. The applicant shall pay for any review under this section.

7.8.3.c. Once final bond release is authorized, the permittee's responsibility for implementing the bio-oil cropland reclamation plan shall cease.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS NO. WV–109–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on June 19, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we

will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (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 determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 11, 2006.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E6–8620 Filed 6–1–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–032]

RIN 1625–AA00

Safety and Security Zones; Tall Ships Celebration 2006, Great Lakes, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety and security zones around Tall Ships visiting the Great Lakes during Tall Ships Celebration 2006. These safety and security zones will provide for the regulation of vessel traffic in the vicinity of Tall Ships in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the safety hazards associated with the limited maneuverability of these tall ships and to ensure public safety during Tall Ships events.

DATES: Comments and related material must reach the Coast Guard on or before June 22, 2006.

ADDRESSES: You may mail comments and related material to Ninth Coast Guard District (dpw–1), 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. The Ninth Coast Guard District Waterways Planning and Development Section (dpw–1) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CDR K. Phillips, Waterways Planning and Development Section, Prevention Department Ninth Coast Guard District, Cleveland, OH at (216) 902–6045.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–06–032], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to The Ninth Coast Guard District Waterways Planning and Development Section at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

During the Tall Ships Celebration 2006, Tall Ships will be participating in parades and then mooring in the harbors of Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, and Chicago, IL. Safety and security zones will be established around Tall Ships participating in these events on 12:01 a.m. (local time) July 10, 2006 and terminate on 12:01 a.m. (local time) August 23, 2006.

These safety and security zones are necessary to protect the public from the hazards associated with limited maneuverability of tall sailing ships and to protect the Tall Ships from potential harm. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to and on Lake Erie, Saginaw Bay, Lake Huron, Green Bay and Lake Michigan. Therefore, the Coast Guard is proposing to implement a safety and security zone around each ship to ensure the safety of both participants and spectators in these areas. The combination of large numbers of recreational boaters, congested waterways, boaters crossing commercially transited waterways and low maneuverability of the Tall Ships could easily result in serious injuries or fatalities.

Discussion of Proposed Rule

Upon the navigable waters of the United States, no vessel or person is allowed within 100 yards of a Tall Ship that is underway or at anchor, unless authorized by the cognizant Captain of the Port or on-scene official patrol. When within a Tall Ship safety and security zone vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene official patrol. Even if operating within a Tall Ship safety and security zone pursuant to permission from the on-scene official patrol, no vessel or person is allowed within 25 yards of a Tall Ship. In addition, upon the navigable waters of the United States, no vessel or person is allowed within 25 yards of any Tall Ship that is moored.

When conditions permit, vessels constrained by their navigational draft or restricted in their ability to maneuver may be allowed by the on-scene official patrol to pass within 100 yards of a tall ship in order to ensure a safe passage in accordance with the Navigational Rules.

When conditions permit, vessels that must transit via a navigable channel or waterway may be allowed by the on-scene patrol to pass within 100 yards of an anchored Tall Ship or within 25 yards of a moored Tall Ship with minimal delay consistent with security.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based upon the size and location of the safety and security zones and the minimal time and limited area from which vessels will be restricted. Vessels may transit through the safety zone with permission from the official on-scene patrol.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the safety and security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones are relatively small and vessels may transit through the safety zone with permission from the official on-scene patrol.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR K. Phillips, Waterways Planning and Development Section, Ninth Coast Guard District, Cleveland, OH at (216) 902–6045. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T09–032 is added read as follows:

§ 165.T09–032 Safety and Security Zone; Huntington Cleveland Harbor Fest, Tall Ship Festival, Green Bay, Wisconsin, Sturgeon Bay, Wisconsin, Tall Ships Chicago 2006, Tall Ship Celebration, Saginaw River, Bay City, MI.

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

Navigation Rules means the Navigation Rules, International and Inland (See, 1972 COLREGS and 33 U.S.C. 2001 *et seq.*).

Official Patrol means those persons designated by Captain of the Port Buffalo, Detroit, Sault Ste. Marie and Lake Michigan to monitor a Tall Ship safety and security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the cognizant Captain of the Port. Persons authorized in paragraph (i) to enforce this section are designated as the Official Patrol.

Public Vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Tall Ship means any sailing vessel participating in the 2006 Tall Ships Challenge in the Great Lakes. The following vessels are participating in the 2006 Tall Ships Challenge: Sailing Vessel (S/V) Appledore IV, S/V Denis Sullivan, S/V Appledore V, S/V Friends Good Will, S/V Highlander Sea, S/V Niagara, S/V Madeline, S/V Nina, S/V Picton Castle, S/V Pathfinder, S/V Playfiar, S/V Providence, S/V Pride of Baltimore, S/V St. Lawrence II, S/V Red Witch, S/V Royaliste, S/V Windy, S/V Unicorn, and S/V Windy II.

(b) Safety and Security zone. The following areas are safety and security zones: all navigable waters of United States located in the Ninth Coast Guard District within a 100 yard radius of any Tall Ship sailing vessel.

(c) Effective Period. This section is effective from 12:01 a.m. (local) on Wednesday July 11th, 2006 through 12:01 a.m. (local) on August, 10th 2006.

(d) Regulations. When within a Tall Ship safety and security zone all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene official patrol. No vessel or person is allowed within 25 yards of a Tall Ship that is underway, at anchor, or moored, unless authorized by the cognizant Captain of the Port, his designated representative, or on-scene official patrol.

(e) Navigation Rules. The Navigation Rules shall apply at all times within a Tall Ships security and safety zone.

(f) To request authorization to operate within 25 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol on VHF–FM channel 16.

(g) When conditions permit, the on-scene official patrol should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 25 yards of a Tall Ship in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit vessels that must transit via a navigable channel or waterway to pass within 25 yards of a Tall Ship that is anchored or moored with minimal delay consistent with safety and security.

(h) When a Tall Ship approaches within 25 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the Tall Ship's safety and security zone unless it is either ordered by, or given permission by Captain of the Port Buffalo, Detroit, Sault Ste. Marie or Lake Michigan, his designated representative, or the on-scene official patrol to do otherwise.

(i) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section.

(j) Exemption. Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (b), (d), (f), (g), and (h) of this section.

(k) Waiver. Captain of the Port Buffalo, Detroit, Sault Ste. Marie and Lake Michigan, may, within their respective Captain of the Port zones, waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: May 23, 2006.

T.W. Sparks,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. E6–8610 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–012]

RIN 1625–AA87

Security Zones; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its regulation entitled Port Valdez and Valdez Narrows, Valdez, Alaska—security zones. This change would include more accurate position information for the boundaries of tank vessels navigating on the Valdez Narrows Optimum Track Line, and establish when the Valdez Narrows Tanker Optimum Track line is activated and subject to enforcement.

DATES: Comments and related material must reach the Coast Guard on or before July 3, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, 105 Clifton, Valdez, AK 99686 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Duane Lemmon, Chief, Maritime Homeland Security Department, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7262.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard is taking this action to revise 33 CFR 165.1710(a)(3)(71 FR 2154, January 13, 2006) entitled Port Valdez and Valdez Narrows, Valdez, Alaska—security zones. This revision would include more accurate position information for the boundaries of tank vessels navigating on the Valdez Narrows Optimum Track Line, and establish when the Valdez Narrows Tanker Optimum Track line is activated and subject to enforcement.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17–004—Security zone; Port Valdez, and

§ 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule created temporary § 165.T17–009, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska—security zone''.

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired. This extension was to allow for the completion of a notice-and-comment rulemaking to create permanent security zones to replace the temporary zones.

On October 23, 2002, we published the notice of proposed rulemaking (NPRM) that sought public comment on establishing permanent security zones similar to the temporary security zones (67 FR 65074). The comment period for that NPRM ended December 23, 2002. Although no comments were received that would result in changes to the proposed rule an administrative omission was found that resulted in the need to issue a supplemental notice of proposed rulemaking (SNPRM) to address a collection of information issue regarding of the proposed rule (68 FR 14935, March 27, 2003).

Then on May 19, 2004, we published a Second Supplemental Notice of Proposed Rulemaking (SSNPRM)(69 FR 28871) incorporating changes to the Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska security zone coordinates described in the NPRM (67 FR 65074). These changes included more accurate position information for the boundaries of the security zone. The comment period for that SNPRM ended on July 30, 2004. Although no comments were received that would result in changes to the SSNPRM, we have learned over the last 3 years while enforcing the temporary security zones (see those mentioned above and 68 FR 26490 (May 16, 2003) and 68 FR 62009 (October 31, 2003)) that the TAPS Terminal security zone is actually larger than it needs to be and that a smaller zone would allow the Coast Guard to monitor and enforce the zone more effectively. To make the security zone smaller, we proposed changes to the TAPS Terminal security zone coordinates in a Third Supplemental Notice of Proposed Rulemaking (TSNPRM) (70 FR 58646, October 7, 2005). In that TSNPRM, we also proposed removing unnecessary text from the description of the Valdez Narrows, Port Valdez, Valdez, Alaska security zone in proposed 33 CFR 165.1710(a)(3). We received no comments on the proposed rule published October 7, 2005.

On January, 13, 2006, we published a final rule in the **Federal Register** (71 FR 2152) that established permanent security zones encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska, and TAPS tank vessels and the Valdez Narrows, Port Valdez, Alaska. These security zones are necessary to protect the TAPS Terminal and vessels from damage or injury from sabotage, destruction or other subversive acts. This rule was effective February 13, 2006.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Economic impact is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permits to enter the zone are available, and the Tank Vessel Moving Security Zone is in effect for a short duration.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this proposed rule is expected to be minimal because there are alternative routes for vessels to use when the zone is enforced, permission to enter the zone is available, and the Tank Vessel Moving Security Zone is in effect for a short duration. Since the time frame this proposed rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this proposed rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Duane Lemmon, Marine Safety Office Valdez, Alaska at (907) 835–7218.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This proposed rule creates no additional vessel traffic and thus imposes no additional burdens on the environment in Prince William Sound. It simply regulates vessels transiting in the Captain of the Port, Prince William Sound Zone for security purposes so that they may transit safely in the vicinity of the Port of Valdez and the TAPS Terminal. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) 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, Safety measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.1710(a)(3) to read as follows:

§ 165.1710 Port Valdez and Valdez Narrows, Valdez, Alaska—security zones.

(a) * * *

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line, when a tank vessel is navigating through the narrows.

(i) The Valdez Narrows Optimum Track line is a line commencing at 61°05.38′ N, 146°37.38′ W; thence south westerly to 61°04.05′ N, 146°40.05′ W; thence southerly to 61°03.00′ N, 146°41.20′ W.

(ii) This security zone encompasses all waters 200 yards either side of the Valdez Narrows Optimum Track line.

(iii) Whenever a tank vessel is navigating on the Valdez Narrows Optimum Track line, the security zone is activated and subject to enforcement. All vessels forward of a tank vessel's movement must vacate the security zone surrounding the Optimum Track line. Vessels may reenter the security zone astern of a moving vessel provided that a 200 yards separation is given, as required in paragraph (a)(2) of this section.

* * * * *

Dated: May 8, 2006.

M.S. Gardiner,

Commander, United States Coast Guard, Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. E6–8544 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CCGD05–06–054]

RIN 1625–AA00

Safety Zone: Fireworks on the Bay Celebration, Chesapeake Bay, Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing the establishment of a 500-foot safety zone on the Chesapeake Bay in support of the Fireworks on the Bay Celebration. This event is will be held at First Landing State Park, Virginia Beach, VA on July 04, 2006, and if warranted due to inclement weather, July 5, 2006. This action is intended to restrict vessel traffic on Chesapeake Bay as necessary to protect mariners from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before June 26, 2006.

ADDRESSES: You may mail comments and related material to Commander, Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Attn: Lieutenant Bill Clark, Norfolk, VA 23510. Sector Hampton Roads maintains the public docket for this rulemaking.

Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Federal Building between 9 a.m. and 2 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Bill Clark, Chief, Waterways Management Division, Sector Hampton Roads, at (757) 668–5580.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–06–054 and indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting, but you may submit a request for a meeting by writing to the United States Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On July 4, 2006, the Fireworks on the Bay Celebration will be held on the Chesapeake Bay in Virginia Beach, VA. However, if warranted due to inclement weather, this event will be postponed until July 5, 2006. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted within 500 feet of the fireworks display.

Discussion of Proposed Rule

The Coast Guard is establishing safety zone that encompasses all waters of Chesapeake Bay within 500 feet of position 36–55–02N/076–03–27W in the vicinity of the First Landing State Park in Virginia Beach, VA. This regulated area will be established in the interest of public safety during the Fireworks on the Bay Celebration and will be enforced from 9 p.m. to 10 p.m. eastern time, on July 4, 2006, and if warranted due to inclement weather, July 5, 2006. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration and (ii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will be in place for a limited duration of time and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Chesapeake Bay from 9 p.m. to 10 p.m. eastern time, on July 4, 2006 and July 5, 2006.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Bill Clark, Chief, Waterways Management Division, Sector Hampton Roads, at (757) 668–5580.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental

Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.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 made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 Subpart C as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add Temporary § 165.T05–054, to read as follows:

§ 165.T05–054 Safety Zone: Fireworks on the Bay Celebration, Chesapeake Bay, Virginia Beach, VA.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay in the Captain of the Port, Hampton Roads zone as defined in 33 CFR § 3.25–10 within 500 feet of position 36–55–02N/076–03–27W in the vicinity of the First Landing State Park in Virginia Beach, VA.

(b) *Definition.* The following definition applies to this section: Captain of the Port Representative: Means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or the Captain of the Port Representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(A) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555 or (757) 484–8192.

(B) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(d) *Effective date.* This regulation is effective from 9 p.m. to 10 p.m. eastern time, on July 4, 2006 and, if warranted due to inclement weather, July 5, 2006.

Dated: May 15, 2006.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E6–8553 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2003–0179; FRL–8178–1]

RIN 2060–AN74

Proposed Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this action is to request comments on a proposed interpretation of certain existing Federal air program operating permits regulations. This proposed

interpretation is that certain sections of the operating permits regulations do not require or authorize permitting authorities to assess or enhance existing monitoring requirements in implementing the operating permits independent of such monitoring required or authorized in other rules. Such other rules include the monitoring requirements in existing Federal air pollution control standards and regulations implementing State requirements. We propose to interpret these sections to require that title V permits contain the monitoring provisions specified or developed under these separate sources of monitoring requirements. We also formally withdraw a September 17, 2002 **Federal Register** proposal to revise the Federal operating permits program and with this action provide an interpretation of those rules different from that set forth in the 2002 proposal. This proposed interpretation will clarify the permit content requirements and facilitate permit issuance ensuring that air pollution sources can operate and comply with requirements.

DATES: Written comments must be received by July 17, 2006.

ADDRESSES: Submit your comments identified by Electronic Docket ID No. EPA–HQ–OAR–2003–0179 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Fax: (202) 566–1741.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW.; Mail Code: 6102T, Washington, DC 20460.
- Hand Delivery: To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Electronic Docket ID No. EPA–HQ–OAR–2003–0179. 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 to be protected through *http://www.regulations.gov* or e-mail. The Web site is an ''anonymous access'' system, which means we 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 us 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, we recommend 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 we cannot read your comment as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the Federal Docket Management System (FDMS) index at *http://www.regulations.gov.* 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 either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Peter Westlin, Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail code: D243–05, 109 TW Alexander Drive, Research Triangle Park, NC 27711, Telephone: (919) 541–1058.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Affect Me?

Categories and entities potentially affected by this action include facilities currently required to obtain title V permits under State, local, tribal, or Federal operating permits programs, and State, local, and tribal governments that issue such permits pursuant to approved part 70 and part 71 programs. If you have any questions regarding the applicability of this action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

In addition to access to information in the docket as described above, you may also access electronic copies of the proposed rule and associated information through the Technology Transfer Network (TTN) Web site. Following the Administrator signing the notice, we will post the proposed rule on the Office of Air and Radiation's Policy and Guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/.* The TTN provides an information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/ttn/oarpg.*

You may access an electronic version of a portion of the public docket through the Federal eRulemaking Portal. Interested persons may use the electronic version of the public docket at *http://www.regulations.gov* to: (1) Submit or view public comments, (2) access the index listing of the contents of the official public docket, and (3) access those documents in the public docket that are available electronically. Once in the FDMS, use the *Search for Open Regulations* field to key in the appropriate docket identification number or document title at the Keyword window.

C. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

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D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background

EPA's State and Federal operating permits program regulations, 40 CFR parts 70 and 71, require that operating permits include applicable monitoring requirements. The ''periodic monitoring'' rules as described in §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) require that

> [w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§ 70.6(a)(3)(i)(B) and § 71.6(a)(3)(i)(B)].

Sections 70.6(a)(3)(i)(A) and 71.6(a)(3)(i)(A) require that permits contain ''[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) and 504(b) of the Act.'' In addition, §§ 70.6(c)(1) and 71.6(c)(1) require that each title V permit contain, *''[c]onsistent with paragraph (a)(3) of this section,* compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit'' (emphasis added).

On September 17, 2002 (67 FR 58561), we proposed to remove the introductory phrase *''[c]onsistent with paragraph (a)(3) of this section,''* from §§ 70.6(c)(1) and 71.6(c)(1) to clarify a policy we expressed in our responses to the citizen petitions regarding Pacificorp and Fort James Camas Mills facilities [1] (see discussion of these petitions below). The purpose of these revisions was to remove the introductory clause so that §§ 70.6(c)(1) and 71.6(c)(1) could be interpreted more clearly as establishing a regulatory standard for: (1) Assessing and enhancing existing monitoring requirements, or (2) adding new monitoring requirements separate from the application of the periodic monitoring rules. At that time, we believed the action would clarify what we viewed as the relationship between the *NRDC* and *Appalachian Power* [2] decisions regarding title V monitoring. In *Appalachian Power,* the Court held that permitting authorities may not, on the basis of the periodic monitoring rule in § 70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or Federal standard, unless that standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' 208 F.3d at 1028. The *NRDC* decision implied that implementing parts 70 and 71 could fulfill the need to address enhanced monitoring under the Act. In *NRDC,* the Court noted that ''* * * the 1990 Clean Air Act Amendments did not mandate that EPA fit all enhanced monitoring under one rule and EPA has reasonably illustrated how its enhanced monitoring program, when considered in its entirety, complies with § 114(a)(3).'' 194 F.3d at 135.

We decided following those two decisions that we could interpret §§ 70.6(c)(1) and 71.6(c)(1) as an independent source of authority for permit writers to assess and enhance monitoring requirements through the operating permits process, and adopted that interpretation in our responses to citizen petitions for the permits proposed for the Pacificorp and Fort James Camas Mills facilities, as well as in the 2002 proposed rule. Simply put, the monitoring related portions of the petitions filed in 1998 and 1999 requested not only that the permits include existing monitoring requirements, but also asked us to require permitting authorities to: (1) Assess the sufficiency of the existing monitoring requirements beyond assessing their periodic nature, and (2) enhance the requirements as necessary to assure compliance with permit terms and conditions. We had documented that two-part monitoring assessment and enhancement process for parts 70 and 71 in the Periodic Monitoring Guidance [3] issued in 1998; however, we subsequently withdrew the Guidance as a result of the *Appalachian Power* decision, which vacated the Guidance on the grounds that it overreached the plain language of the periodic monitoring rules, §§ 70.6(a)(3) and 71.6(a)(3). The Court said in that decision that the plain language of these sections provided that monitoring requirements could be amended via the title V permitting process only where the applicable emission standard contains no monitoring requirement, a one-time startup test, or provides no frequency for monitoring. In our orders regarding the Pacificorp and Fort James petitions, we relied on §§ 70.6(c)(1) and 71.6(c)(1), rather than the periodic monitoring rules, to authorize an independent assessment of the sufficiency of the monitoring to provide an assurance of compliance.

The September 2002 proposal to revise §§ 70.6(c)(1) and 71.6(c)(1) by deleting the introductory clause was meant to clarify the regulations consistent with this previous interpretation. On that same day, we separately issued an interim final rule effective from September 17, 2002, until Nov. 18, 2002. 67 FR 58529 (Sept. 17, 2002). By promulgating this interim final rule, we suspended, for sixty days, the italicized prefatory language in § 70.6(c)(1) providing that all title V permits contain, *''[c]onsistent with paragraph (a)(3) of this section* compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' 67 FR 58532.

[1] *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants,* Petition No. VIII–00–1 (November 16, 2000) (Pacificorp) (available on the Internet at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/woc020.pdf),* and

In the Matter of Fort James Camas Mill, Petition No. X–1999–1 (December 22, 2000) (*Fort James*) available on the Internet at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/fort_james_decision1999.pdf.*

[2] *Natural Resources Defense Council* v. *EPA,* 194 F.3d 130 (DC Cir. 1999) (*NRDC*) and *Appalachian Power* v. *EPA,* 208 F.3d 1015 (DC Cir. 2000) (*Appalachian Power*).

[3] ''Periodic Monitoring Guidance,'' signed by Eric V. Schaffer, Director, Office of Regulatory Enforcement, and John S. Seitz, Director, Office of Air Quality Planning and Standards, September 15, 1998.

In reviewing both our September 17, 2002, proposal to include the sufficiency assessment as part of the title V operating permits program, as well as the public comments received, we decided after further reflection that the plain language of §§ 70.6(c)(1) and 71.6(c)(1) indicates that they direct permitting authorities to include monitoring under existing statutory and regulatory authorities in permits, but does not authorize or require them to assess the sufficiency of underlying monitoring requirements. Therefore, we published a final rule (69 FR 3202, January 22, 2004) in which we determined not to adopt the regulatory changes to parts 70 and 71 proposed in 2002. In the January 22, 2004 rule, we noted that the appropriate interpretation of §§ 70.6(c)(1) and 71.6(c)(1), consistent with the background and intent of parts 70 and 71, is that they do not provide a basis for requiring or authorizing review and enhancement of existing monitoring requirements in operating permits, independent of any other review and enhancement that be may required under other rules. In the January 22, 2004 notice, we identified other applicable regulatory vehicles that more appropriately address monitoring requirements other than the parts 70 and 71 general operating permits regulations and the periodic monitoring requirements. The types of monitoring requirements we referenced included: (1) monitoring directed by applicable requirements under the Act including, but not limited to, monitoring required under 40 CFR part 64, where it applies, as well as monitoring required under Federal rules such as new source performance standards of 40 CFR part 60 (NSPS), national emissions standards for hazardous air pollutants of 40 CFR parts 61 and 63 (NESHAP), acid rain rules of 40 CFR parts 72 through 78, and State, Tribal, and Federal implementation plan rules; and (2) such monitoring as may be required under the narrow definition of gap-filling as required under the periodic monitoring rules (§§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B)).

Petitioners challenged the Agency's January 22, 2004, rule on the basis that it unlawfully and arbitrarily prohibited permitting authorities from requiring additional monitoring in title V permits where existing monitoring obligations in underlying applicable requirements were not sufficient to assure source compliance.[4] On October 7, 2005, the United States Court of Appeals vacated the January 22, 2004, final rule on procedural grounds, holding that the final rule was not a ''logical outgrowth'' of our September 17, 2002, proposal in violation of the Administrative Procedure Act's notice-and-comment requirements.

[4] *Environmental Integrity Project* v. *EPA*, 425 F.3d 992 (D.C. Cir. 2005).

III. What Does This Action Involve?

As mentioned in the prior section and as discussed below, we have decided to withdraw the revisions to §§ 70.6(c)(1) and 71.6(c)(1) that we proposed on September 17, 2002 (67 FR 58561). In addition, we propose for comment, based on a reasonable interpretation of the Act, that the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1) do not provide an independent basis for requiring or authorizing review and enhancement of existing monitoring in title V permits. We believe that other rules establish a basis for such review and enhancement, including: (1) The periodic monitoring rules of parts 70 and 71 and (2) compliance assurance monitoring of 40 CFR part 64 (62 FR 54900, October 22, 1997) where it applies. Other applicable regulatory requirements that address monitoring design and implementation, include, but are not limited to: (1) NSPS, (2) NESHAP, (3) acid rain program rules, and (4) State, tribal and Federal implementation plan rules approved under title I of the Act. In addition, we recognize and propose that there are current and future opportunities to advance monitoring through regulatory and other mechanisms more effectively than through a nonspecific requirement in §§ 70.6(c)(1) and 71.6(c)(1) of the operating permits rules that the proposed (September 17, 2002) revisions would have created.

A. Will the Regulatory Text of the Rules Change Under This Action?

No, this action does not change any regulatory text.

B. Is There a Need To Address Comments Received Concerning the September 17, 2002 Proposal?

We addressed significant comments received on the September 17, 2002, proposal in the January 22, 2004, rule and in a summary document available in the docket. While we refer to some of the comments in the discussion below, because this action withdraws the proposal, there is no further need to address the comments on the proposal.

C. What Is the Correct Interpretation of §§ 70.6(c)(1) and 71.6(c)(1)?

Notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, we propose that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement that may be required under other portions of the rules. Instead, these paragraphs require the permitting authority to include in title V permits a number of elements (*e.g.*, reporting, record keeping, compliance certifications) related to compliance; among these elements is the monitoring as specified in §§ 70.6(a)(3) and 71.6(a)(3) (*i.e.*, monitoring defined by the applicable requirements and periodic monitoring, if needed).

More specifically, both §§ 70.6(c)(1) and 71.6(c)(1) provide only that permits contain ''monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.'' This general language does not provide any indication of what type or frequency of monitoring is required. For monitoring, however, §§ 70.6(c)(1) and 71.6(c)(1) take on additional meaning when considered with the more detailed periodic monitoring rules in §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), which specify that periodic monitoring must be ''sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit,'' or with the monitoring required in other provisions of §§ 70.6(a)(3) and 71.6(a)(3). This means that either the monitoring from applicable requirements or the periodic monitoring included under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) satisfies the compliance provisions in §§ 70.6(c)(1) and 71.6(c)(1).

In summary, §§ 70.6(c)(1) and 71.6(c)(1) constitute general provisions that direct permitting authorities to include the monitoring required under *existing* statutory and regulatory authorities in title V permits along with other compliance related requirements. These provisions do not require or authorize a new and independent assessment of monitoring requirements to assure compliance.

D. What Are the Effects of This Action on Pacificorp and Fort James Petitions?

Our responses to the monitoring aspects of the Pacificorp and Fort James title V petitions were based on the same interpretation of § 70.6(c)(1) that we took in the September 17, 2002 proposal, under which we read that provision as requiring a sufficiency review of existing monitoring requirements. That interpretation of

§ 70.6(c)(1) is different than the interpretation that we propose with this action. We are proposing that §§ 70.6(c)(1) and 71.6(c)(1) should be interpreted as not establishing a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement that may be required under §§ 70.6(a)(3) and 71.6(a)(3) or other Federal rules.

In fact, even if we had applied the interpretation of § 70.6(c)(1) in the Pacificorp and Fort James citizen petitions that we propose with this action, we believe that application of that different interpretation would have had a minimal impact on our response to the petitions. In the former instance, we required an already-installed continuous opacity monitoring system (COMS) to provide quarterly opacity data in lieu of quarterly Method 9 visible opacity readings. We note that the owners or operators would have collected the COMS data in any case and reported any excursions as other information available as part of the annual compliance certification. In the latter instance, we relied on our sufficiency monitoring interpretation of the rule in response to one of the approximately twenty monitoring provisions at issue in the Fort James permit by requiring a sufficiency review of a newly-developed control device inspection performed monthly for an annual particulate matter standard. While our request for documentation of the link between inspections and maintenance of the annual emissions limit was appropriate, our authority under the periodic monitoring rules allowed us to point out there was no frequency of monitoring specified in the standard. Thus, we did not need to comment pursuant to §§ 70.6(c)(1) and 71.6(c)(1) on the adequacy of the frequency of monitoring established by the permitting authority.

Under the circumstances that we have just described, we believe that follow-up activity with regard to the Pacificorp or Fort James permits is unnecessary. If, after the public comment period, we decide to finalize the interpretation of §§ 70.6(c)(1) and 71.6(c)(1) that we propose with this action, the owners or operators of those facilities may choose to revisit these particular terms and conditions in their permits via the permit revision process or at permit renewal. Such revisions may include deleting redundant quarterly Method 9 visible opacity readings via permit streamlining [5] given that the COMS is already required and provides essentially the same data continuously.

E. How Do We Intend To Advance Better Monitoring?

As the Court noted in *NRDC,* EPA's enhanced monitoring program to assure compliance with applicable requirements is not, and need not be, implemented under a single rule. 194 F.3d at 135. Our enhanced monitoring program encompasses a number of regulatory and other mechanisms to improve and advance better monitoring for stationary sources subject to air emissions regulations implementing the Act.

Central to the program is the development of over 90 source category-specific regulations (*e.g.*, NESHAP regulations in 40 CFR part 63) since 1990 that address monitoring to assure compliance with emissions limitations. The program to address enhanced monitoring also includes 40 CFR part 64, the CAM rule, that requires owners or operators who rely on add-on control devices (*e.g.*, fabric filters and scrubbers) to meet applicable emissions limits to assess existing monitoring requirements according to prescribed procedures and operating criteria. In the preamble to the CAM rulemaking (62 FR 54900, October 22, 1997), we noted that ''* * * part 64 is intended to address: (1) The requirement in title VII of the 1990 Amendments that EPA promulgate enhanced monitoring and compliance certification requirements for major sources, *and* (2) the related requirement in title V that operating permits include monitoring, compliance certification, reporting and recordkeeping provisions to assure compliance.'' (emphasis added). We clearly indicated by this statement that part 64 will address and satisfy the monitoring requirements required for those permitted facilities subject to the CAM rule.

In the CAM rule, we also recognized that the basis for monitoring sufficient to assure compliance is inherent in many existing regulations. For example, we noted that ''* * * monitoring of covered units and sources under some NSPS may be sufficient to meet part 64 requirements; however, the question of sufficiency of any particular monitoring requirement from a non-exempt standard will have to be determined in accordance with the requirements of part 64.'' (62 FR 59940, October 22, 1997). Thus, part 64 requires the source owner or operator to design, submit, and implement new monitoring as needed to assure compliance with existing (*e.g.*, pre-1991) regulatory requirements and, by doing so, satisfy the statute.

We also are continuing to pursue the four-step strategy that we described in the January 22, 2004, rulemaking for improving existing monitoring where necessary through rulemaking actions while reducing resource-intensive, case-by-case monitoring reviews. The interpretation of §§ 70.6(c)(1) and 71.6(c)(1) that we propose with this action is a first part of that strategy. Second, on February 16, 2005 (70 FR 7905), we published a request for comment on potentially inadequate monitoring in applicable requirements and on methods to improve such monitoring. We are reviewing comments received in response to that notice and intend to take appropriate action in response.

Third, we have also published a proposed rulemaking concerning the implementation of the national ambient air quality standard (NAAQS) for fine particulate matter (particulate matter with an aerodynamic diameter of less than 2.5 micrometers, or PM_{fine}). In conjunction with finalizing that rule, we plan to issue monitoring guidance that we intend to make available for public comment. We intend that such material would encourage States and Tribes to improve monitoring in SIPs and TIPs relative to implementing the NAAQS.

Fourth, many who commented on the September 17, 2002 proposed rule raised concerns that the rules implementing EPA's enhanced monitoring program do not yet address some existing requirements. In particular, they noted that there are requirements in existing rules that are not affected by 40 CFR part 64 (*e.g.*, units with control measures other than add-on devices), post-1990 NESHAP and NSPS, or the soon-to-be-developed SIP rules such as the PM_{fine} implementation rules. We agree and have learned through implementing the operating permits and other regulatory programs that there continue to be opportunities to improve monitoring in existing requirements, achieve improved compliance, and assure emissions reductions.

IV. What Is the Policy Rationale for This Action?

This action clarifies the role that the title V permitting process plays in ensuring that the statutory monitoring requirements are met. Several policy considerations—many of which were raised in comments on the 2002 proposed rule—have motivated our decision to pursue an approach to title V monitoring that will achieve necessary improvements in the monitoring required of title V sources primarily through national rulemakings

[5] 40 CFR 70.6(a)(3)(i)(A).

or guidance for States to revise their SIP rules, rather than through authorizing or requiring permitting authorities to perform case-by-case monitoring.

First, this approach will improve the balance between the responsibility that States and other permitting authorities have for issuing and implementing title V permits and our responsibility for developing rules establishing monitoring requirements sufficient to meet the Act's monitoring requirements. The interpretation we propose would limit the authority of permitting authorities under §§ 70.6(c)(1) and 71.6(c)(1) to conduct case-by-case assessments of the sufficiency of monitoring required by other rules. We emphasize that this interpretation relative to parts 70 and 71 does not affect the State, Tribal, or other permitting agency's authority under other applicable rules to assess and impose alternative or new monitoring requirements. Such other authorities with respect to monitoring include the applicable SIP or TIP and the alternative testing and monitoring assessments and approval procedures in §§ 60.8, 60.13, 61.13, 61.14, 63.7, and 63.8. This interpretation also does not affect the development of monitoring necessary to implement other specific provisions relating to permits, including monitoring to allow for operational flexibility, monitoring under alternative scenarios, and monitoring consistent with permit streamlining (*e.g.*, §§ 70.4(d)(3)(viii) and (xi) and 70.6(a)(3)(i)(A)).

This proposed interpretation would avoid two significant permit implementation issues arising from our previous interpretation that §§ 70.6(c)(1) and 71.6(c)(1) require an independent assessment of the adequacy of otherwise applicable monitoring requirements. First, under this previous alternative interpretation, for each draft title V permit, permitting authorities would be required to review every permit term or condition, based on applicable requirements, and determine, generally without any definitive national guidance or regulation, whether the existing monitoring requirements are sufficient to assure compliance with such terms and conditions. The complex industrial sources and other sources subject to title V are subject to numerous applicable requirements and their draft permits contain numerous terms and conditions, which means that such reviews would be time-consuming and demand that permit writers develop and maintain highly technical expertise. This proposed interpretation that §§ 70.6(c)(1) and 71.6(c)(1) do not require such additional assessments and new monitoring development would relieve many significant burdens on State, local, and Tribal permitting authorities charged with implementing the rule that the previous interpretation would have imposed.

Second, under the previous interpretation, permit writers may have determined that existing monitoring would not assure compliance with the permit's terms and conditions and, in response, would have to propose new or revised monitoring to satisfy an unclear sufficiency requirement. This would have been without the benefit of an established process for determining what types of monitoring would satisfy the statutory and regulatory requirements. This approach would have required a significant level of expertise within the permitting authority and likely resulted in confusion and disagreements over the monitoring decisions made by permitting authorities. Some State and local permitting authorities have attributed delays in permit issuance to such case-by-case efforts to develop and approve monitoring for individual permits, as indicated by comments on the September 17, 2002, proposed changes to §§ 70.6(c)(1) and 71.6(c)(1). (See more detailed EPA responses to all significant comments raised on the proposal below and in a separate document placed in the docket.) In addition to the excessive burden and confusion issues outlined above, one permitting authority also indicated that such independent monitoring assessments under §§ 70.6(c)(1) and 71.6(c)(1) would likely result in relatively arbitrary and inconsistent monitoring decisions from permit to permit and make permit issuance more difficult. Thus, we believe that requiring States and other permitting authorities to assess the adequacy of all existing monitoring and, as necessary, to upgrade monitoring through the title V permitting process would place a significant, unmanageable, and unnecessary burden on those permitting authorities. We believe that this interpretation will mitigate those concerns.

We also received comments from industry representatives who indicated that requiring sufficiency reviews under §§ 70.6(c)(1) and 71.6(c)(1) would have placed undue burdens on title V sources. All industry representatives who provided comments stated that the 2002 proposed rule's changes to §§ 70.6(c)(1) and 71.6(c)(1) would lead to increased burdens on States and on sources. For instance, those who commented cited several examples indicating that case-by-case monitoring assessments and development of new monitoring requirements can delay permit issuance and renewals. Furthermore, commenters suggested that using rulemaking to revise monitoring requirements will assure that the new monitoring requirements are adopted consistent with the intent of those control technology standards.

Finally, we believe that this proposed interpretation of §§ 70.6(c)(1) and 71.6(c)(1) offers other advantages over the interpretation in the September 17, 2002 proposed rule. Specifically, we believe that applying a programmatic approach to reviewing, proposing, and promulgating improvements to existing monitoring requirements through Federal, State, or local rulemaking as we propose is an effective use of resources and available technical expertise. This proposed approach will be far more efficient and effective than relying on more resource-intensive, case-by-case sufficiency reviews under §§ 70.6(c)(1) and 71.6(c)(1) during the process of developing and reviewing permits. Monitoring developed through national rulemaking is also likely to result in greater consistency in monitoring requirements included in permits both within States and nationally. In addition, we expect that a national regulatory program to assess and improve potentially inadequate monitoring requirements will result in broader public input into monitoring decisions than is possible during individual permit proceedings. We believe this is true because formal national rulemaking procedures involve an opportunity for broad public comment and hearing, attracting a larger national audience of individuals more knowledgeable about technical issues specific to monitoring technologies as related to specific source categories, pollutants, and control measures. The resulting regulatory outcomes would facilitate the requirements of section 502(b)(6) of the Act for an adequate, streamlined, reasonable, and expeditious process for reviewing and implementing permit actions.

Moreover, national rulemakings are more likely than individual permit proceedings to result in better consideration of potential economic impacts. For example, Executive Order 12866 provides for the following analyses: (l) Stating the need for the proposed regulatory action; (2) examining alternative approaches to the problem; (3) quantifying benefits and costs and valuing them in dollar terms (where feasible); and (4) evaluating the findings on benefits, costs, and distributional effects. Statutory or regulatory provisions or Executive

Orders requiring detailed consideration of economic impacts or other burdens imposed by various types of monitoring apply to Federal rulemakings but are not required in individual permit proceedings. Thus, compared to the September 17, 2002 proposed rule's approach, the approach we propose has the added benefit of providing a greater degree of scrutiny of decisions concerning the potential economic impact of proposed monitoring requirements.

We believe it is necessary and appropriate to clarify through an interpretive rule that §§ 70.6(c)(1) and 71.6(c)(1) do not authorize or require States and other permitting authorities to assess the adequacy of all existing monitoring, and, as necessary, to upgrade monitoring through the title V permitting process. We believe that the comprehensive regulatory development approach for addressing monitoring has resulted and will continue to result in development and implementation of more consistent and more effective monitoring requirements, and reduced confusion about what monitoring requirements should be imposed in individual permits. When inadequate monitoring is improved through rulemaking at the national or State level, the improved monitoring can be incorporated into title V permits with little, if any, source-specific tailoring, thereby eliminating some of the variations in monitoring determinations inherent in case-by-case reviews. More consistent monitoring requirements in permits nationally should also help to eliminate concerns about potential inequities in monitoring amongst similarly-situated sources in different jurisdictions.

V. What Is the Legal Basis for This Action?

Various factors have prompted EPA's decision regarding §§ 70.6(c)(1) and 71.6(c)(1). EPA believes that the plain language of §§ 70.6(c)(1), and 71.6(c)(1), which begins with the phrase ''[c]onsistent with'' §§ 70.6(a)(3) and 71.6(a)(3), indicates that §§ 70.6(c)(1) and 71.6(c)(1) include and gain meaning from the more specific monitoring requirements in §§ 70.6(a)(3) and 71.6(a)(3). Both §§ 70.6(c)(1) and 71.6(c)(1) provide only that permits contain ''monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.'' Read in isolation, this general language does not provide any indication of what type or frequency of monitoring is required. Yet, for monitoring, §§ 70.6(c)(1) and 71.6(c)(1) take on practical meaning when they are read together with the more detailed periodic monitoring rules, which specify that periodic monitoring must be ''sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit,'' or with other provisions of §§ 70.6(a)(3) and 71.6(a)(3).[6] Thus, the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1) and the periodic monitoring rules show that §§ 70.6(c)(1) and 71.6(c)(1) support the interpretation that we are proposing.

In addition, the policy considerations discussed in section IV of this preamble support EPA's determination that our proposed interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is the correct one. In sum, this approach will better balance the responsibilities of States and other permitting authorities and EPA to improve monitoring where necessary to ensure that the Act's monitoring requirements are met. Compared to 2002 proposed rule's approach, this approach will also reduce burdens on title V sources, be more efficient from a resource standpoint, result in more equitable monitoring decisions, and allow for wider, more expert public input into monitoring decisions.

This interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is consistent with EPA's authority under the Act and the underlying rules. Congress granted EPA broad discretion to decide how to implement the title V monitoring requirements and the ''enhanced monitoring'' requirement of section 114(a)(3) of the Act.[7] Two provisions of title V of the Act specifically address rulemaking concerning monitoring. First, section 502(b)(2) of the Act requires EPA to promulgate regulations establishing minimum requirements for operating permit programs, including ''[m]onitoring and reporting requirements.'' 42 U.S.C. 7661a(b)(2). Second, section 504(b) authorizes EPA to prescribe ''procedures and methods'' for monitoring ''by rule.'' 42 U.S.C. 7661c(b). Section 504(b) provides: ''The Administrator *may by rule* prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. * * *'' (Emphasis added.) Id.

Other provisions of title V refer to the monitoring required in individual operating permits. Section 504(c) of the Act, which contains the most detailed statutory language concerning monitoring, requires that ''[e]ach [title V permit] shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' 42 U.S.C. 7661c(c). Section 504(c) further specifies that ''[s]uch monitoring and reporting requirements shall conform to any applicable regulation under [section 504(b)]. * * *'' Id. Section 504(a) more generally requires that ''[e]ach [title V permit] shall include enforceable emission limitations and standards, * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.'' 42 U.S.C. 7661c(a).

Thus, title V clearly authorizes the Agency to require improvements to the existing monitoring required by applicable requirements in at least two ways. Under the statute, we may require case-by-case monitoring reviews as described in the revisions to parts 70 and 71 proposed on September 17, 2002. Alternatively, we may achieve any improvements to monitoring through Federal or State rulemakings to amend the monitoring provisions of applicable requirements themselves; these amended monitoring requirements may then be incorporated into title V permits without engaging in case-by-case sufficiency monitoring reviews.

This interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is consistent with EPA's authority under the Act and the underlying rules. We have exercised the authority the Act provides by establishing monitoring requirements under national rules, such as 40 CFR part 64, NSPS requirements under part 60, NESHAP requirements under part 61, MACT standards under part 63, and the continuous emissions monitoring rule under the acid rain program (40 CFR part 75). Based on comments received on the 2002 proposed rule and as a matter of policy (see section IV of this preamble), we believe that that the approach we propose is preferable to an

[6] For instance, each permit must contain, with respect to monitoring, (1) ''[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [the CAM rule] and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) and 504(b) of the Act,'' see §§ 70.6(a)(3)(i)(A) and 71.6(a)(3)(i)(A); and (2) ''[a]s necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.'' §§ 70.6(a)(3)(i)(C) and 71.6(a)(3)(i)(C).

[7] Section 114(a)(3) of the Act provides that ''[t]he Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications.'' 42 U.S.C. 7414(a)(3).

approach requiring case-by-case monitoring reviews under §§ 70.6(c)(1) and 71.6(c)(1). We believe that improving the monitoring required of title V sources by developing new standards, by revising existing Federal standards that contain inadequate monitoring, and by encouraging States to revise SIP rules that contain inadequate monitoring, will balance the responsibilities of EPA with those of the States and other permitting authorities more clearly and will result in more equitable and more efficient monitoring decisions.

Our four-step approach, which includes this action, as well as developing PM_{fine} implementation guidance, responding with appropriate regulatory and other actions resulting from comments on the advance notice of proposed rulemaking that identify existing requirements with potentially inadequate monitoring, and continuing effort to enhance monitoring through separate rulemakings including future revisions to the CAM rule, will ensure that the Act's monitoring requirements will be met. First, our renewed emphasis on establishing monitoring requirements through rulemaking gives full effect to section 504(b) of the Act, which provides that ''[t]he Administrator may *by rule* prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants * * *'' 42 U.S.C. 7661c(b) (emphasis added). Second, this approach also is intended to ensure that section 504(c)'s command that each title V permit ''set forth * * * monitoring * * * to assure compliance with the permit terms and conditions'' will be satisfied through the combination of EPA (and as necessary State) rulemakings to address monitoring, and the addition to permits of such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). See 42 U.S.C. 7661c(c). Finally, satisfying the specific monitoring requirements of section 504(c) will assure that the more general requirements of section 504(a) are satisfied as to monitoring.

The statutory monitoring provisions—particularly, section 504(c), which specifically requires that monitoring contained in permits to assure compliance *''shall conform to any applicable regulation under [section 504(b)]''*—clearly contemplate that monitoring in permits must reflect current regulations. We anticipate that some monitoring that appears in permits as required under existing applicable requirements could be improved; however, we believe that addressing such deficiencies through rulemaking will be the most expeditious approach to resolving such deficiencies.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether 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 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, adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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 entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

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

Under Executive Order 12866, we determined that this interpretative rule is a ''significant regulatory action'' because it raises important legal and policy issues. As such, we submitted this rule to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden and does not adopt the revision to the text of §§ 70.6(c)(1) and 71.6(c)(1) that we proposed in the September 17, 2002 notice. This action merely states that notwithstanding the recitation in §§ 70.6(c)(1) and 71.6(c)(1) of monitoring as a permit element, these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). The information collection requirements in the existing regulations (parts 70 and 71) were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The existing ICR for part 70 is assigned EPA ICR number 1587.05 and OMB control number 2060–0243; for part 71, the EPA ICR number is 1713.04 and the OMB control number is 2060–0336. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20004 or by calling (202) 566–1672.

Under the Paperwork Reduction Act, 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 (RFA)

The RFA generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration by category of business using the North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The originally promulgated part 70 and part 71 rules included the text of §§ 70.6(c)(1) and 71.6(c)(1), and this proposed interpretation does not revise that text. Moreover, any burdens associated with the interpretation of §§ 70.6(c)(1) and 71.6(c)(1) proposed in this action are less than those associated with any interpretation under the proposed rule and that we may have previously enunciated. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to these impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where 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, EPA 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no new Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Rather, EPA merely states that §§ 70.6(c)(1) and 71.6(c)(1) do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring, independent of any review and enhancement as may be required under the periodic monitoring rules, §§ 70.6(a)(3) and 71.6(a)(3). Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this action contains no new regulatory requirements that might significantly or uniquely affect small governments. With this action, EPA sets out the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1), which is that they do not require or authorize title V permitting authorities—including any small governments that may be such permitting authorities—to conduct reviews and provide enhancement of existing monitoring through case-by-case monitoring reviews of individual permits under §§ 70.6(c)(1) and 71.6(c)(1). Therefore, this action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have any new federalism implications. The action will not have new 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. This interpretation will not impose any new requirements. Accordingly, it will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this action.

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

Executive Order 13175, ''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.''

This action does not have new tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, this action imposes no new requirements that would impose compliance burdens beyond those that would already apply. Accordingly, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866 and because it is not expected to have a disproportionate effect on children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action 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. This action merely withdraws the revisions to the text of §§ 70.6(c)(1) and 71.6(c)(1) proposed on September 17, 2002 and proposes for comment that these provisions do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement of monitoring as may be required under §§ 70.6(a)(3) and 71.6(a)(3). Further, we have concluded that this action is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 12(d) (15 U.S.C. § 272 note), directs 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.

The NTTAA does not apply to this action because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. Our goal is to ensure that all citizens live in clean and sustainable communities. This action merely proposes an interpretation of an existing rule and includes no changes that are expected to significantly or disproportionately impact environmental justice communities.

Dated: May 25, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–8613 Filed 6–1–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2003–0216; EPA–HQ–OAR–2005–0149; FRL–8178–4]

RIN 2060–AM27 and RIN 2060–AM88

Regulation of Fuel and Fuel Additives: Refiner and Importer Quality Assurance Requirements for Downstream Oxygenate Blending and Requirements for Pipeline Interface

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the reformulated gasoline (RFG) regulations to allow refiners and importers of reformulated gasoline blendstock for oxygenate blending, or RBOB, the option to use an alternative method of fulfilling a regulatory requirement to conduct quality assurance sampling and testing at downstream oxygenate blending facilities. This alternative method consists of a comprehensive program of quality assurance sampling and testing that would cover all terminals that blend oxygenate with RBOB in a specified reformulated gasoline covered area. The program would be carried out by an independent surveyor funded by industry. The program would be conducted pursuant to a survey plan, approved by EPA, that is calculated to achieve the same objectives as the current regulatory quality assurance requirement.

This proposed rule also would largely codify existing guidance for compliance by parties that handle pipeline interface with requirements for gasoline content standards, recordkeeping, sampling and testing. The proposed rule also contains new provisions which would provide additional flexibility to these regulated parties. The proposed rule would also establish gasoline sulfur standards for transmix processors and blenders that are consistent with the sulfur standards for other entities, such as pipelines and terminals, that are downstream of refineries in the gasoline distribution system, and would clarify the requirements for transmix processors under the Mobile Source Air Toxics program.

DATES: *Comments:* Comments must be received on or before July 3, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before July 3, 2006.

Hearings: If EPA receives a request from a person wishing to speak at a public hearing by June 19, 2006, a public hearing will be held on July 3, 2006. If a public hearing is requested, it will be held at a time and location to be announced in a subsequent **Federal Register** notice. To request to speak at a public hearing, send a request to the contact in **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0216 for comments on the transmix provisions, and EPA–HQ–OAR–2005–0149 for comments on the RBOB provisions, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2003–0216 or EPA–HQ–OAR–2005–0149, as appropriate.
- Mail: Air Docket, Docket ID No. EPA–HQ–OAR–2003–0216, or EPA–HQ–OAR–2005–0149, as appropriate, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. EPA–HQ–OAR–2003–0216, or EPA–HQ–OAR–2005–0149, as appropriate. Such

deliveries are 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–OAR–2003–0216, or EPA–HQ–OAR–2005–0149, as appropriate. 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 www.regulations.gov. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Chris McKenna, mailcode 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9037; fax number: 202–343–2802; e-mail address: *mckenna.chris@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

In the ''Rules and Regulations'' section of the **Federal Register**, we are issuing these amendments to the RFG regulations as a direct final rule without prior proposal because we view them as non-controversial amendments and anticipate no adverse comment. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the direct final rule on which adverse comment was received will not take effect. Those portions of the rule on which adverse comment was not received will go into effect on the effective date noted in the DATES section. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production or importation of gasoline motor fuel. Regulated categories and entities affected by this action include:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.
Industry	422710; 422720	5171; 5172	Gasoline Marketers and Distributors.
Industry	484220; 484230	4212; 4213	Gasoline Carriers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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:

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

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

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

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

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

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

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

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

3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided by 40 CFR Part 2.

Outline of This Preamble

I. Refiner and Importer Quality Assurance Requirements for Downstream Oxygenate Blending
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D. Unfunded Mandates Reform Act
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I. National Technology Transfer and Advancement Act
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I. Refiner and Importer Quality Assurance Requirements for Downstream Oxygenate Blending

A. Background

The RFG regulations currently require RFG to contain a minimum of 2.0 weight percent oxygen. 40 CFR 80.41. To fulfill this requirement, oxygenate is added either at the refinery before the gasoline is certified by the refiner as meeting RFG requirements, or it is added downstream from the refinery at an oxygenate blending facility. As discussed in more detail below, refiners often wish to require that more than the minimum amount of oxygenate be added downstream in order to include the additional oxygenate in their emissions performance compliance calculations. Although Congress recently removed the oxygen requirement for RFG in the Clean Air Act,[1] we believe many refiners and importers may wish to continue to include oxygenate added downstream in their emissions compliance calculations. Under the current regulations, refiners must conduct a program of quality assurance testing at the downstream oxygenate blending facility in order to include the oxygenate in their compliance calculations. This proposed rule would provide an alternative QA requirement for these refiners and importers.

Under the current regulations, when oxygenate is to be added to produce RFG at a downstream oxygenate blending facility, refiners produce a product called reformulated gasoline blendstock for oxygenate blending, or RBOB. RBOB is certified by the refiner, or by an importer who imports RBOB, as complying with all of the RFG requirements except the minimum 2.0 weight percent oxygen requirement. The oxygenate blender is responsible for complying with the oxygen requirement when the oxygenate is added to the RBOB to produce RFG at the oxygenate blending facility.

Various oxygenates may be used to fulfill the oxygen requirement. Some oxygenates, such as methyl tertiary butyl ether, or MTBE, typically are added at the refinery. However, some oxygenates, such as ethanol, have a propensity to attract water, and, as a result, cannot be added at the refinery, particularly where the finished gasoline will be traveling through a pipeline on its way to terminals and retail gasoline stations. As a result, RFG containing ethanol is typically produced by blending the ethanol with RBOB at a blending facility downstream from the refinery that produced the RBOB.

Refiners and importers of RBOB are required to calculate compliance with the RFG emissions performance standards for VOC, NO_X and toxics by sampling and testing a hand blended mixture of the RBOB and the type and amount of oxygenate that the refiner or importer of the RBOB designates must be added downstream. The type and amount of oxygenate to be added downstream must be indicated on the product transfer documents that accompany the gasoline when it is transferred to the downstream oxygenate blender. The oxygenate blender is required to add the type and amount of oxygenate designated on the product transfer documents.

Under the current regulations, RBOB refiners and importers can designate either a specific type and specific amount of oxygenate to be added downstream, or they can designate one of two generic categories of RBOB: ''any-oxygenate'' RBOB or ''ether-only'' RBOB. 40 CFR 80.69(a)(8). Where the RBOB is designated as any-oxygenate RBOB, the refiner or importer must assume for purposes of its handblend that 2.0 weight percent ethanol will be added downstream. The downstream oxygenate blender may add any type of legal[2] oxygenate, to any-oxygenate RBOB in an amount sufficient to meet the minimum 2.0 weight percent requirement. Where the RBOB is designated as ether-only RBOB, the refiner or importer must assume for purposes of its handblend that 2.0 weight percent MTBE will be added downstream. The oxygenate blender may add any legal ether oxygenate to ether-only RBOB in an amount sufficient to meet the minimum 2.0 weight percent requirement.

Where a specific type and amount of oxygenate is designated for the RBOB rather than one of the two generic designations, the regulations require the refiner or importer to conduct downstream oversight quality assurance (QA) sampling and testing of the downstream oxygenate blending facility. 40 CFR 80.69(a)(7). This is to ensure that the specific type and amount of oxygenate that is designated, which typically is greater than the 2.0 weight percent requirement, in fact is added to the RBOB by the oxygenate blender. In addition, the refiner or importer must have a contract with the oxygenate blender which requires the blender to comply with the blending procedures specified by the RBOB refiner or importer and allows the refiner or

[1] 1 Energy Policy Act of 2005, Pub. L. 109–58 (HR6), section 1504(a), 119 STAT 594, 1076–1077(2005). In accordance with the Energy Policy Act, EPA has issued a rule amending the RFG regulations for California to remove the 2.0 weight percent oxygen standard (71 FR 8965 (February 22, 2006)), and has proposed a similar rule that would be applicable in the rest of the country (71 FR 9070 (February 22, 2006)).

[2] Oxygenates that are allowed under EPA's ''substantially similar'' rule and any section 211(f) waiver that may apply.

importer to conduct the required QA sampling and testing. 40 CFR 80.69(a)(6). If the refiner or importer does not meet the contractual and quality assurance requirements and does not designate its RBOB as ether-only or any-oxygenate, the refiner or importer must assume for purposes of its handblend that 4.0 volume percent ethanol will be added to the RBOB downstream.

B. Need for Action

Recently, the states of New York and Connecticut promulgated state laws banning the use of MTBE in gasoline sold in these states. As a result, many refiners and importers that historically produced or imported RFG containing MTBE for the NY/CT RFG area currently produce or import RBOB for ethanol blending. Refiners in this area have indicated that, due to the complex gasoline marketplace in New York and Connecticut, it is extremely difficult, if not impossible, to track RBOB from the refinery where it is produced to the terminal where it is blended with ethanol in order to fulfill the downstream QA sampling and testing requirement. As a result, under the current regulations, refiners in the NY/CT RFG area are effectively precluded from producing an RBOB which requires a specific type and amount of oxygenate, such as 10 volume percent ethanol, and instead must produce a generic any-oxygenate RBOB, which does not require the refiner to conduct downstream QA testing at the ethanol blender facility.

As discussed above, for purposes of calculating compliance with RFG emissions performance standards, these refiners may then only include in their handblends ethanol in an amount which would result in gasoline having 2.0 weight percent ethanol (approximately 5.7 volume percent ethanol.) Some refiners have indicated that they will need to produce RBOB requiring 10 volume percent ethanol, which would allow them to include 10 volume percent ethanol for purposes of compliance calculations, in order to meet emissions performance standards. As a result, these refiners have asked EPA to allow use of an alternative method of meeting the downstream QA sampling and testing requirement.

For the reasons discussed below, we believe it is appropriate to provide refiners and importers who produce or import RBOB for the NY/CT RFG area with an alternative means of meeting the QA sampling and testing requirement. We also believe it is appropriate to provide this alternative to refiners and importers who produce or import gasoline RBOB for other RFG areas. As a result, this proposed rule would amend the RFG regulations to provide an alternative QA sampling and testing option which will be available to any RBOB refiner or importer in any RFG covered area. As indicated above, we believe that providing this alternative QA requirement would be appropriate even after the 2.0 weight percent minimum oxygen standard is removed.

C. This Action

This proposal would provide RBOB refiners and importers the option to comply with an alternative QA requirement which consists of a program of sampling and testing designed to provide oversight of all terminals that blend ethanol with RBOB for use in a specified RFG covered area. Under this option, a refiner or importer would need to either arrange to have an independent surveyor conduct a program of compliance surveys, or participate in the funding of an organization which arranges to have independent surveyor conduct a program of compliance surveys. In either event, compliance surveys would need to be carried out by an independent surveyor pursuant to a survey plan calculated to achieve the same QA objectives as the current regulatory requirement. A detailed survey plan would be submitted to EPA for approval by September 1st of the year preceding the annual averaging period in which the alternative QA sampling and testing program would be implemented. The survey plan would include a methodology for determining when the survey samples will be collected, the location of the retail outlets where the samples will be collected, the number of samples to be included in the survey, and any other elements that EPA determines are necessary to achieve the same level of quality assurance as the current QA requirement.

Under this alternative QA option, the independent surveyor would be required to obtain samples at retail stations in the RFG covered area in accordance with the survey plan and have the samples tested for type and amount of oxygenate. The sampling and testing conducted under this alternative QA option would be required to be done in accordance with the provisions in §§ 80.8 and 80.46. The surveyor would obtain from the retail outlet the product transfer documents associated with the gasoline, which will provide the surveyor with information regarding the type and amount of oxygenate that the gasoline is supposed to contain, and the terminal that conducted the oxygenate blending. The surveyor would be required to notify EPA of any instance where the product transfer documents do not contain such information. If the test results show that the gasoline does not contain the type and/or the minimum amount of oxygenate indicated on the product transfer documents, the surveyor would be required to ask the terminal determined to have supplied the gasoline to produce documentation of the blending instructions from the refiner or importer of the RBOB. The surveyor would be required to notify EPA of any instances where the refiner's or importer's blending instructions indicate that the oxygenate blender did not add the type or minimum amount of oxygenate designated for the RBOB by the refinery or importer. The surveyor would be required to submit to EPA a report which includes the information and data collected during the survey, and to maintain records associated with the surveys for five years.

This proposed rule would require each refiner and importer who chooses to comply with the alternative QA requirement to take all reasonable steps to ensure that parties downstream from the refiner or importer cooperate with the program by allowing the independent surveyor to collect samples, and by providing to the independent surveyor copies of product transfer documents and other information regarding the source of any gasoline received, the destination of any gasoline distributed, the oxygenate blending instructions for RBOB, and the rate the oxygenate was blended. In partial satisfaction of the ''reasonable steps'' requirement, the rule would require the refiner or importer to include such a requirement in contractual agreements with its branded downstream facilities.

In addition, this proposed rule would require parties downstream from a refiner or importer that complies with the alternative QA requirement to include on product transfer documents the type and amount of oxygenate contained in the gasoline and identification of the oxygenate blending terminal that blended the gasoline. This proposed rule would require that the survey plan include a process for notifying all oxygenate blending terminals and other downstream parties in the affected area of the product transfer documentation requirement. Where a downstream party fails to receive notice of the product transfer requirement, the party would be required to begin complying with the

product transfer requirement upon notification by EPA.

We believe that use of this QA compliance alternative would result in oversight sampling and testing that is equivalent to the current regulatory QA requirement, and, in fact, may result in significantly superior QA oversight since the sampling and testing would be conducted by an independent surveyor in accordance with a comprehensive plan approved by EPA, rather than by individual refiners and importers. This rule would not have any adverse environmental impact, and would provide refiners and importers with additional flexibility in complying with the regulations. As a result, while this rulemaking was initiated in response to the compliance issues raised by refiners in the NY/CT area, we believe it is appropriate to provide this compliance alternative to refiners and importers supplying any RFG covered area. The rule, therefore, would provide this QA compliance alternative to any RBOB refiner or importer in any RFG area who either arranges to have an independent surveyor conduct a program of compliance surveys, or who participates in the funding of an organization that arranges to have an independent surveyor conduct a program of compliance surveys, in accordance with the provisions in this proposed rule.

Compliance with this QA alternative would be optional. Refiners and importers may choose to comply with the existing QA requirement and not participate in a survey program. Refiners and importers who supply more than one RFG area may choose to participate in the survey program for one RFG area and comply with the existing QA requirement for another RFG area.

This proposed rule would add a new paragraph (a)(11) to 40 CFR 80.69, which contains the current QA requirement. This proposed rule also would amend § 80.77 to require parties to include on product transfer documents the information required under § 80.69(a)(11) as described above.

II. Requirements for Pipeline Interface

A. Background

Refined petroleum products that are transported by pipeline normally are pumped sequentially, as a continuous flow through the pipeline. As a result, some amount of mixing of adjacent product types normally occurs. The product in a pipeline between two adjacent volumes of petroleum product consists of a mixture of the two adjacent volumes and is called ''interface.'' Generally, interface is blended into the two adjoining products that created the interface. For example, half of the interface between premium and regular gasoline is blended into the premium gasoline and half into the regular gasoline (called a ''fifty percent cut'' or a ''mid-point cut.'') However, certain product types, such as jet fuel, are not mixed with any other product type, and all of the interface that contains jet fuel is blended into the other product (called a ''clean cut.'')

Where interface consists of a mixture of finished fuels that cannot be cut with adjoining product so as to produce a product that meets the specifications for a fuel that can be used or sold without further processing, the interface is called ''transmix''. Transmix is not blended into either of the two adjacent products transported by the pipeline, but is diverted by the pipeline as a distinct product into a separate storage tank. Transmix is generally transported via tank truck, pipeline or barge to a facility designed to separate the transmix into its fuel components. For example, where the transmix consists of gasoline and distillate fuel, the transmix may be transported to a ''transmix processing'' facility where the gasoline portion is separated from the distillate fuel. At locations where it is either relatively expensive or inconvenient to transport transmix to a transmix processing facility for separation, the transmix is sometimes blended into gasoline in very small amounts, typically around 0.25 volume percent of the gasoline.

The reformulated gasoline (RFG) and anti-dumping requirements apply at any facility where gasoline is produced. *See* 40 CFR 80.2(h) and (i), 80.65(a), and 80.101. Gasoline most commonly is produced by processing crude oil at refineries, but it is also produced by other processes, such as combining blendstocks or adding blendstocks to finished gasoline. Gasoline is also produced when transmix is blended into gasoline, or when transmix is separated into gasoline and distillate fuel. Transmix blending is similar to adding blendstock to gasoline where the addition of the transmix, like blendstock, may change the properties of the gasoline. Similarly, the process of separating gasoline and distillate fuel may result in gasoline with different properties than the gasoline as originally certified by the refinery. Transmix processors and transmix blenders are refiners under the RFG/anti-dumping regulations, but EPA has historically provided transmix processors and transmix blenders flexibility in complying with the refiner requirements. This proposed rule would codify some of the existing practices into EPA regulations, and would also include modifications reflecting EPA experience.

B. 1997 Notice of Proposed Rulemaking

On July 11, 1997, EPA proposed to add a new § 80.84 to the RFG/anti-dumping regulations at 40 CFR Part 80 to clarify the manner in which interface, including transmix, would be treated under the RFG/anti-dumping regulations. The NPRM proposed requirements for designating different combinations of gasoline in interface. The NPRM also proposed requirements for transmix processors and transmix blenders that produce either RFG or conventional gasoline.

The NPRM proposed to allow parties to blend transmix into conventional gasoline provided that the transmix resulted from normal pipeline operations, and either there was no means of transporting the transmix to a transmix processor via pipeline or water, or there was an historical practice of blending transmix at the facility before 1995. The rate of transmix blending was limited to the greater of 0.25 volume percent or the demonstrated blending rate in 1994. The NPRM proposed to allow transmix to be blended into RFG provided that the transmix resulted from normal pipeline operations, there was no means of transporting the transmix to a transmix processing facility via pipeline or water, and the party was unable to blend the transmix into conventional gasoline. The rate of transmix blending into RFG was limited to a maximum of 0.25 volume percent. The NPRM also proposed requiring transmix blenders to carry out a program of periodically sampling and testing of the RFG subsequent to transmix blending to ensure that the downstream standards were met.

The NPRM proposed to require transmix processors who designate the gasoline produced from the transmix (such gasoline is one type of transmix gasoline product, or TGP) as conventional gasoline to exclude the TGP from anti-dumping compliance calculations for the transmix processing facility, but to include any blendstocks added to the TGP since such blendstocks would not previously have been included in any refinery's compliance calculations. The NPRM proposed to require transmix processors who designate the gasoline produced from transmix as RFG to *include* the TGP, as well as any blendstocks used, in the RFG compliance calculations for the transmix processing facility to

ensure that the gasoline produced using the transmix meets all RFG standards.

Parties have been processing and blending transmix in accordance with EPA guidance which describes similar treatment of interface and transmix as that outlined in the July 11, 1997 NPRM. (*See Reformulated Gasoline and Anti-dumping Questions and Answers* (November 12, 1996)). Our experience since the guidance was issued indicates that the approach taken in the guidance is mostly appropriate, but that some revisions are warranted. EPA is also aware, from recent discussions with several pipeline operators, that volumes of transmix may increase as pipelines begin transporting ultra-low sulfur diesel fuel. EPA had anticipated that transporting ultra-low sulfur diesel would require greater volumes of diesel to be cut as interface into other higher-sulfur distillate fuels such as heating oil and jet fuel. However, some pipelines have indicated they intend to change their product sequencing by transporting volumes of ultra-low sulfur diesel between volumes of gasoline, in order to minimize sulfur contamination of the ultra-low sulfur diesel. This change would increase the number of gasoline/diesel interfaces cut to transmix, and increase the overall volume of transmix. Pipeline operators have also indicated that transporting ultra-low sulfur diesel fuel will cause them to generate transmix at locations where they have not historically generated transmix.

In this proposed rule, we are including the provisions in § 80.84, which were previously proposed in the July 11, 1997 NPRM, with certain changes made in response to the comments we received on the NPRM, as discussed below. We believe it is appropriate to include in this proposal the provisions in § 80.84 given the length of time since they were originally proposed, and to include changes made in response to prior comments. We have also added several new provisions in this proposal clarifying, and in some instances expanding, the flexibilities available to transmix processors and transmix blenders for complying with the RFG/antidumping regulations. This proposed rule also includes modest recordkeeping requirements in §§ 80.74 and 80.104 which would require parties that handle interface and transmix to keep records verifying that the requirements of § 80.84 were met. In addition, this proposed rule includes provisions for transmix processors and transmix blenders related to gasoline sulfur and air toxics. This proposed rule only addresses gasoline produced by transmix processors and transmix blenders. Distillate fuel produced by transmix processors and transmix blenders is addressed in the diesel sulfur regulations under 40 CFR part 80, subpart I.

EPA believes the flexibilities available in this proposed rule are appropriate given the unique roles that transmix processors and transmix blenders fill in the petroleum products distribution system. Although transmix processors and transmix blenders are refiners under EPA's regulations, almost all of the gasoline and distillate fuel they produce is derived from fuel which has already been produced and certified by an upstream refinery. Thus, this proposed rule would allow transmix processors the flexibility to exclude from their antidumping compliance calculations conventional gasoline that they recover directly from transmix, since the conventional gasoline has already been accounted for in the compliance calculations of an upstream refinery. Similarly, this proposed rule would allow transmix processors to only have to meet the downstream sulfur standards for gasoline they recover directly from transmix, since the gasoline has already been accounted for in the compliance calculations of an upstream refinery. However, transmix processors must comply with all refiner standards at each of their transmix processing facilities for any blendstocks they add to gasoline. Lastly, this proposed rule would allow transmix blenders to blend transmix into gasoline without restriction on location or rate, provided the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit, and that the gasoline meets all applicable downstream standards.

C. Pipelines

This proposed rule includes designations for pipeline interface that are consistent with the designations in EPA's current guidance and the 1997 NPRM. The designations for pipeline interface are primarily intended to ensure that pipelines cut their interfaces in a manner that maintains the quality of any RFG or VOC-controlled gasoline transported by a pipeline. For example, interfaces between volumes of RFG and conventional gasoline should be cut into the conventional gasoline to maintain the quality of the RFG. Regardless of gasoline product designation, all gasoline containing interface must meet all downstream standards, including but not limited to any standards and requirements that apply downstream of the refinery in 40 CFR Part 80 and the Clean Air Act.

D. Transmix Processors

1. Comments on the 1997 Notice of Proposed Rulemaking

EPA received a number of comments on the 1997 NPRM regarding transmix processors. One commenter said that the definition of transmix should be changed since transmix processors and transmix blenders sometimes process or blend mixtures of fuels that were unintentionally combined in tanks. Although such mixtures are similar in composition to transmix, they do not fit the definition of transmix proposed in the 1997 NPRM, which specified that transmix must be generated in a pipeline. EPA agrees that a product that in composition is similar to transmix, and that is produced by unintentionally mixing gasoline and distillate fuel in tanks, should be afforded the same treatment as transmix product generated in a pipeline. EPA also understands that transmix may include mixtures of gasoline and distillate fuel produced through normal operational activities at pipelines and terminals, such as draining tanks, or draining piping and hoses used to transfer gasoline or distillate fuel to tanks or trucks, or from a safety relief valve discharging to protect equipment from overpressuring. As a result, § 80.84(e) in this proposed rule specifically allows such products to be covered under the transmix provisions.

EPA is aware that some transmix processors and transmix blenders may also be adding feedstocks to their transmix that were not produced from normal pipeline interface, or from inadvertently mixing gasoline and distillate fuel in tanks, or through normal operational activities at pipelines and terminals. Mixing other feedstocks in transmix prior to processing may cause these other feedstocks to be inappropriately accounted for under the antidumping regulations and gasoline sulfur regulations, as discussed later. The flexibility provided in this rule extends only to transmix composed of pipeline interface, mixtures of gasoline and distillate fuel that were unintentionally combined in a tank, and mixtures of gasoline and distillate fuel produced through normal operational activities at pipelines and terminals. A transmix processor or transmix blender who adds feedstocks derived from any other sources to their transmix must comply with all the standards applicable to a refiner under EPA's regulations for all the gasoline they produce during a compliance period, including but not limited to any standards and requirements in 40 CFR parts 79, 80 and

the Clean Air Act. Transmix processors that add feedstocks from any other sources should also take extra care to be sure that they are complying with Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921–6939(e), and any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. 6926.

One commenter said that the 1997 NPRM should clarify that the transmix processing requirements do not apply to transmix processed by a crude oil refinery where the transmix is received into a crude or other feedstock stream and is not separated before it is added to other feedstocks. EPA believes that the regulations in this proposed rule are clear in this regard, since they specifically apply to persons who separate transmix at a transmix processing facility. The term ''transmix processing facility'' is defined as excluding refineries that ''produce gasoline by processing crude oil''. Such refineries must comply with all existing refiner requirements, and would not be eligible to take advantage of the flexibilities available in this proposed rule.

Some commenters said that they do not know the source of the transmix and, therefore, would not know the original designation of the gasoline portion of the transmix (*e.g.*, RFG, conventional gasoline, blendstocks). The commenters said that the transmix processor should not be required to track and segregate transmix generated from different types of gasoline or blendstocks. This proposed rule would not require a transmix processor to track and segregate transmix. However, § 80.65 requires the transmix processor to designate the gasoline portion (*i.e.*, conventional gasoline, RFG, or RBOB) that is separated from the distillate fuel.

One commenter said that, under previous guidance, EPA provided for the exclusion of the transmix-based portion of conventional gasoline from anti-dumping compliance calculations as an option, whereas in the 1997 NPRM, the exclusion would be mandatory. The commenter believes the exclusion should be optional. Another commenter believes that transmix processing improves the quality of the gasoline separated from transmix by removing more heavy aromatics and sulfur compounds and improving E300 distillation point, and therefore, TGP should be included in compliance calculations for conventional gasoline to give credit for the improvements. EPA agrees with the commenters, and this proposed rule would modify the 1997 NPRM to allow the exclusion of the TGP from anti-dumping compliance calculations to be optional, provided the TGP meets all of the downstream standards for conventional gasoline. However, in order to prevent transmix processors from selectively including only high quality TPG batches in their compliance calculations, while excluding those of low quality, transmix processors must consistently include or exclude TGP in their compliance calculations during each annual compliance period, with one exception.

The exception occurs if transmix contains gasoline blendstocks that are derived from pipeline interface. EPA understands that some pipelines transport gasoline blendstocks, and that these pipelines may cut interfaces containing gasoline blendstock to a transmix tank. If a transmix processor produces conventional gasoline from transmix containing gasoline blendstocks and was allowed to exclude the TGP from their anti-dumping compliance calculations, the finished conventional gasoline would not be included in any refiner's anti-dumping compliance calculations. Thus, under this proposal, if a transmix processor produces conventional gasoline at a transmix processing facility from transmix containing gasoline blendstocks derived from pipeline interface, the transmix processor must consistently include all TGP produced during a compliance period in their antidumping compliance calculations for that transmix processing facility. As discussed previously, if transmix processors add any feedstocks to their transmix that were not produced from normal pipeline interface, or from inadvertently mixing gasoline and distillate fuel in tanks, or through normal operational activities at pipelines and terminals, they would need to comply with all standards applicable to refiners under EPA's regulations for all the gasoline they produce during a compliance period. This proposed rule would also require any RFG or RBOB produced by a transmix processor to be included in the RFG compliance calculations for the transmix processing facility.

This proposed rule would also modify the 1997 NPRM by treating TGP as a blendstock when the transmix processor mixes the TGP with other blendstock(s) to produce conventional gasoline. In this situation, the TGP would be included in compliance calculations for the resulting conventional gasoline. We believe it is appropriate to treat TGP as a blendstock rather than as a previously certified gasoline in this situation, since the TGP is likely to have undergone changes as a result of having been interfaced with another product and separated through transmix processing. For example, one transmix processor indicated that their TGP could not be directly sold as gasoline because it does not meet standards for octane or Reid vapor pressure. This approach is consistent with the approach taken in both the 1997 NPRM and the Question and Answer guidance with regard to RFG, where TGP is required to be included in compliance calculations when it is mixed with blendstock to produce RFG.

Where TGP is *sold* as a blendstock, the transmix processor would be required to *exclude* the TGP from compliance calculations, with one exception. The exception is when the transmix processor sells the TGP to an oxygenate blender as a blendstock which becomes conventional gasoline solely upon the addition of an oxygenate, such as ethanol or MTBE. In this circumstance, the transmix processor would need to include the TGP in compliance calculations. This exception would not apply if the TGP is combined with any other non-oxygenated blendstocks to produce conventional gasoline. Thus, in order for a transmix processor to properly account for any TGP sold as a blendstock in compliance calculations for a transmix processing facility, the transmix processor must clearly state on the TGP product transfer documents whether or not the TGP may only be combined with an oxygenate to produce conventional gasoline. This approach is consistent with the anti-dumping regulations at § 80.101(d)(3), which require blendstocks that become conventional gasoline solely upon the addition of an oxygenate to be included in anti-dumping compliance calculations for the refiner that produced the blendstock.

Transmix processors also sometimes blend sub-octane TGP with previously certified premium gasoline (PCG) to produce regular gasoline. EPA is proposing that transmix processors which blend sub-octane TGP with premium PCG to produce conventional gasoline must include the TGP in compliance calculations for the transmix processing facility, but may meet the sampling and testing requirements in one of three ways. First, the transmix processor may directly measure the properties of the TGP and treat each volume of TGP blended with PCG as a separate batch for purposes of compliance calculations. As a second alternative, the transmix processor may measure the volume and properties of the PCG prior to blending with the TGP, then measure the volume and properties of the gasoline subsequent to blending

with the TGP, and calculate the volume and properties of the TGP by subtracting the volume and properties of the PCG from the volume and properties of the gasoline subsequent to blending. As a third alternative, the transmix processor may demonstrate compliance using the procedures in § 80.101(g)(9). Where TGP is mixed with previously certified gasoline to produce RFG or RBOB, the transmix processor must demonstrate compliance using the procedures in § 80.65(i).

One commenter said that EPA should allow transmix processors to blend oxygenates and other blendstocks into transmix-based conventional gasoline to produce RFG. This proposed rule would address this comment by allowing transmix processors to treat their TGP as a blendstock, and combine the TGP with other blendstocks to produce either conventional or reformulated gasoline. In this situation, the transmix processor would be required to fulfill all the requirements and standards for RFG that apply to a refiner.

2. Issues Not Addressed in the 1997 NPRM

a. Gasoline Sulfur. In the preamble to the gasoline sulfur regulations, EPA indicated that the Agency would establish requirements for transmix processors in a future rulemaking (65 FR 6800, February 10, 2000). Therefore, as part of this rulemaking, EPA is also including proposed requirements for transmix processors and transmix blenders under the gasoline sulfur regulations at 40 CFR part 80, subpart H.

As under the RFG/anti-dumping rule, transmix processors and transmix blenders are refiners under the gasoline sulfur regulations. As a result, transmix processors and transmix blenders are subject to the refinery sulfur standards under § 80.195 of the gasoline sulfur regulations. However, for reasons discussed below, we believe it is appropriate that such parties be held to the gasoline sulfur standards applicable to downstream parties under §§ 80.210 and 80.220 of the gasoline sulfur regulations, and not be held to the more stringent refinery standards in § 80.195.

As indicated above, transmix processors generally do not control their feedstock, but receive mixtures of products from upstream refineries. The gasoline portion of transmix may be relatively high in sulfur if it was originally produced by a small refiner, a refiner producing gasoline for use in the Geographic Phase-in Area (GPA), or a refiner who has been given a temporary hardship extension to produce relatively high sulfur gasoline. As a result, holding transmix processors to the downstream sulfur standards rather than the more stringent refinery standards would provide transmix processors the flexibility to recover gasoline originally produced by small refiners, refiners of GPA gasoline, or temporary hardship refiners. To ensure compliance with the applicable downstream sulfur standards, transmix processors will be required to test any gasoline produced from transmix for sulfur content.

Under this proposed rule, transmix processors who add blendstocks not derived from transmix to their recovered gasoline would be required to meet all of the requirements and standards that apply to refiners under 40 CFR Part 80, subpart H, for such blendstocks. Where certain requirements are met, the transmix processor may use sulfur test results from the blendstock supplier for purposes of meeting the sampling and testing requirements under the sulfur rule.

As mentioned previously, EPA has learned that some transmix processors have added feedstocks to their transmix, before the transmix is processed, that are not produced from pipeline interface, or from mixtures of gasoline and distillate fuel unintentionally combined in a tank, or from normal operations at pipelines and terminals. Under this proposal, transmix processors that use these other feedstocks would need to meet all EPA standards applicable to a refiner for all the gasoline they produce during a compliance period, including the refinery level sulfur standards in 40 CFR 80.195. These transmix processors could not utilize the flexibilities in this rule because they have chosen to use feedstocks that have not been previously accounted for by a refinery in the production of gasoline. When the transmix is processed, the previously compliant gasoline present in the transmix and the other feedstocks both distill out of the transmix together as a fungible product, and the transmix processor cannot distinguish exactly which portion of the TGP was derived from previously compliant gasoline and which was derived from other feedstocks. Thus, EPA proposes limiting the flexibility allowed by this proposed rule to gasoline produced from transmix, only if the transmix was produced from pipeline interface, or from mixtures of gasoline and distillate fuel that were unintentionally combined in a tank, or from mixtures of gasoline and distillate fuel produced from normal operational activities at pipelines and terminals. Transmix processors who add any other material to their transmix would need to comply with all EPA standards applicable to a refiner for all the gasoline they produce during a compliance period, including the refinery level sulfur standards in 40 CFR 80.195.

This proposed rule would, however, allow transmix processors that produce gasoline from pipeline interface to meet the less stringent downstream gasoline sulfur standards, even if the interface contains small amounts of gasoline blendstocks that are transported via pipeline as a normal part of pipeline operations. EPA believes it is appropriate to allow transmix processors that produce gasoline from these interface mixtures to meet the downstream sulfur standards because they do not have the same level of control over their transmix as the transmix processors that intentionally introduce other feedstocks into the production process. Furthermore, because the volume of gasoline blendstocks in the transmix will be relatively small and since the gasoline will still have to meet downstream standards, EPA believes the environmental consequences of allowing these transmix processors to meet the less stringent downstream sulfur standard should be negligible.

This proposed rule would add a new § 80.213 to the gasoline sulfur regulations. This section contains the additional requirements for demonstrating compliance with the gasoline sulfur rule discussed above for refiners who process or blend transmix in accordance with the provisions in § 80.84. EPA believes that the additional proposed requirements for transmix processors and transmix blenders in § 80.213 are necessary to maintain the flexibility of the current practices regarding transmix, and will not result in any adverse environmental consequences. This proposed rule would also add modest recordkeeping requirements to § 80.365 which require parties to retain records of any sampling and testing required under § 80.213.

b. Air Toxics. The mobile source air toxics (MSAT) rule (66 FR 17230, March 29, 2001) requires the annual average toxics performance of a refinery's or importer's gasoline to be at least as clean as the average of its gasoline during the three-year baseline period 1998–2000. The MSAT requirements apply separately to RFG and to conventional gasoline. MSAT compliance is determined from the same gasoline data used by a refiner to determine its compliance with the RFG or anti-dumping requirements. As a result, only gasoline which would be included in the RFG or anti-dumping compliance determination of a refiner is

included in the refiner's MSAT baseline and compliance determinations.

Most, if not all, transmix processors have unique individual MSAT baselines. Under MSAT, those with unique individual MSAT baselines (§ 80.915) are subject to their MSAT baseline up to their associated MSAT baseline volume (§ 80.850). Gasoline production above the MSAT baseline volume is subject to either the RFG toxics performance standard (§ 80.41) or to the refiner's anti-dumping standard (§ 80.91). Because these standards are equal to or less stringent than the refiner's MSAT baseline, they offer some flexibility to the refiner's overall compliance with its MSAT standard. Because gasoline demand is increasing, EPA expects that this provision will provide most refiners with some degree of MSAT compliance flexibility. The MSAT rules also provide for limited credit and deficit carryover, allowing refiners to weather slightly off years with better toxics performance in an adjacent year (§ 80.815). Finally, because all refiners are subject to MSAT standards which are typically more stringent than the RFG toxics performance standard or their individual anti-dumping standard, it is likely that the gasoline portion of the transmix is also cleaner with respect to toxics performance than it was during the baseline period 1998–2000, thus providing some immediate flexibility to transmix processors and transmix blenders.

This action clarifies that any gasoline or blendstock a transmix processor includes in their RFG or anti-dumping compliance determination is also included in their MSAT compliance calculations. Also, EPA has recently proposed to replace the existing MSAT regulations with a standard that would limit the benzene content of gasoline to an annual average of 0.62 percent by volume for most refiners, beginning in 2011. See 71 FR 15803 (March 29, 2006). The proposed toxics regulations would exempt transmix processors from the new benzene standard for any gasoline they recover from transmix, but require transmix processors to meet the standard for any blendstocks they add to transmix.

E. Transmix Blenders

1. Comments on the 1997 Notice of Proposed Rulemaking

One commenter was concerned that the sampling and testing procedures in the 1997 NPRM for blends of transmix and RFG, which would be performed after blending the transmix, may not prevent the release of noncompliant RFG in the distribution system. For reasons discussed below, however, EPA believes that commercial standards limit transmix blending to such small percentages, that blending transmix in RFG will cause essentially no change in the emissions performance of the RFG. This proposed rule would specifically require that all gasoline produced by transmix blenders have an endpoint less than 437 degrees Fahrenheit. As described below, as a practical matter, EPA believes that this endpoint standard will effectively prevent the blending of transmix into gasoline from causing any appreciable changes in gasoline emissions performance.

One commenter said that the 1996 Question and Answer guidance regarding transmix blended into conventional gasoline requires that the transmix be blended at a rate no greater than the historical rate that was used by the pipeline, whereas the NPRM provided that the transmix be blended at a rate no greater than the historical rate at the terminal or 0.25 volume percent, whichever is greater. The commenter said the NPRM did not cover a situation where, historically, transmix was moved through a pipeline to a terminal that is no longer used for blending transmix, and the transmix is currently moved through the same pipeline but blended at an intermediate terminal which historically had not been used for blending transmix. The commenter recommended that the language in the Q&A guidance, which covers this situation by allowing blending at the historical rate used by the pipeline rather than by the terminal, be adopted in the regulations.

We believe the Q&A guidance is consistent with the 1997 NPRM in stating that if a pipeline stops blending transmix at a terminal, that the pipeline may not begin blending transmix at a second terminal at a rate equal to the first terminal's blending rate. The Q&A guidance states: ''* * * the transmix must be present in a terminal from which there is no out-bound pipeline or water transportation by which the transmix could be transported to a transmix processor, or the pipeline's historical practice *at the terminal* [emphasis added] (the practice beginning at least before January, 1994) has been to blend all transmix into conventional gasoline without further processing.'' This language indicates that the criteria regarding historical practice applies to the terminal in which the transmix was blended by the pipeline. Where a pipeline blends transmix at more than one terminal, the historical practice criterion would apply separately to each of the pipeline's terminals at which transmix is blended. However, as described below, this proposed rule would change this approach.

2. This Proposal

This proposed rule would eliminate the historical practice criterion for determining amounts of transmix to be blended into conventional gasoline and the locations where this may occur, and also would eliminate the 0.25 volume percent limit for blending transmix in reformulated gasoline. This proposed rule would instead allow transmix to be blended into conventional or reformulated gasoline in any location and in any amount, provided the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit,[3] and meets all other applicable downstream standards. As EPA's diesel sulfur regulations begin phasing in, transmix will be generated at new locations. EPA believes it is appropriate to allow the flexibility to blend transmix into gasoline at locations which have not historically blended transmix, provided the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit, and the gasoline meets all other applicable downstream standards. In addition, EPA believes it is appropriate to use gasoline endpoint to regulate transmix blending because it takes into account the quality of the transmix-blended gasoline. The historical practice criterion for conventional gasoline and the 0.25 volume percent limit for RFG were crude approaches that did not account for the variability of transmix and its effect on the gasoline into which it was blended.

EPA believes that blending small percentages of transmix in gasoline should be allowed at any facility, provided the facility takes appropriate steps to ensure that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit. Transmix typically contains significant percentages of distillate fuels such as diesel fuel or heating oil, and distillate fuels have higher boiling points and much lower octane ratings than

[3] 437 degrees Fahrenheit is the maximum allowable endpoint for gasoline specified in ASTM's standard for automotive spark-ignition engine fuel, D 4814–88. Gasoline endpoint is measured using ASTM D86–01. ASTM D86–01 measures the percentage of a gasoline sample that evaporates, as a function of temperature, as the sample is heated up under controlled conditions. Endpoint is the temperature at which all the volatile portion of a gasoline sample is evaporated. ASTM D4814–88 specifies a maximum allowable endpoint of 437 degrees Fahrenheit in order to limit the amount of higher-boiling point compounds that can be present in the gasoline.

gasoline. EPA's existing guidance regarding transmix blending reflected a concern that blending excessive amounts of transmix in gasoline could have an appreciable effect on emissions. However, EPA believes that where transmix is blended at sufficiently low percentages, such that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit, the emissions effect of blending transmix in gasoline will be negligible.

In addition to affecting gasoline endpoint and octane, blending transmix in gasoline also affects parameters in EPA's complex model, the model used to ensure that imported or produced gasoline complies with EPA standards. Although the complex model does not use gasoline endpoint or octane to predict gasoline emissions, the complex model does use several other gasoline parameters to predict gasoline emissions. These parameters include sulfur content, benzene content, aromatics content, olefin content, oxygen content, Reid vapor pressure (RVP), and two distillation points (E200 and E300). Compared to gasoline, the distillate fuel portion of transmix contains much less benzene, olefins, and oxygen (typically zero for all three parameters), has a much lower RVP, may contain a moderately greater percentage of aromatics, has significantly lower (typically zero) E200 and E300 distillation points, and may contain more sulfur.

EPA is primarily concerned with the effect of transmix blending on average gasoline sulfur content. Beginning in 2006, EPA's gasoline sulfur regulations specify that all gasoline produced by most refineries or imported by each importer must contain an annual average sulfur content of 30 ppm or less, in order to help significantly reduce emissions from gasoline-powered vehicles.[4] Transmix may contain significant percentages of high sulfur distillate fuel such as heating oil, nonroad diesel or jet fuel, and blending transmix containing high sulfur distillate fuels into gasoline could cause an increase in the sulfur content of the gasoline.

EPA believes, for two reasons, that the potential increase in gasoline sulfur due to blending transmix into gasoline would be so small, that the effect on emissions from gasoline engines would be negligible. The first reason is that the percentage of transmix that can be blended into gasoline is significantly limited by the amount of distillate fuel in the transmix. Distillate fuels have much higher boiling points than gasoline, so transmix blenders must limit the addition of transmix so that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit. Refiners already have to meet the ASTM endpoint standard under the ''substantially similar'' requirements for gasoline (56 FR 5352, February 11, 1991). Consequently, transmix which contains relatively high percentages of distillate fuel must be blended into gasoline at relatively low percentages so that the endpoint of the transmix-blended gasoline does not exceed 437 degrees Fahrenheit.

The second reason is that EPA anticipates that the distillate fuel portion of transmix will contain significantly less sulfur beginning June, 2006, when the sulfur standard for highway diesel fuel drops sharply from 500 to 15 parts per million (ppm). Beginning in June, 2006, EPA estimates that the national average sulfur content of transmix will drop from approximately 800 ppm to 141 ppm, using product sulfur levels and pipeline product sequencing arrangements from Chapter 7 of the Regulatory Support Document (RSD) for the nonroad diesel sulfur regulations. Blending 0.25 volume percent transmix containing 141 ppm sulfur into gasoline raises the sulfur level of the gasoline by only approximately 0.3 ppm. Although the percentage of gasoline that is blended with transmix would be anticipated to increase under this proposed rule, EPA anticipates that transmix will be blended at no more than 0.25 volume percent on average nationwide, and that the overall average increase in gasoline sulfur from transmix blending will have a negligible impact on emissions from gasoline engines. Using EPA's model for calculating emissions from vehicle fleets for a given year (MOBILE 6.2.03), EPA estimates that blending 0.25 volume percent transmix in gasoline would change emissions of various pollutants by only -0.2 to 0.3 percent.

EPA believes that the effect of blending transmix in gasoline at relatively low percentages will have a similarly small effect on other complex model parameters, such that the consequent effect on gasoline emissions will also be negligible. Since gasoline toxics emissions are primarily affected by benzene, and the distillate fuel portion of transmix typically contains no benzene, transmix-blended gasoline is not expected to produce any more toxics than gasoline which does not contain transmix. Similarly, since evaporative emissions are primarily affected by RVP, and the distillate fuel portion of transmix has a much lower RVP than gasoline, volatile emissions from transmix-blended gasoline are not expected to be any greater than volatile emissions from gasoline which does not contain transmix.

EPA is aware that the physical properties of gasoline and transmix can vary due to a variety of factors, which affect the percentage of transmix that can be blended into gasoline, without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit. For example, gasoline that is produced for use during colder winter months often has an endpoint which is lower than the endpoint of gasoline produced during warmer summer months. Similarly, reformulated gasoline often has an endpoint which is lower than the endpoint of conventional gasoline produced during the same time of the year. Gasoline which has a relatively low endpoint compared to the ASTM standard can be blended with a greater percentage of distillate fuel without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit. Additionally, the properties of the transmix itself can vary widely due to the practices of the pipeline or terminal that produced the transmix. If transmix contains a relatively high percentage of gasoline, a relatively greater percentage of transmix can be blended into gasoline without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit, since the transmix itself is already mostly composed of gasoline. Alternatively, if transmix contains a relatively high percentage of distillate fuel, the percentage of transmix that can be blended into gasoline without causing the endpoint of the transmix-blended gasoline to exceed 437 degrees Fahrenheit is relatively low. EPA is not including any requirements in this proposed rule to list additional information on product transfer documents identifying gasoline or transmix properties. However, as described below, EPA is proposing that transmix blenders maintain a quality assurance program.

EPA also understands that distillate fuel can potentially be blended more than once into the same volume of gasoline through transmix blending and other normal pipeline operations. Blending transmix multiple times into the same volume of gasoline can cause an excessive cumulative percentage of transmix to be blended into the gasoline, and cause the endpoint of the transmix-blended gasoline to exceed

[4] Gasoline produced by most refineries or imported by each importer must also contain no more than 80 ppm sulfur per gallon beginning in 2006. However, EPA has allowed flexibility for some refiners to be able to produce gasoline that is higher on both an average basis and a per gallon basis through December 31, 2010.

437 degrees Fahrenheit. For example, a pipeline or terminal may blend transmix into gasoline, then send the gasoline to another pipeline or terminal which may blend transmix into the gasoline a second time. Similarly, as part of normal pipeline operation, pipeline operators may cut an interface between adjacent volumes of gasoline and distillate fuel directly into the gasoline volume. Cutting distillate fuel directly into gasoline has an effect on gasoline properties similar to the effect of blending transmix directly into the gasoline (gasoline endpoint increases and octane decreases). A downstream pipeline or terminal could then subsequently blend transmix into the same volume of gasoline which already contains distillate fuel from the interface cut. EPA is not including any requirements in this proposed rule to list any additional information on product transfer documents identifying whether gasoline has been blended with transmix or any distillate fuel. EPA believes that the requirement that gasoline produced by transmix blenders meet the 437 degree Fahrenheit endpoint standard will prevent any potentially deleterious effects from successive transmix blending. However, as described below, EPA is proposing that transmix blenders maintain a quality assurance program designed to ensure compliance with the endpoint standard.

This proposed rule requires transmix blenders to maintain a quality assurance program that will ensure that the endpoint of transmix-blended gasoline does not exceed 437 degrees Fahrenheit, and that the transmix-blended gasoline will comply with the downstream standards for conventional or reformulated gasoline. As a part of this quality assurance program, transmix blenders must either sample and test transmix-blended gasoline at certain frequencies to determine the end-point of the gasoline, or submit a petition to EPA documenting how their quality assurance program ensures that the endpoint of their transmix-blended gasoline will not exceed 437 degrees Fahrenheit, and that the transmix-blended gasoline meets all EPA downstream standards for conventional or reformulated gasoline.

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this proposed rule does not satisfy the criteria stated above. As a result, this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. It would not have an annual effect on the economy of $100 million or more and is not expected to have any adverse economic effects as described in the Order. This proposed rule does not raise issues of consistency with the actions taken or planned by other agencies, would not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

B. Paperwork Reduction Act

The modifications to the RFG information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1591.21, OMB control number 2060–0277.

This proposed rule addresses certain adverse impacts on refiners and importers of RBOB under the current rule and provides these refiners and importers with additional flexibility to comply with the regulations. The flexibility afforded under this rule is optional. Modest information collection requirements in the form gasoline surveys of oxygenate blending facilities are required for those parties who avail themselves of the flexibility provided in this rule. It is estimated that refiners and importers who choose this option will save, at a minimum, half of the cost they would incur if they complied with the existing QA requirements.

The estimated total hourly burden per respondent for the gasoline surveys is 20 hours. The estimated total hourly burden for all respondents is 700 hours (35 respondents maximum). The estimated hourly cost is estimated to be $71 per hour. The total estimated cost per respondent for the gasoline surveys is $1,420. The total estimated cost for all respondents is $49,700. In addition, the gasoline survey requirement is estimated to require purchase of services costs to industry of approximately $220,000, assuming that refiners and importers in all potentially affected RFG areas choose the compliance option under this rule.

This rule would provide flexibility for transmix processors and transmix blenders to produce gasoline under certain circumstances without having to meet all of EPA's standards for refiners. Transmix processors would be allowed to recover gasoline from transmix that does not need to be included in their compliance calculations, under certain circumstances. Transmix blenders would be provided with the additional flexibility to blend transmix at any rate and at any location, provided the endpoint of their transmix-blended gasoline does not exceed 437 degrees Fahrenheit. However, in order to ensure the endpoint of the transmix-blended gasoline does not exceed 437 degrees, transmix blenders would be required to either test every batch of transmix-blended gasoline or submit a petition to EPA documenting that they maintain an oversight program that will prevent the endpoint of transmix-blended gasoline from exceeding 437 degrees. This proposed rule would codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards.

EPA estimates that approximately 25 transmix blenders will submit one-time petitions for approval of their quality testing programs. One transmix blender estimated that they would need 1–2 person-weeks to prepare a petition for EPA approval. For calculating the burden and cost of this rule, EPA has estimated that the average labor cost would be $71/hour, and that each petition would take 2 person-weeks (80 hours) to prepare. Multiplying the average labor cost by the total time required to prepare each petition (80 hours) by the total number of petitions (25) results in a total respondent cost of $142,000.

The information under this rule will be collected by EPA's Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation (OAR), and by EPA's Air Enforcement Division,

Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance (OECA). The information collected will be used by EPA to evaluate compliance with the requirements under the RFG and antidumping programs, and gasoline sulfur program. This oversight by EPA is necessary to ensure attainment of the air quality goals of the RFG and antidumping programs, and gasoline sulfur program.

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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this proposed rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule will not have any adverse economic impact on small entities. This proposed rule would codify existing guidance for the RFG and antidumping regulations, and establish provisions in the gasoline sulfur regulations (65 FR 6698, February 10, 2000) that allow transmix processors and transmix blenders more flexibility for compliance. The proposed rule would establish gasoline sulfur standards for transmix processors and blenders that are consistent with the sulfur standards for other entities, such as pipelines and terminals, that are downstream of refineries in the gasoline distribution system, and would clarify the requirements for transmix processors under the Mobile Source Air Toxics program. This proposed rule would codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. This proposed rule would also provide refiners and importers with an alternative compliance option for fulfilling a requirement to conduct downstream sampling and testing at oxygenate blender facilities. We have, therefore, concluded that this proposed rule would relieve regulatory burden for all small entities subject to the RFG regulations. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of 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.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector that would result in expenditures of $100 million or more. This proposed rule provides refiners and importers of gasoline with additional flexibility in complying with regulatory requirements. As a result, this proposed rule would have the overall effect of reducing the burden of the RFG regulations on these regulated parties. This proposed rule would also codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. Therefore, the requirements

of the Unfunded Mandates Act do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It 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. This proposed rule would provide refiners and importers of gasoline with additional flexibility in complying with regulatory requirements. This proposed rule would also codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. The requirements of this proposed rule would be enforced by the Federal Government at the national level. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' 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 does not have tribal implications. It would not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This rule would apply to gasoline refiners and importers of gasoline. This action contains certain modifications to the federal requirements for RFG, and would not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant and does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Acts That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule would not be an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it would not have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule will provide refiners and importers of gasoline with additional flexibility in complying with regulatory requirements. This proposed rule would also codify existing practices designed to ensure that products transported by pipelines meet existing downstream standards. As a result, this proposed rule may have a positive effect on gasoline supplies.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not establish new technical standards within the meaning of the NTTAA. Therefore, EPA did not consider the use of any voluntary consensus standards.

IV. Statutory Provisions and Legal Authority

The statutory authority for the actions in this proposed rule comes from sections 211 and 301(a) of the CAA.

For the reasons set out in the preamble, the regulatory text proposed today is set forth in the concurrent direct final rule published in today's **Federal Register**.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 25, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–5050 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 106
Friday, June 2, 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

Forest Service

Ochoco National Forest, Lookout Mountain Ranger District; Oregon; Spears Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service is proposing to conduct timber harvest, noncommercial thinning, and fuels reduction activities in the Marks Creek Wateshed. The proposal includes the connected action of constructing 19.5 miles of road. The project area covers approximately 39,200 acres.

DATES: Comments concerning the scope of the analysis must be received by June 26, 2006. The draft environmental impact statement is expected by September 2006 and the final environmental impact statement is expected in March 2007.

ADDRESSES: Send written comments to Arthur J. Currier, District Ranger, Lookout Mountain Ranger District, Ochoco National Forest, 3160 NE., Third Street, Prineville, Oregon 97754. Alternately, electronic comments can be sent to *comments-pacificnorthwest-ochoco@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Kathy Farrell, Project Leader, at the address listed above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this p proposal is to (1) maintain and increase the abundance of late and old structure (LOS) stands; (2) reduce fuels and the potential for high-intensity wildfires; (3) maintain conditions that would currently support low-intensity fires; (4) reduce the susceptibility of the landscape to large-scale infestation by insects and disease; (5) enhance hardwood communities, such as aspen and cottonwood; (6) increase riparian vegetation and large tree structure in RHCAs; and (7) increase early-seral species composition.

Proposed Action

The Lookout Mountain Ranger District is proposing to manage vegetation through commercial timber harvest, noncommercial thinning, and fuel reduction activities. The proposed action includes approximately 6,250 acres of commercial harvest and 11,000 acres of noncommercial thinning. Fuel reduction activities include approximately 15,250 acres of prescribed fire, and 3,150 acres of grapple and 700 acres of hand piling. Commercial harvest includes tractor, skyline, and helicopter logging systems. Areas identified as tractor logging are areas where heavy equipment, such as logging tractors/skidders, will be used to remove a commercial product. Road construction activities include 19.5 miles of new road construction, and 15.5 miles of reconstructing roads on an existing road bed. Newly constructed roads and roads that are reopened would be closed after harvest activities are complete.

Possible Alternatives

At this time, the Forest Service is considering at least three alternatives. The no action alternative is the baseline for comparison and will analyze the effects of natural processes along with ongoing activities such as road maintenance and recreation use. Ongoing activities, such as road maintenance, noxious weeds treatments, and recreational use, would continue. Access for public and administrative purposes would continue on the existing transportation system. Alternative 2, the proposed action, will analyze the effects of timber harvest, noncommercial thinning, and prescribed fire activities, along with the connected road construction activities. The third alternative being considered at this time would analyze the effects of only conducting noncommercial thinning and prescribed fire activities. Other possible alternatives may reduce or restrict the amount of road construction activities. The action alternatives will examine combinations and degrees of activities in order to meet the purpose of and need for action and concerns stated during the public scoping process.

Responsible Official

The responsible official for this project is Jeff Walter, Forest Supervisor, Ochoco National Forest, 3160 NE., Third Street, Prineville, Oregon 97754.

Nature of Decision to be Made

The Forest Supervisor will decide whether to conduct timber harvest, noncommercial thinning, and prescribe fire treatments within the Spears project area. The decision will be based on the information disclosed in the EIS, and the goals, objectives, and desired future conditions as stated in the Forest Plan as amended. The responsible official will consider significant issues, public comments, environmental consequences, and compliance with applicable laws, regulations, and policies in making his decision. The rationale for the decision will be stated in the Record of Decision for the project.

Scoping Process

The Lookout Mountain Ranger District intends to scope for information by mailing letters to adjacent landowners, persons, and organizations interested or potentially affected by the proposed action. The Lookout Mountain Ranger District will hold a public meeting during the summer of 2006. The Lookout Mountain Ranger District will also meet with the Crook County Natural Resources Planning Committee during the analysis process. This project will also be included in the Ochoco National Forest Quarterly Schedule of Proposed Actions for the duration of the environmental analysis.

Preliminary Issues

The Lookout Mountain Ranger District has identified three preliminary issues related to the proposed action. They are: (1) The amounts and kinds of activities in the Bandit Springs Recreational Area could alter the character of the area and cause recreational use of the area and cause recreational use of the area to decline. (2) Road construction and reconstruction activities could increase disturbance to wildlife species such as deer, elk, and birds. (3) Commercial timber harvest, underburning, and road construction and reconstruction activities can increase sediment and

cause a decline in water quality. Commercial harvest and noncommercial thinning can also cause a reduction in shade on streams and cause an increase in stream temperatures.

Comment Requested

This notice of intent is part of the scoping process that will guide the development of the environmental impact statement. The primary purpose of scoping is to gather public comments, issues, and concerns regarding the proposed action. Comments, issues, and concerns may be used to formulate alternatives. Comments are most helpful if they are as specific as possible and relate to the proposed action. Comments should include the name, address, and, if possible, telephone number of the commenter. Electronic comments must be submitted as part of the actual e-mail message, or as an attachment in plain text (.txt), Microsoft Word (.doc), rich text format (.rtf), or portable document format (.pdf). Comments received in response to this solicitation, including the names and addresses of those who comment, will be considered part of the public record and will be available for public inspection.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared and made available for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these joints.

Dated: May 19, 2006.

Arthur J. Currier,

District Ranger.

[FR Doc. 06–5049 Filed 6–1–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, June 21, 2006 at the Okanogan and Wenatchee National Forests Headquarters office, 215 Melody Lane, Wenatchee, WA. This meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting Provincial Advisory Committee members will continue the collaboration process on forest plan issues relating to the preparation of a revised forest plan for the Okanogan and Wenatchee National Forests. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–664–9200.

Dated: May 26, 2006.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 06–5039 Filed 6–1–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Tuesday, June 27, 2006 in Grangeville, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on June 27th will be held at the Super 8 Motel in Grangeville, Idaho, beginning at 10 a.m. (PST). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

Dated: May 26, 2006.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 06–5055 Filed 6–1–06; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: July 2, 2006.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSNs: Fluorescent Highlighter.
7520–01–238–0979—Green.
7520–01–238–0978—Blue.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Service

Service Type/Location: Custodial Services, GSA, PBS, Region 6, 1114 Market Street, St. Louis, Missouri.
NPA: MGI Services Corporation, St. Louis, Missouri.
Contracting Activity: GSA, PBS—Region 6, Kansas City, Missouri.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–8558 Filed 6–1–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

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

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On April 7, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 17809) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Base Supply Store, Hazmart & Self Help Operations, Building 4406, Fort Hood, Texas.
NPA: San Antonio Lighthouse for the Blind, San Antonio, Texas.
Contracting Activity: Army Contract Agency, Fort Hood, Texas.
Service Type/Location: Custodial Services, Transportation Security Administration, Rafael Hernandez Airport, Ave. Ing. Alarcon Rodriquez Hanger #405, Aguadilla, Puerto Rico.
NPA: The Corporate Source, Inc., New York, New York.
Contracting Activity: GSA, Caribbean Property Management Center, Hato Rey, Puerto Rico.
Service Type/Location: Custodial Services, U.S. Geological Survey, Columbia River Research Lab, 5501–A Cook-Underwood Road, Cook, Washington.
NPA: Hood River Sheltered Workshop, Hood River, Oregon.
Contracting Activity: U.S. Geological Survey, Sacramento, California.
Service Type/Location: Grounds Maintenance, Internal Revenue Service, Fresno Campus,
5045 E. Butler Avenue, Fresno, California.
NPA: Valley Service Connection, Inc., Stockton, California.
Contracting Activity: U.S. Treasury, IRS, San Francisco, California.

Deletions

On March 31, and April 7, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 16285, and 17809) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer

suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Product/NSNs: Brush, Plater's, Hand, 7920–00–267–1213—Brush, Plater's, Hand.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSNs: Computer Accessories, 7045–01–483–7838—Comfort Wrist Mouse Pad. *NPA:* Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSNs: Staff Section, 1010–00–225–4906—Staff Section, 1025–00–563–7232—Staff Section, 1015–00–699–0633—Staff Section.
NPA: Montgomery County Chapter, NYSARC, Inc., Amsterdam, New York.
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio.

Services

Service Type/Location: Base Supply Center, Brooks Air Force Base, Texas.
NPA: San Antonio Lighthouse for the Blind, San Antonio, Texas.
Contracting Activity: Department of the Air Force.
Service Type/Location: Base Supply Center, Defense Supply Service—Washington, Skyline #3, 5109 Leesburg Pike, Alexandria, Virginia.
NPA: Virginia Industries for the Blind, Charlottesville, Virginia.
Contracting Activity: Defense Supply Service, Washington, DC.
Service Type/Location: Food Service, U.S. Property and Fiscal Officer, Wisconsin, Wisconsin Military Academy, 90 S 10th Avenue, Fort McCoy, Wisconsin.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contracting Activity: U.S. Property and Fiscal Officer for Wisconsin, Camp Douglas, Wisconsin.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–8559 Filed 6–1–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Correction of Notice of Deletion

In the document appearing on page 19479, FR Doc. E6–5585, Procurement List Additions and Deletions, in the issue of April 14, 2006, in the third column, the Committee published deletions of a Mophead, Dusting, Cotton, NSN 7920–00–205–0488, and a Mop, Dusting, Cotton, NSN 7920–00–205–0484. Following the publication of this Notice, the Committee was informed that the two NSNs were erroneously added to the list of products to be deleted. The Committee is therefore canceling the deletion of these two NSNs from the Procurement List. The other deletions announced in the Notice remain in effect.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–8561 Filed 6–1–06; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD APRIL 20, 2006 THROUGH MAY 23, 2006

Firm	Address	Date petition accepted	Product
Merritt Apples, Inc	8914 Bayview-Edison Road, Bow, WA 98232.	4/20/2006	Apple grower.
Covarrubias Farms	201 W. Sharon Street, Dell City, TX 79837.	5/9/2006	Anaheim peppers, onions and corn.
Forte Product Solutions	4100 Riverside Street, Kansas City, MO 64150.	5/9/2006	Molded plastic products.
Arkansas Face Veneer Co., Inc	706 Center Street, Benton, AR 72015	5/9/2006	Softwood veneer faces and edge banding.
Trend Plastics, Inc	15665 S. Keeler Street, Olathe, KS 66062.	5/9/2006	Handles, enclosures, lenses, connectors and medical parts.
Absolute Machine and Tooling	16001 Ronald Reagan Boulevard, Leander, TX 78641.	5/9/2006	Machines parts for semiconductors and oil field equipment.
Partch Farms, Inc	741 Price Road, Outlook, WA 98938	5/23/2006	Asparagus, corn, hay, peas and wheat.
Cogswell Limited Partnership dba Hillcrest Orchard.	3285 Hillcrest Road, Medford, OR 97504.	5/23/2006	Pears, grapes and other fruits and vegetables.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD APRIL 20, 2006 THROUGH MAY 23, 2006—Continued

Firm	Address	Date petition accepted	Product
The Shutter Mill, Inc. dba Kirtz Shutters ..	8517 S. Perkins Road, Stillwater, OK 74076.	5/23/2006	Wood shutters.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 26, 2006.

Barry Bird,

Chief Counsel.

[FR Doc. 06–5048 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of June 2006,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Duty Proceedings Period	
JAPAN:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches), A–588–850	6/1/05–5/31/06
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–588–851	6/1/05–5/31/06
Forklift Trucks, A–588–703	6/1/05–6/1/05
Structural Steel Beams, A–588–852	6/1/05–6/18/05
Certain Hot-Rolled Carbon Steel Flat Products, A–588–846	6/1/05–5/31/06
Grain-Oriented Electrical Steel, A–588–831	6/1/05–3/13/06
REPUBLIC OF KOREA:	
Polyethylene Terephthalate (Pet) Film, A–580–807	6/1/05–5/31/06
SPAIN:	
Chlorinated Isocyanurates, A–469–814	12/20/04–5/31/06
SOUTH AFRICA:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–791–808	6/1/05–6/25/05
TAIWAN:	
Carbon Steel Plate, A–583–080	6/1/05–5/31/06
Stainless Steel Butt-Weld Pipe Fittings, A–583–816	6/1/05–5/31/06
Certain Helical Spring Lock Washers, A–583–820	6/1/05–5/31/06
THE PEOPLE'S REPUBLIC OF CHINA:	
Apple Juice Concentrate, Non-Frozen, A–570–855	6/1/05–5/31/06
Chlorinated Isocyanurates, A–570–898	12/16/04–5/31/06
Color Television Receivers, A–570–884	6/1/05–5/31/06
Folding Metal Tables & Chairs, A–570–868	6/1/05–5/31/06
Furfuryl Alcohol, A–570–835	6/1/05–5/31/06
Indigo, A–570–856	6/1/05–6/18/05
Lawn and Garden Steel Fence Posts, A–570–877	6/1/05–5/31/06
Silicon Metal, A–570–806	6/1/05–5/31/06
Sparklers, A–570–804	6/1/05–5/31/06
Tapered Roller Bearings, A–570–601	6/1/05–5/31/06

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period
Countervailing Duty Proceedings	
CANADA:	
Softwood Lumber,[2] C–122–839	4/1/05–3/31/06
ITALY:	
Grain-Oriented Electrical Steel, C–475–812	1/1/05–12/31/05
Suspension Agreements	
RUSSIA:	
Ammonium Nitrate, A–821–811	6/1/05–5/31/06

In [2] accordance with section 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2006. If the Department does not receive, by the last day of June 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 30, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–8627 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–DS–P

[2] In the notice of opportunity to request administrative review that published on May 1, 2006 (71 FR 25566), we listed the period of review for Softwood Lumber from Canada (C–122–839) incorrectly. The correct period of review is listed above.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Later–Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order.

SUMMARY: In response to a request from the National Candle Association (''NCA'' or ''Petitioners''), the Department of Commerce (''the Department'') initiated an anticircumvention inquiry pursuant to section 781(d) of the Tariff Act of 1930, as amended (''the Act''), to determine whether candles composed of petroleum wax and over fifty percent or more palm and/or other vegetable oil–based waxes (''mixed–wax candles'') can be considered subject to the antidumping duty order on petroleum wax candles from the People's Republic of China (''PRC'') under the later–developed merchandise provision. *See Notice of Initiation Anticircumvention Inquiries of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 70 FR 10962 (March 7, 2005) (''*Initiation Notice*'').

We gave interested parties an opportunity to comment on the *Initiation Notice*, on the commercial availability of mixed–wax candles at the time of the less–than-fair–value (''LTFV'') investigation, and on whether mixed–wax candles otherwise should be subject to the antidumping duty order on petroleum wax candles from the PRC under the later–developed merchandise provision. *See Notice of Antidumping Duty Order: Petroleum Wax Candles*

from the People's Republic of China, 51 FR 30686 (August 28, 1986) (''*Order*'').

EFFECTIVE DATE: June 2, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Julia Hancock, AD/CVD of Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–3208 and (202) 482–1394, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On October 8, 2004, Petitioners requested that the Department conduct a later–developed merchandise anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether candles containing palm or vegetable–based waxes as the majority ingredient and exported to the United States are circumventing the *Order*.

On October 12, 2004, Petitioners also requested that the Department conduct a minor alterations anticircumvention inquiry pursuant to section 781(c) of the Act to determine whether candles containing palm or vegetable–based waxes and exported to the United States are circumventing the *Order*.

On February 25, 2005, the Department initiated the later–developed merchandise anticircumvention inquiry to determine whether mixed–wax candles can be considered subject to the Order, as provided in section 781(d) of the Act. Also, on February 25, 2005, the Department initiated a minor alterations anticircumvention inquiry to determine whether mixed–wax candles have been subject to a minor alterations from the subject merchandise such that mixed–wax candles can be considered subject to the Order, as provided in section 781(c) of the Act. *See Initiation Notice*, 70 FR at 10962, 10964.

On March 9, 2005, a memorandum to the file was placed on the record of this inquiry by the Department noting that the date of initiation was the signature date of February 25, 2005. On March 10, 2005, the Department issued a letter to all interested parties that the Department established a separate record for these anticircumvention inquiries. Additionally, on March 10, 2005, the Department issued a letter notifying all parties that the final determination had initially been extended by 12 days from December 22, 2005, to January 3, 2006.

On March 15, 2005, the Department issued a letter to all interested parties informing them that submissions must follow the appropriate filing format. On April 4, 2005, a memorandum to the file was placed on the record of these inquiries by the Department regarding the administrative protective order (''APO'').

On April 6, 2005, Petitioners; Target Corporation (''Target''); Candle Corporation of America (''CCA''); Silk Road Gifts, Ltd. (''Silk Road''); CCCFNA;[1] GDLSK Respondents;[2] Coalition for Free Trade in Candles (''CFTC'');[3] and Michaels' Stores, Inc. (''Michaels'') submitted comments regarding the appropriateness of the Department's initiation of the later–developed merchandise anticircumvention inquiry. On April 18, 2005, Petitioners; Target; CCA; Silk Road; CCCFNA; and CFTC submitted rebuttal comments. Additionally, on April 18, 2005, Petitioners submitted a letter requesting that the Department issue a questionnaire to respondents in these inquiries.

Between May 11–17, 2005, the Department issued quantity and value (''Q&V'') questionnaires to 115 PRC producers and/or exporters for the minor alterations anticircumvention inquiry. Also, between June 6, 2005, and June 17, 2005, the Department received Q&V questionnaire responses from ten companies[4] for the minor alterations anticircumvention inquiry.

On December 20, 2005, the Department issued a letter to all interested parties notifying them that the Department was extending the deadline of the final determination for the anticircumvention inquiries by 90 days from January 3, 2006, to April 3, 2006. On January 6, 2006, CCCFNA submitted a letter requesting that the Department not issue any more extensions of the deadline of the final determination for these anticircumvention inquiries.

On January 17, 2006, a memorandum to the file was placed by the Department placing the International Trade Commission (''ITC'')'s determination in the second five-year review regarding the antidumping duty order on petroleum wax candles from the PRC on the record.

On January 18, 2006, the Department issued a letter, with respect to the later–developed merchandise inquiry, to all interested parties inviting parties to submit comments, including evidence, on: (1) the ''commercial availability'' of mixed–wax candles in the marketplace at the time of the LTFV investigation; (2) significant technological advancements between 1985 and 2005 that allowed the commercial production of mixed–wax candles; (3) whether mixed–wax candles are later–developed merchandise, in light of the findings of the *ITC Second Sunset Review Report*[5]; and (4) all other factors that are required for a later–developed merchandise analysis, pursuant to section 781(d) of the Act.

On January 19, 2006, and January 20, 2006, CCCFNA and Target requested a two-week extension of the deadlines for interested parties to submit comments and rebuttal comments with regard to the Department's January 18, 2006, letter. On January 25, 2006, the Department extended the deadlines by two-weeks for interested parties to submit comments from February 1, 2006, to February 15, 2006, and for rebuttal comments from February 13, 2006, to February 27, 2006.

On February 10, 2006, Lava Enterprises, Inc., (''Lava''), submitted comments in response to the Department's January 18, 2006, letter. On February 15, 2006, Target; CCCFNA; the MVP Group; CCA; and Petitioners also submitted comments. Also, on February 15, 2006, the MVP Group submitted a request for a public hearing. On February 27, 2006, Target; CCCFNA; Petitioners; and CCA submitted rebuttal comments.

On March 6, 2006, CCCFNA submitted a letter to the Department stating that Petitioners' rebuttal comments contained significant portions of non–publicly available information. On March 15, 2006, the Department issued a letter to all interested parties requesting comments

[1] The China Chamber of Commerce for Imports and Exporters of Foodstuffs, Native Products and Animal By-Products, and the China Daily Chemical Association, as well as their common members, including Dalian Talent Gift., Ltd.; Kingking A.C. Co., Ltd.; Shanghai Autumn Light Enterprise Co., Ltd.; Aroma Consumer Products (Hangzhou) Co., Ltd.; Amstar Business Company Limited; Zhongshan Zhongnam Candle Manufacturer Co., Ltd., and Jiaxing Moonlite Candle Art Co., Ltd., collectively known as ''CCCNFA.''

[2] Qingdao Kingking Applied Chemistry Co., Ltd.; Shonfeld's (USA), Inc.; Alef Judaica, Inc.; and Amscan, Inc., collectively known as ''GDLSK Respondents.''

[3] This coalition consisted of J.C. Penney Company, Inc., Target Corporation, the National Retail Federation, the MVP Group, the Candle Company, and the World at Large. On May 26, 2005, the CFTC was disbanded. However, counsel for the CFTC was retained for a former CFTC member, the MVP Group, which remains an interested party.

[4] The ten companies that submitted Q&V questionnaire responses are: (1) Fleming International; (2) Zhongshan Zhongnam Candle Manufacturer Co., Ltd.; (3) Dalian Talent Gift Co.; (4) Shanghai Autumn Light Enterprises Co. Ltd; (5) Jiaxing Moonlite Candle Art Co. Ltd.; (6) Universal Candle; (7) Qingdao Kingking Applied Chemistry Co. Ltd.; (8) PeakTop and Silk Roads Gifts; (9) Aroma Consumer Products (Hangzhou) Co., Ltd.; and (10) Amstar Business Company Limited.

[5] *See Petroleum Wax Candles from China*, Inv. No. 731-TA-282 (Second Review), USITC Pub. 3790 (July 2005) (''*ITC Second Sunset Review Report*'').

and rebuttal comments on the non–publicly available information contained within Petitioners' February 27, 2006, rebuttal comments. Also, in the letter, the Department notified interested parties that deadline of the final determination wax extended by 50 days from April 3, 2006, to May 23, 2006.

On March 28, 2006, Target; CCCFNA; and CCA submitted comments on the non–publicly available information contained within Petitioners' February 27, 2006, rebuttal comments. On April 7, 2006, Petitioners submitted rebuttal comments.

On April 19, 2006, the MVP Group withdrew their request for a hearing that had been submitted within their February 15, 2006, comments. On April 24, 2006, CCCFNA submitted a request for a public hearing for the later–developed merchandise inquiry. On April 26, 2006, Petitioners submitted a letter objecting to CCCFNA's request for a public hearing due to the lateness of the request in this proceeding.

On April 28, 2006, the Department issued a letter to all interested parties announcing that it would hold a public hearing on May 9, 2006, limited to issues raised in the comments and rebuttal comments submitted by parties in response to the Department's January 18, 2006, letter.

On May 2, 2006, the Department issued a letter to the ITC notifying them of the Department's upcoming determination scheduled for May 23, 2006.

On May 3, 2006, the Department issued a letter to all interested parties notifying them of a room change with respect to the public hearing. On May 5, 2006, the Department issued a letter to all interested parties notifying them of a further room change. On May 9, 2006, the Department held a public hearing on the later–developed merchandise inquiry.

On May 23, 2006, the Department placed the hearing transcript on the record. Also, on May 23, 2006, the Department placed a memorandum on the file regarding additional information considered in making this preliminary determination.

Scope Of Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; round, columns, pillars, votives; and various wax–filled containers. The products were classified under the Tariff Schedules of the United States (''TSUS'') 755.25, Candles and Tapers. The products covered are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') item 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, our written description remains dispositive. *See Order* and *Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 77990 (December 29, 2004).

Preliminary Determination

We have analyzed the information, comments, and rebuttal comments of interested parties in this anticircumvention inquiry, and conducted our own research. Based upon our analysis of the comments and information received, we determine that mixed–wax candles are later–developed products pursuant to section 781(d) of the Act. However, for the purposes of this preliminary determination, we have determined that only mixed–wax candles containing no more than 87.80 percent palm or vegetable oil–based wax with petroleum wax are within the scope of the antidumping duty order on petroleum wax candles from the PRC, as provided in section 781(d) of the Act.[6]

General Overview

In reaching its preliminary determination, the Department undertook several analytical steps in response to its obligations under the statute, as well as information and comment provided by the interested parties. The Department first considered again, the issue of whether it was appropriate to initiate this anticircumvention inquiry. Then, the Department analyzed whether these mixed–wax candles were later–developed merchandise pursuant to section 781(d) of the Act. Prompted by comments raised by interested parties, the Department began this analysis by first considering whether the ''commercial availability'' factor it had used in prior later–developed merchandise inquiries was appropriate in this instance. Next, the Department considered whether these mixed–wax candles were commercially available at the time of the LTFV investigation, as well as considering whether a significant technological advancement or a significant alteration of the merchandise involving commercially significant changes occurred. The Department's analysis next examined whether these mixed–wax candles are properly included within the scope of the *Order* pursuant to section 781(d) of the Act. Finally, the Department considered certain additional issues submitted the parties.

Appropriateness Of Initiation

In the Department's January 18, 2006, letter to interested parties, the Department explained that it was appropriate to initiate this anticircumvention inquiry. However, certain parties continued to argue that the Department's initiation was inappropriate.

Since the issuance of the Department's January 18, 2006, letter to interested parties, the Department finds that Respondents have not placed any new information on the record that shows that the Department's initiation was inappropriate. Respondents argue that, pursuant to the findings of *Wheatland Tube*, the Department may not, through the anticircumvention provisions of the statute, expand the scope of the *Order*. The Department disagrees that *Wheatland Tube* precludes finding that later–developed merchandise is within the scope of the order. *See Wheatland Tube Co. v. United States*, 161 F. 3d 1365, 1371 (Fed. Cir. 1998) (''*Wheatland Tube*''). In *Wheatland Tube*, the Court of Appeals for the Federal Circuit (''the Federal Circuit'') found that a minor alterations anticircumvention inquiry, pursuant to section 781(c) of the Act, was not proper if the product at issue was ''unequivocally excluded from the scope of the order in the first place.'' *See Wheatland Tube*, 161 F. 3d at 1371. *Wheatland Tube* involved an antidumping duty order on standard pipe, and the petitioner had ''expressly and unambiguously'' excluded a slightly higher grade of pipe, ''line pipe,'' from the scope of both its petition at the Department and from the ITC's injury determination. *Id.* at 1369. Subsequently, when exporters began to substitute line pipe for standard pipe, the petitioner alleged that imports of line pipe were circumventing the order on standard pipe, under the minor alterations provision. The Court of International Trade (''the CIT'') held that, because the petitioner had deliberately excluded line pipe from the standard pipe investigations and order, it could not subsequently use the

[6] If the Department affirms this preliminary determination which covers all mixed-wax candles in proportions of no more than 87.80 percent palm or vegetable oil-based wax with petroleum wax, then the minor alterations anticircumvention inquiry will be rescinded as the products subject to that inquiry would already have been determined to be within the scope pursuant to the instant inquiry. If any candles with a higher percentage are brought to the Department's attention, we will conduct a scope inquiry on a model-specific basis.

''minor alterations'' provision to bring line pipe into the scope of that order. *Id.* at 1369. The Federal Circuit affirmed the CIT on appeal. *Id.* at 1371.

However, a more recent case, *Nippon Steel*, provided further guidance on the application of the minor alterations provision. *See Nippon Steel Corp. v. United States*, 219 F.3d 1348 (Fed. Cir. 2000) (''*Nippon Steel*''). *Nippon Steel* involved a minor alterations circumvention inquiry arising from the antidumping duty order on corrosion–resistant carbon steel flat products from Japan. The petitioner in that case alleged that respondents had added minute amounts of boron to their carbon steel products, so as to remove them from the literal scope of the order without significantly affecting either their physical characteristics or uses of the steel. *See Corrosion–Resistant Carbon Steel Flat Products from Japan: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 58364 (October 30, 1998).

In upholding the Department's circumvention inquiry, the Federal Circuit emphasized that, in contrast to *Wheatland Tube*, which involved a distinct product line that the petitioner had expressly and unequivocally excluded from the scope of the order, *Nippon Steel* involved simply adding an insignificant amount of boron to the precise product covered by the order. In addition, the Federal Circuit held that steel with an insignificant amount of added boron had not been deliberately excluded from the scope of the order, because there was no commercial reason for such steel to exist at the time of the investigation, and in fact it did not exist as a commercial product. The Federal Circuit observed that indeed such steel would not have been purposely manufactured but for the antidumping order, which supplied the only reason for its existence. Under these circumstances, the Federal Circuit held that, although the Department had previously found that the boron–added steel was technically outside the order, the circumvention inquiry could proceed. Thus, contrary to Respondent's contentions, the Federal Circuit clarified in *Nippon Steel* that the minor alteration inquiry in *Wheatland Tube* was prohibited only because the product in question was well–known prior to the order and was specifically excluded from the investigation.[7] *See Nippon Steel*, 219 F.3d at 1356.

Having examined relevant precedent, the Department looked anew to the original petition, *ITC Final Report* and previous Department determinations to determine if mixed–wax candles were well–known prior to the *Order* and were specifically excluded from the LTFV investigation, such that *Wheatland Tube* applies. *See Candles from the People's Republic of China*, USITC Pub. 1888 (August 1986) (''*ITC Final Report*'')[8]. With respect to the original petition, the Department observed that petroleum or paraffin waxes were the only materials used in candle production within the PRC at the time of the filing. *See Antidumping Petition of National Candle Association*, (September 3, 1985) at 3, 6, 28, 36 (''*Petition*'')[9].

Regarding the *ITC Final Report*, the Department notes that the initial investigation found that ''{PRC} candle factories that manufacture for export reportedly use only semi–refined petroleum waxes... stearic acid[10] or plastic wax as a hardening agent accounts for approximately one percent of the composition of {PRC} manufactured candle.'' *See ITC Final Report*, at 20. Moreover, the Department now finds that it is not apparent from the language of the *ITC Final Report* whether mixed–wax candles were being produced within the United States at the time of the investigation. The ITC found that ''petroleum wax candles'' were the domestic ''like product'' after considering whether ''candles made of materials other than petroleum, principally beeswax,'' were within the ''like product.'' *Id.* at 2–3. However, the Department notes that while the ITC indicated that it considered ''candles made of {other} materials,'' as highlighted by various Respondents, the domestic ''like product'' analysis did not focus on mixed–wax candles, but only on beeswax and petroleum wax candles. *See ITC Final Report*, at 2–3; *Petroleum Wax Candles from China*, Inv. No. 731–TA–282 (Second Review), USITC Pub. 3790 (July 2005) at 6–7 (''*ITC Second Sunset Review Report*'').

Finally, the Department considered its prior scope ruling finding certain mixed–wax candles outside the scope of the Order. While the Department recognizes that it made previous such scope rulings, the Department notes that the factors that govern the Department's analysis of whether a product is within the scope of the *Order* differ for anticircumvention inquiries and other scope determinations. In scope rulings under section 351.225(k)(1) of the Department's regulations, the Department relies upon relevant documents (*i.e.*, descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC) in determining whether a particular product is included within the scope of an antidumping duty order. If the Department finds that the descriptions are dispositive, the Department will issue a final scope ruling of whether the product is within the scope of the antidumping duty order. But when the descriptions are not dispositive, the Department will further consider the additional five factors, as stipulated in section 351.225(k)(2) of the Department's regulations. In five of the one hundred and forty three scope rulings requested, starting with the *J.C. Penney Final Ruling*, the Department found that mixed–wax candles were outside the scope of the *Order* because the *ITC Final Report* defined a petroleum wax candle as one ''composed of fifty percent or more petroleum wax.'' *See Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A–570–504): J.C. Penney* (May 21, 2001) at 12 (''*J.C. Penney Final Ruling*'')[11]; *ITC Final Report*, at 3. Thus, the Department found it was unnecessary in these prior scope rulings to consider the additional factors, (*i.e.*, physical characteristics, expectations of the ultimate purchaser, ultimate use, channels of trade, and advertising/display), set forth in section 351.225(k)(2). *See also Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (A–570–504): Pier 1 Imports, Inc.*, at 7 (May 13, 2005) (''*Pier 1 Final Ruling*'')[12].

Later–developed merchandise anticircumvention inquiries are governed by section 781(d) of the Act,

[7] The Department recognizes that both *Wheatland Tube* and *Nippon Steel* were minor alterations anticircumvention inquiries and has discussed them here not only because they were raised by interested parties but also because they provide guidance as to the general issue of initiating anticircumvention inquiries.

[8] *See Memo to the File from Julia Hancock, International Trade Analyst, Subject: Placing Additional Information on the Record* (May 23, 2006), at Attachment 1 (''*May 23, 2006, Additional Information Memo*'').

[9] *See May 23, 2006, Additional Information Memo*, at Attachment 2.

[10] Stearic Acid is a fatty acid with long hydrocarbon chains varying in length typically found in hydrogenated vegetable or animal oils. *See Petitioners' April 6, 2005, Comments*, at Exhibit F. In the LTFV investigation, the ITC noted that ''a composite of paraffin and roughly five to ten percent stearic acid as a hardening agent became the basic candle stock for U.S. manufacturers.'' *See ITC Final Report*, at 19.

[11] *See May 23, 2006, Additional Information Memo*, at Attachment 3.

[12] *See May 23, 2006, Additional Information Memo*, at Attachment 4.

which instructs the Department to determine whether the product in question was developed after the investigation was initiated, and, if so, whether it is within the scope of the order. If the Department finds that the product subject to the inquiry is later–developed, then section 781(d)(1) of the Act instructs the Department to consider: (A) whether the later–developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (''earlier product''); (B) whether the expectations of the ultimate purchasers of the later–developed merchandise are the same as for the earlier product; (C) whether the ultimate use of the earlier product and the later–developed merchandise is the same; (D) whether the later–developed merchandise is sold through the same channels of trade as the earlier product; and (E) whether the later–developed merchandise is advertised and displayed in a manner similar to the earlier product. In contrast to the prior scope rulings, in the present inquiry, the Department is obligated, pursuant to section 781(d) of the Act, to make a determination by explicitly analyzing these additional factors.

As neither the original petition or the *ITC Final Report* unequivocally excluded these products and as the statute compels a different analytical framework than the prior scope ruling in this context, the Department conclude it was appropriate to initiate this inquiry as Wheatland Tube does not apply in this instance.

Later–Developed Merchandise

Statutory Provision

Section 781(d) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise is developed after an investigation is initiated (''later–developed merchandise''). In conducting anticircumvention inquiries under section 781(d)(1) of the Act, the Department must examine the following criteria: (A) whether the later–developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (''earlier product''); (B) whether the expectations of the ultimate purchasers of the later–developed merchandise are the same as for the earlier product; (C) whether the ultimate use of the earlier product and the later–developed merchandise is the same; (D) whether the later–developed merchandise is sold through the same channels of trade as the earlier product; and (E) whether the later–developed merchandise is advertised and displayed in a manner similar to the earlier product.

In addition, section 781(d)(2) of the Act also states that the administering authority may not exclude later–developed merchandise from a countervailing or antidumping duty order merely because the merchandise (A) is classified under a tariff classification other than that identified in the petition or the administering authority's prior notices during the proceeding, or (B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise, and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

Legislative History and Prior Case Precedents

The statute does not provide further guidance in defining the meaning of further development. The only other source of guidance available is the brief discussion of later–developed products in the legislative history for section 781(d), which although addressed later–developed products with respect to the ITC's injury analysis, we find is also relevant to the Department's analysis. The Conference Report on H.R. 3, Omnibus Trade and Competitiveness Act of 1988 defines a later–developed product as a product that has been produced as a result of a **''significant technological advancement or a significant alteration of the merchandise involving commercially significant changes.''** *See* H.R. Conf. Rep No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2031, H2305 (daily ed. April 20, 1988) (*emphasis added*). In addition, in the first section 781(d) determination involving portable electric typewriters, the Department also cited a U.S. Senate report:

> [s]ection 781(d) was designed to prevent circumvention of an existing order through the sale of later developed products or of products with minor alterations that contain features or technologies not in use in the class or kind of merchandise imported into the United States at the time of the original investigation.

See S. Rep No. 40., 100th Cong., 1st Sess. 101 (1987).

Additionally, the Department noted the following:

> The Senate amendment is designed to address the application of outstanding antidumping and countervailing duty orders to merchandise that is essentially the same merchandise subject to an order, but was developed after the original investigation was initiated. Sec. 323(a) of Sen. amendment to H.R. 3, October 6, 1987. H.R. Conf. Rep No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2031, H2305 (daily ed. April 20, 1988).

The language of the statute and legislative history makes clear that for **any product to be considered later–developed it must be an advancement of the original product** subject to the investigation, as opposed to a product recently found to be within the scope of the order.

See Portable Electric Typewriters from Japan: Preliminary Scope Ruling, 55 FR 32107, 32114 (August 7, 1990) (''*PET Prelim*'') *(emphasis added).*

In addition to the legislative history, prior later–developed merchandise cases also provide further guidance, foremost of which is that the Department has considered ''commercial availability'' in some form in its prior later–developed merchandise anticircumvention inquiries: *PET Final*; *EMD Final*; and *EPROMs Final. See Portable Electric Typewriters from Japan: Final Scope Ruling*, 55 FR 47358 (November 13, 1990) (''*PET Final*''); *Electrolytic Manganese Dioxide from Japan: Final Scope Ruling*, 57 FR 395 (January 6, 1992) (''*EMD Final*''); and *Eraseable Programmable Read Only Memories from Japan: Final Scope Ruling*, 57 FR 11599 (April 6, 1992) (''*EPROMS Final*''). In each case, the Department addressed the ''commercial availability'' of the later–developed merchandise in some capacity, such as the product's presence in the commercial market or whether the product was fully ''developed,'' *i.e.*, tested and ready for commercial production.[13]

[13] The fourth later-developed merchandise inquiry conducted by the Department was Television Receiving Sets, Monochrome and Color, from Japan. In that inquiry, the Department found that hand-held LCD televisions (LCD TVs) were later-developed merchandise. *See Television Receiving Sets, Monochrome and Color, from Japan: Final Scope Ruling*, 56 FR 66841 (December 26, 1991) (''*TV Final*''). In its final determination, the Department reviewed LCD TVs based upon the later-developed merchandise provision and noted that the LCD TVs technology did not exist at the time the original product descriptions were developed. If the technology did not exist, LCD TVs could not have been ''commercially available'' at the time of the investigation. In other later-developed merchandise inquiries, such as *EPROMs Final*, the Department addressed ''commercial availability'' in some form as a factor in its later-developed merchandise analysis because the

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Based upon the legislative history of the anticircumvention provision and prior later–developed merchandise inquiries, the Department finds that it should include a ''commercial availability'' standard in its analysis of this proceeding, as was indicated in the January 18, 2006, letter to interested parties. *See* January 18, 2006, Letter, at 2–3. As noted above, both the legislative history and prior later–developed merchandise inquiries place emphasis on evaluating the ''commercial availability'' of the specific product to determine whether that product is later–developed, pursuant to section 781(d) of the Act. Accordingly, the Department must find that mixed–wax candles were not ''commercially available'' at the time of the LTFV investigation in order to be properly considered later–developed merchandise.

Consideration of Later–Developed Merchandise Factors

The legislative history and prior later–developed merchandise inquiries show that there are two key elements to a later–developed merchandise analysis. Specifically, that the alleged later–developed merchandise was not commercially available at the time of the LTFV investigation and second, that there was a significant technological advancement or a significant alteration of the merchandise involving commercially significant changes.

A. Commercial Availability

There are two key components implicit in the Department's prior analyses of the commercial availability factor. The first is whether it was possible, at all, to manufacture the product in question. Second, if the technology existed, whether the product was available in the market.

Existence of Mixed–Wax Candle Technology[14]

In previous later–developed merchandise inquiries, the Department considered whether technology existed at the time of initiation of the LTFV investigation, which may have resulted in the creation of a new product. *See EPROMs Final*, 57 FR at 11602–3. Therefore, the Department will consider in this analysis whether the appropriate technology required to produce the kind of mixed–wax candles at issue (hydrogenation) existed at the time of the LTFV investigation.[15]

One of the Respondents, Target, submitted a candle–making manual from 1906 that discusses the history of candle–making manufacturing in the 19th century.[16] *See Target's February 15, 2006, Comments* (February 15, 2006), at Exhibit 1. Specifically, it discusses the process by which a candle made of paraffin and stearic/fatty acids is produced, including the process of distilling fatty and stearic acids and the melting and solidifying points of mixtures of stearic and palmitic acids. Although the manual does not specifically reference hydrogenation, a review of this manual and other patents submitted by parties, which details the hydrogenation process, appear to be similar. Specifically, the Lamborn manual demonstrates that stearic acid, or ''stearine,'' which may be ''palm stearin,'' can be produced by either a ''lime–saponification process, or by acid saponification with distillation.'' *Id.* at Exhibit 1, p. 493.

In addition, Target also submitted a patent issued by the U.S. Patent and Trademark Office (''USPTO'') to Wilhelm Pungs, Ludwigshafen–on-the–Rhine, and Michael Jahrstorfer in 1930 (''Pungs Patent'') that discusses the hydrogenation process in producing candles with paraffin and natural waxes. *See Target's February 15, 2006, Comments*, at Exhibit 3. The Pungs Patent describes many different candle formulations such as

> Candles with a cotton wick are cast in the usual manner from a fused mixture (about 85 C.) of equal parts of hard paraffin wax and of the mixture of alcohols of high molecular weight obtainable by the catalytic hydrogenation, with the aid of hydrogen at about 200 C., at a pressure of about 200 atmosphere and in the presence of metallic nickel, of a Montan wax which has been bleached with chromic acid and the acids of which bleached wax have been esterified with methyl alcohol before the hydrogenation.

Id.

In addition, both Respondents and Petitioners acknowledge the existence of hydrogenation technology prior to the time of the LTFV investigation as discussed in the patent issued to Howard C. Will in 1934. *See CCA's February 15, 2006, Comments* (February 15, 2006), at Attachment 8 (''Will Patent''). Specifically, the Will Patent states that:

> I have found that a very satisfactory candle can be produced which comprises a substantial percentage, as 50% or more vegetable oil combined with paraffin wax, stearic acid, beeswax or other waxes if the vegetable oil, such as rapeseed oil is first hydrogenated and then mixed with paraffin wax, stearic acid, beeswax or other waxes.

Id.

Given the description of the candles within the patents on the record and the Lamborn Manual, the Department finds that the mixed–wax candle technology existed prior to the LTFV investigation.

Market Availability of Mixed–Wax Candles

The interested parties submitted a significant amount of information on the record as to whether these mixed–wax candles were available at the time of the LTFV investigation. The types of information the Department received from interested parties was in the form of marketing materials (product brochures, etc.), affidavits, patents, direct quantity and value information, and statements made in various ITC documents. Moreover, the Department conducted its own research and placed this information on the record. The record information as a whole does not definitively demonstrate that these mixed–wax candles were available in the market at the time of the LTFV investigation.

While the marketing materials and affidavits demonstrate a commercial presence of candles containing various wax materials, both mixed and unmixed, none of the submitted materials demonstrate that the subject candles, with the specific kind of mixed–waxes in the specific proportions, (*i.e.*, more than fifty percent non–petroleum wax), were available for commercial sale in the market prior to time of the LTFV

technology to ''developrdquo; the new product existed at the time of the original investigation. *See EPROMs Final*, 57 FR at 11602-3.

[14] The Department notes that in all previous later-developed merchandise inquiries, the existence of the technology central to the manufacturing of the product was not at issue.

[15] In their petition, Petitioners specifically requested that this anticircumvention inquiry focus on mixed-wax candles containing palm and/or vegetable-based oils. More importantly, Petitioners noted in their request that neither palm and/or vegetable-based oils could be used by itself as a candle wax because they are liquid at room temperature. Accordingly, Petitioners noted that these oils must be chemically modified, (*i.e.*, undergo the hydrogenation process), resulting in a carbon chain chemistry that allows the long chains to fit closely together, which is a necessity for candle wax. *See Petitioners' October 8, 2004 LDM Petition* (October 8, 2004), at 15 and Exhibit 4 (''*Petitioners' LDM Petition*''). As such, the hydrogenation process and any developments to it are the central technologies to this inquiry.

[16] *Modern Soaps, Candles and Glycerin: A Practical Manual of Modern Methods of Utilization of Fats and Oils in the Manufacture of Soap and Candles, and of the Recovery of Glycerin*, Leebert Lloyd Lamborn, D. Van Nostrand Company, 1906. (''Lamborn Manual'').

investigation.[17] For instance, one of the respondents, CCCFNA, submitted a Colonial Candle/Mrs. Baker's catalogue from 1988 for bayberry candles, which this company has sold since 1909, as evidence that mixed–wax candles were available for commercial sale at the time of the LTFV investigation. *See CCCFNA's February 27, 2006, Rebuttal Comments*, at Exhibit 5. However, this catalogue only references that the candles for sale are made of bayberry wax. By not mentioning any other wax in a blend with bayberry, this catalogue does not demonstrate that the offered candles are either mixed or composed of the waxes subject to the inquiry.

With respect to the patents, the Department notes that it cannot conclusively ascertain that the candle production methods described in the patents dated prior to the LTFV investigation were ever used for commercial production.[18] Further, consistent with *EMD Prelim*, the Department notes that patents by themselves are not dispositive in determining whether a product is later–developed. *See Electrolytic Manganese Dioxide from Japan: Preliminary Scope Ruling*, 56 FR 56977 (November 7, 1991) (''*EMD Prelim*''). In the *EMD Prelim*, the Department found that while patents for CMD–U were in existence at the time of the investigation, the product was not ''developed,'' *i.e.*, not fully tested or readied for commercial production, at the time of the investigation. *See EMD Prelim*, 56 FR at 56978–81.

As an additional method of gathering direct information on this question, the Department sought sales information directly from the parties participating in this proceeding. These parties included U.S. candle importers, U.S. candle producers, and Chinese candle producers and exporters. None provided any evidence that there were any sales of candles composed of greater than fifty percent vegetable or palm oil–based waxes mixed with petroleum wax prior to, or contemporaneous with, the LTFV investigation. The record indicates that Petitioners and one of the respondents, CCCFNA, did sell mixed–wax candles of the type subject to this inquiry, but not until the late–1990s. *See Petitioners' February 15, 2006, Comments*, at Exhibit A; *CCCFNA's Quantity and Value Submission* (February 15, 2006), at Exhibits 1–7.[19] Although the annual sales data submitted by Petitioners and CCCFNA are only separated into two categories, (*i.e.*, candles containing more than fifty percent petroleum wax and candles containing more than fifty percent non–petroleum wax), they show that mixed–wax candles, (*i.e.*, less than fifty percent non–petroleum wax), were not available for commercial sale as late as 1997.[20]

Although the Department is not bound by the ITC's findings in the second sunset review, we find that it is relevant to our later–developed merchandise analysis.[21] The ITC recently found that mixed–wax candles[22] were not considered as part of its analysis at the time of the LTFV investigation because there was ''no commercial production of the {mixed–wax} candles in 1986 when {the ITC} made its original determination.'' *See ITC Second Sunset Review Report*, at 7. The ITC noted that, both during and after the investigation, candles produced in the United States and the PRC contained either 100 percent petroleum wax or were combined with beeswax. *See ITC Second Sunset Review Report*, at 6. Mixed–wax candles, according to the ITC, were not ''commercially produced'' until the late 1990s when ''{domestic} producers began commercial production.'' *Id.* at 7.[23] Therefore, the Department finds the

[17] *See Petitioners' February 15, 2006, Comments*, at Exhibit C16 (1987 Candle World brochure, which offers a ''new patented process for making candles'' that includes ''only highly-refined microcrystalline wax''), C1 (2000 A.I. Root Company brochure which offers ''new products in a renewable soy-wax blend''); *CCCFNA's February 27, 2006, Rebuttal Comments*, at Exhibit 1 (1985 Emkay Price List, which offers specialty candles, such as ''wax lighting tapers, little lites, and bottle decorators''), Exhibit 3 (1993 Williamsburg Soap and Candle Company catalogue, which offers handcrafted tapers made of ''special blend of waxes''), and Exhibits 5 and 7 (1988 Colonial Candle/Mrs. Baker's catalogue and price list, which offer candles made of bayberry wax); *Lava Enterprise's February 13, 2006, Comments* (February 13, 2006), at Attachment 1 (1997 Lava Enterprises product catalogue, which offer Glowing Art-Masters candles); *CCA's February 15, 2006, Comments*, at Exhibit 11 (2004 Health Supplement Retailer article, which discusses ''palm oil candles are a relatively new addition to the market''), Exhibit 13 (1998 StratSoy News Service article, which states that ''new soybean oil-based candles were commercially launched at the 1998 Farm Progress Show''), and Exhibit 18 (2002 Colonial Candle Company of Cape Cod product initiation); *Target's February 15, 2006, Comments*, at Exhibit 2 (Price's Patent Candle Company product brochure, which is for a Sherwood dinner candle created in the 1830's, that is composed of ''stearine made from pure vegetable wax''); and *CCA's March 28, 2006, Comments* (March 28, 2006), at Exhibit 4 (International Group, Inc. (''IGI'') Paper which discusses scrape surface heat exchanger (''SSHE'') technology that was researched by IGI to develop candles, from petroleum wax-only blends, vegetable wax-only blends, and blends containing petroleum wax and vegetable wax, for the general market).

[18] While one of the Respondents, Target, did submit a list of patents relating to candles and their production from 1906 through 1983, the Department notes that Target neither provided the claim nor the body of the patent issued within its list. *See Target's February 15, 2006 Comments*, at Exhibit 5. Accordingly, the Department is unable to ascertain from the list submitted by Target whether the patents listed establish that there were significant developments in hydrogenation technology that allowed mixed-wax candles, in the specific wax proportions subject to the inquiry, to be produced prior to the LTFV investigation. As a result, the Department could not consider these patents in its analysis as they are not on the record of this proceeding.

[19] The Department notes that all Respondents were requested to provide the quantity and value of sales of mixed-wax candles in order to establish when these candles were ''commercially available.'' However, four of the Respondents either did not submit the requested data or stated that they were under no legal obligation to maintain such sales records. *See CCA's February 15, 2006, Comments*, at 1; *Lava Enterprises Comments' on the Department's January 18, 2006 Letter* (February 13, 2006), at 2 (≥*Lava's February 13, 2006, Comments*≥). In addition, only 5 NCA members provided quantity and value data because, as noted at the hearing, they were the only member companies that had this data or made sales of mixed-wax candles. *See Anticircumvention Inquiry, In the Matter of Petroleum Wax Candles from the People's Repbulic of China: Hearing Transcript* (May 18, 2006), at 105-106 (''*Hearing Transcript*'').

[20] While Lava was one of the respondents that did not provide annual sales data of mixed-wax candles, Lava did acknowledge that it started selling mixed-wax candles in 1997, over ten years after the LTFV investigation. *See Lava's February 13, 2006, Comments*, at 2.

[21] The Department recognizes that the ITC's findings in the *ITC Second Sunset Review Report* was primarily based on information provided by Petitioners. However, U.S. importers did provide information to the ITC for consideration in the second sunset review.

[22] In the *ITC Second Sunset Review Report*, the ITC defined ''blended candles'' as ''candles containing any blend of petroleum and vegetable wax.'' *See ITC Second Sunset Review Report*, at 7. The Department notes that the merchandise subject to this inquiry, mixed-wax candles, are also candles containing blends of petroleum and palm or other vegetable oil-based waxes.

[23] The Department further observes that in the ITC's examination of the U.S. market in the late 1990s, domestic candle production was threatened by increased energy and raw material costs. *Id.* at II-3. According to U.S. candle producers, {increased petroleum prices were having a significant effect on the price of petroleum wax candles,} and thus, hindering these producers' ability to compete with foreign imports of mixed-wax candles, (*i.e.*, less than fifty percent non-petroleum wax). *Id.* at II-2 (footnote 8) and II-3. These factors, according to the ITC, resulted in an increased availability of mixed-wax candles within the U.S. market. Of note, U.S. candle producers described the increased availability, particularly after 2001, of mixed-wax candles, ''as an explosion.''; *Id.* at II-4. The shift from petroleum wax candles to mixed-wax candles was also due to a consumer demand for substitute products, particularly candles using materials other than petroleum wax. Specifically, the ITC noted that two materials, soy wax, which was developed in 1996, and palm wax, were recent developments. *Id.* at II-7. Moreover, the ITC noted that domestic producers and importers indicated that the most predominant new substitutes for petroleum wax candles, palm and soy wax candles, have only been present within the market since 2001. *Id.* at II-4, II-8, II-9. Due to this change in the market, the ITC also found that ''{PRC} candle producers have been able to produce and increase their exports to the United States of {mixed-wax} candles following {the Department's} issuance of scope exclusions.'' *Id.* at 19. Based on the evidence presented during its proceeding, the ITC defined the domestic like product to include candles with fiber or paper-cored wicks and containing any amount of

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ITC's Second Sunset Review Report relevant to the Department's later–developed merchandise analysis.

Given the overall paucity of data shedding light as to the commercial availability factor, the Department is unable to conclusively establish that mixed–wax candles were available in the market at the time of the LTFV investigation. The most clear evidence submitted on the record, quantity and value information, shows that these mixed–wax candles were first sold in the late 1990s and therefore, were not available in the market at the time of the LTFV investigation.

B. Significant Technological Advancement or a Significant Alteration of the Merchandise Involving Commercially Significant Changes

Although the data on the record support a conclusion that the mixed–wax candles were not available at the time of the LTFV investigation, the Department must also consider this second factor. At the outset, the Department notes that this factor was not explicitly addressed in prior later–developed merchandise inquiries because whether there was a significant technological advancement was not at issue in those cases. However, the legislative history cited above makes clear that this criteria is implicit in the later–developed merchandise provision. This criteria is necessary to distinguish those cases in which a product is not commercially available during the LTFV investigation merely due consumer preferences or other factors, rather than the product not having been developed at the time of the LTFV investigation. In this case, the Department finds that the record evidence, although adequate for the Department to draw a reasonable inference, is somewhat opaque, particularly with respect to the exact significant technological advancements that have occurred enabling the production of mixed–wax candles and the timing of these advancements.

The Department notes that numerous patents were issued from the late 1990s, onward for the production of candles containing a mix of petroleum and other types of waxes. These patents appear at the same time the Department began receiving a surge of scope ruling requests regarding mixed–wax candles. Moreover, during that same period, large volumes of Chinese mixed–wax candles appeared in the market. Finally, the Department notes that a few patents issued in the early 2000s appear to directly bear on the question of producing candles with less than fifty percent petroleum wax. Based on this information, the Department finds it reasonable to infer that the patents issued from the late 1990s onward are correlated with the commercial presence of mixed–wax candles and concludes that a significant technological advancement or a significant alteration of the merchandise involving commercially significant changes occurred.

Although the Department's inferences are reasonable and based on substantial evidence, there are several serious remaining concerns that require further inquiry. Among these considerations are:

• the lack of a clear and definitive statement of the precise significant technological advancement that allowed for the commercial sale of mixed–wax candles;

• the extent to which the concentration of palm or vegetable–based oil wax has any effect on the physical properties of the mixed–wax candle as well as the proper characterization of such as candle as a petroleum wax candle;
• a direct link between patents awarded during this period and commercial sale of mixed–wax candles;
• a comprehensive survey showing the technological developments regarding mixed–wax candles.

C. Conclusion

Based on the above analysis, although not all evidence is definitive or supportive of this conclusion, the Department finds that mixed–wax candles were not commercially available at the time of the LTFV investigation and infers that there was a significant technological advancement regarding such candles well after the time of the LTFV investigation. Therefore, the Department finds that mixed–wax candles meet the statute's meaning of a later–developed product.

Mixed–Wax Candles As Is–Scope Products

Pursuant to section 781(d) of the Act, once the Department finds a product to be later–developed, it must determine whether it is included in the scope of the Order by using the following criteria: (A) whether the later–developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (''earlier product''); (B) whether the expectations of the ultimate purchasers of the later–developed merchandise are the same as for the earlier product; (C) whether the ultimate use of the earlier product and the later–developed merchandise is the same; (D) whether the later–developed merchandise is sold through the same channels of trade as the earlier product; and (E) whether the later–developed merchandise is advertised and displayed in a manner similar to the earlier product. *See* Section 781(d)(1) of the Act.

The data available to the Department is not precise regarding the proportion of different waxes in mixed–wax candles. As such, the Department's analysis necessarily addresses the entire range of products (less than one–hundred percent to over fifty percent palm and/or other vegetable–oil based waxes). However, because the data on the record is imprecise with regard to wax proportions, the Department has concerns. Chief among them is whether there is a proportion of non–petroleum wax content of a candle that is so large that the candle can no longer properly be considered within the same class or kind of merchandise subject to the *Order* as a petroleum wax candle. While the Department has adequate information to address the entire range of mixed–wax candles generally, the Department has only limited information with which to establish a distinction, if any, between subject and non–subject mixed–wax candles. The best information available to the Department is the information submitted by Pier 1 regarding a candle purported to be a mixed–wax candle containing 87.80 percent of non–petroleum wax. *See Pier 1 Final Ruling*, at 7. Therefore, the Department preliminarily concludes that the preponderance of the record evidence supports a finding that candles containing up to 87.80 percent palm and/or other vegetable–oil based waxes mixed with petroleum wax are within the scope of the Order.

Physical Characteristics

With respect to physical characteristics, the Department first notes that the available data is limited. No party provided comprehensive evidence regarding the wax proportions of the mixed–wax candles that they sell. Moreover, no party provided an analysis addressing the precise effects of increasing proportions of palm and/or other vegetable oil–based waxes on the physical characteristics of mixed–wax candles. Absent this information, the Department cannot precisely evaluate the physical characteristics of mixed–wax candles in varying proportions.

Despite these consideration, when taken as a whole, the limited record evidence supports the conclusion that there is no substantial difference

petroleum wax, except for candles containing more than 50 percent beeswax.

between mixed and petroleum wax candles' physical characteristics. The Department notes that mixed–wax candles and petroleum wax candles appear to be indistinguishable in terms of appearance, feel, and scent. Although Respondents claim that differences exist, the Department notes that Respondents have not submitted evidence, such as sample candles, that indicate a difference in physical characteristics. The Department observes that one of the Respondents, the MVP Group when it was part of the Coalition for Free Trade in Candles (''CFTC''), did submit sample candles prior to the *Initiation Notice*. However, these sample candles were neither in the same burn stage nor were the candles the same unit of comparison, (*i.e.*, the sample candles were in different containers, the color of the wax was different, and the packaging was different). *See CFTC's Candle Samples* (February 7, 2005), at Exhibits 4 and 5. In contrast, the Department notes that the sample candles provided by Petitioners were visually similar, (*i.e.*, the sample mixed–wax candles that contains palm wax and the petroleum wax candles were both pillars and the color of the wax was similar). *See Petitioners' Sample Candles* (January 25, 2005), at Sample A. The Department notes that the mixed–wax candles contained labels on the bottom of the candle, which indicated that the candles contained fifty–two percent palm wax. However, the Department finds that without turning the mixed–wax candles over to identify their wax content, the sample mixed–wax candles and the sample petroleum wax candles have similar physical characteristics which make them appear to be indistinguishable by appearance, feel, and scent. *Id.*

Additionally, while there were claims that mixed–wax candles have distinct physical differences that stem from these candles' differing chemical structures, the Department again notes that there are no submitted samples of mixed–wax candles to conclusively establish these physical differences. Instead, there are declarations from members of the candle industry as support for this argument. For instance, one of the Respondents, CCA, submitted a declaration from James Groce, R&D Analytical Lab Manager of CCA, who stated that their research showed that the difference in the chemical structure of petroleum wax and vegetable–based waxes results in a distinct difference in the appearance and performance of mixed–wax candles. *See CCA's February 15, 2006, Comments*, at 34–43, Exhibit 38. Because of the chemical difference in the structure of vegetable–based waxes, another declaration from Andrew Birch, Vice President of Manufacturing for PartyLite[24], noted that this required his company to invest significant outlays of capital equipment to successfully produce mixed–wax candles. *Id.* at Exhibit 37. While the Department acknowledges that Respondents have demonstrated that one of the components, palm and vegetable–based oils, of mixed–wax candles possesses different chemical structures, this does not necessarily lead to a conclusion that these candles have distinct physical characteristics. Therefore, the Department preliminarily finds the sample candles and information on the record tend to support a conclusion that these mixed candles are not distinguishable from in–scope petroleum wax candles.[25]

Expectations of the Ultimate Purchaser

Similar to the record with respect to physical characteristics, there is little definitive information on the record with respect to the expectations of the ultimate of mixed–wax candles. No party has submitted clear information that consumers on a wide–spread basis are aware of the wax content of the candles they purchase, or that they prefer one specific wax composition in a candle to another. While both Petitioners and Respondents have provided information purporting to show a preference or lack thereof, none of the submitted evidence appears to override the obvious expectations of the ultimate purchaser. Specifically, the Department notes that numerous industry studies indicate that the two attributes of a candle which primarily drive the purchasing decision of a consumer do not include the wax composition of a candle. Instead, these attributes are fragrance and decorative touches. *See Petitioners' LDM Supplemental Response*, at Exhibit C, Home Fragrances USA Reports from 1995–2002 at Section 3. Of further note, the Department observes that, in the Home Fragrances and Candle Report for 2005, only thirteen percent of candle purchasers indicated that they based their purchase on the quality of the candle. The report concluded that this could lead one to infer that the ultimate purchaser a candle ''does not know how to distinguish'' between types of candles, particularly when there is no distinction of the wax content. *See Petitioners' February 27, 2006, Rebuttal Comments*, at Exhibit 12, pp. 25–26.

Respondents argue that the ultimate purchaser of mixed–wax candles has different expectations due to the health benefits of these candles. Respondents submitted some scientific evidence as support for their argument that the ultimate purchaser derives health benefits purportedly from using mixed–wax candles instead of petroleum wax candles, which are unnatural and allegedly give off more soot. For instance, one of the Respondents, CCA, submitted a study conducted by their research and development department, which showed that mixed–wax candles, containing a mixture of petroleum wax and soy wax, gave off a cleaner burn than a one hundred percent petroleum wax candle. *See CCA's February 15, 2006, Comments*, at Exhibit 38. Additionally, Respondents also submitted numerous advertisements and news articles as support for their argument that petroleum wax candles ''release carcinogenic toxins into the air,'' whereas, mixed–wax candles ''burn cleaner, longer and more evenly than {petroleum} and do not give the oily soot.'' *Id.*, at Exhibit 14. In reviewing the evidence submitted by Respondents, the Department finds that the evidence, while tending to support their argument, is not at this time accompanied with adequate corroborative support for the Department to accord sufficient weight to conclude on balance that the expectation of the ultimate consumer is discernibly different for mixed–wax candles. Therefore, the Department finds that the limited available record evidence does not indicate that the ultimate purchaser of mixed–wax candles necessarily has different expectations than the ultimate purchaser of in–scope petroleum wax candles.

Ultimate Use

Concerning whether the ultimate uses of mixed–wax candles as compared with petroleum wax candles are similar, Petitioners maintain that these candles share the same uses: 1) providing light, heat, or scent; and, 2) decorative purposes. The Department observes that Petitioners provided scientific evidence demonstrating that these candles are used for the same purposes. Specifically, Petitioners submitted an analysis of wax compositions conducted

[24] CCA and PartyLite are divisions of Blyth, Inc., their parent company.

[25] In response to the argument that the Department should address the product's predominant raw material, with respect to physical characteristics, the Department notes that the CIT has found that the addition of a different material in an ''otherwise identical'' product does not alone result in a ''significant, general physical distinction.'' *See Smith Corona Corp. v. United States*, 698 F. Supp. 240, 244 (CIT September 20, 1988) (''*Smith Corona II*'').

by IGI, which found there is no substantial difference in the fragrance throw or burn properties of mixed–wax candles in comparison to petroleum wax candles in similar wax proportions. *See Petitioners' LDM Supplemental Response*, at Exhibit B. Although IGI is a member of Petitioners, the study is persuasive because the study, which was presented at conference held by Petitioners in Spring 2004, which was not requested until October 2004. While Respondents did provide some scientific evidence to show that there was a difference in the fragrance throw and burn properties of mixed–wax candles in comparison to petroleum wax candles, the submitted scientific evidence was conducted specifically for this inquiry. *See CCA's February 15, 2006, Comments*, at 38–43. Similarly, Petitioners submitted argument that by employing varying processing conditions and other factors, mixed–wax candles and petroleum wax candles can have similar chemical properties. Citing the IGI study, they note that not only the wax composition but numerous other factors (*i.e.*, fragrance composition, wick shape and size, and dye used) contribute to the burn properties of a candle. *See Petitioners' February 27, 2006, Rebuttal Comments*, at Exhibit 8, p. 4; *Petitioners' LDM Supplemental Response*, at Exhibit B.

The Department recognizes that parties provided information showing that some retailers have tried to create a market for mixed–wax candles by advertising their health benefits.[26] However, while this information is intriguing, there is currently insufficient data to link these observations and claims to the ultimate use of mixed–wax candles.

Moreover, contrary to arguments made by Respondents, there is little independently supported evidence that the strong demand within the aromatherapy market is limited solely to mixed–wax candles. The 1999 Home Fragrances USA Report (''*Report*'') indicates that there was an increase in demand for candles within the aromatherapy market. However, the *Report* did not state that the demand was solely for mixed–wax candles. *See Petitioners' LDM Supplemental Response*, at Exhibit C. Specifically, the *Report* discusses a growth in demand for candles, particularly scented candles, but does not identify a specific demand for candles containing palm and/or vegetable–based waxes. Therefore, based on the information available on the record the Department finds that mixed–wax candles and in–scope petroleum wax candles have similar uses.

Channels of Trade

The Department finds that the same entities, which range from mass marketing stores to high–end specialty stores, offer both mixed candles and in–scope petroleum wax candles. While Respondents argue that mixed–wax candles are sold in other channels of trade (*i.e.*, bath and beauty stores, spas, specialty stores, natural food retailers, the internet, etc.) because these candles are natural products, the Department observes that the evidence on the record is conflicting. The Department notes that one of the Respondents, CCA, submitted a study on ''Candle Marketing Opportunities within the Spa and Salon Industry,'' as evidence that these channels of trade often exclusively sell mixed–wax candles. *See CCA's February 15, 2006, Comments*, at Exhibit 26, p. 31. However, the Department observes that the submitted study does not, in fact, state that spa and salon channels of trade only sell mixed–wax candles.[27] *Id.* at Exhibit 26, p. 32–35. In actuality, both mixed–wax candles and petroleum wax candles are sold within the spa and salon industry. *See Petitioners' February 27, 2006, Rebuttal Comments*, at 25. Additionally, the Department observes that Respondents' argument that mixed–wax candles are also primarily sold within the Internet does not establish this is a separate channel of trade from in–scope petroleum wax candles. Both Petitioners and Respondents have submitted Internet advertisements offering for sale both in–scope petroleum wax candles and mixed–wax candles. *See Petitioners' LDM Supplemental Response*, at Exhibits N (Scentsations web advertisement for paraffin wax candles and soy wax candles), P (Crafted Candles web advertisement for taper containing blend of waxes); *CCA's February 15, 2006, Comments*, at Attachment 32 (Er'go web advertisement for a soy wax candle). However, the Department notes that the evidence on the record, with respect to channels of trade, also does not distinguish between candles containing wax mixtures in any proportion and the specific range of wax mixtures subject to this inquiry.

In addition, the Department finds unsupported by adequate corroborative evidence Respondents' assertions that mixed–wax candles, which are sold in mass merchandise stores, are marketed under a ''natural'' strategy that sets these candles apart from petroleum wax candles. A review of the record shows that these mass merchandise stores, such as Whole Foods and Target, sell both petroleum wax candles and mixed–wax candles. *See Petitioners' February 27, 2006, Rebuttal Comments* at 25, and Exhibit 14. Moreover, these mass merchandise stores do not differentiate the types of candles for sale primarily based on wax content or any alleged ''environmental'' benefit. *Id.* at Exhibit 14. Accordingly, the Department finds that the limited record evidence of this proceeding indicates that mixed and in–scope petroleum wax candles share similar channels of trade.

Advertising/Display

The Department finds that the record indicates that advertising and display appear to be virtually the same for mixed and petroleum wax candles. While Respondents provided advertisements as evidence that mixed–wax candles, containing palm or soy wax, are marketed based on their alleged health benefits, the Department notes that most of these advertisements are for one hundred percent vegetable–based wax candles. For instance, one Respondent, CCA, submitted an advertisement from Pure Impressions for one hundred percent palm wax candles, not subject to this inquiry, which states: ''Made from environmentally friendly natural palm wax (100% stearine).'' *See CCA's February 15, 2006, Comments*, at Exhibit 16. In addition, the Department also observes that Respondents placed other information from companies on the record as evidence that the all–natural and health–related benefits of mixed–wax candles are central to these companies' marketing strategy. However, the Department again notes that this evidence, such as a webpage from Aloha Bay, does not demonstrate that mixed–wax candles, in the specific

[26] *See CCA's February 15, 2006, Comments*, at Exhibits 20-24 (Exhibit 20 contains a news article that states that estheticians are using mixed wax candles because ''paraffin, a by-product of petroleum, is known to be harmful,'' Exhibit 21 is an advertisement from Sephora for a scented candle that says ''this soy-based candle ... helps promote a cleaner, healthier environment,'' Exhibit 22 is a CW Group catalogue for CleanWax, which is ''patent pending alternative to paraffin with a lower propensity to soot,'' Exhibit 23 is an Aroma Naturals catalogue that offers 100% Vegetable wax pillars that are ''the cleanest burning candles on our planet, Exhibit 24 is a Nirvana Candles webpage that offers soybean wax aromatherapy candles that are ''soot-free and longer burning than paraffin, and biodegradable,''); *MVP Group's February 15, 2006, Comments*, at Exhibit 5 (*CFTC's February 7, 2005, Minor Alterations Rebuttal Comments*, at Exhibit 1, p.2 (which states that the EPA report finds ''sooting associated with burning candles can cause property damage by blackening walls, ceilings, and carpets).

[27] For further discussion of this study, which is business proprietary, please *see Memorandum to the File from Julia Hancock, Import Compliance Analyst, Subject: Anticircumvention Inquiry on Later-Developed Merchandise, Re: CCA's February 15, 2006, Comments, Exhibit 26* (May 23, 2006).

wax proportions subject to this inquiry, are advertised differently than petroleum wax candles. *See id.* at Exhibit 36; *Target's February 15, 2006, Comments*, at Exhibit 6.

Additionally, the Department finds that the majority of the evidence on the record does not establish that mixed–wax candles are advertised and displayed differently than petroleum wax candles. Petitioners submitted advertisements and submitted copies of displays for candles as evidence that mixed–wax candles are displayed in the same manner as petroleum wax candles. *See Petitioners' LDM Supplemental Response*, at Exhibits L (Illuminations 2004 Holiday catalogue), P (internet web page for Crafted Candles), Z (pictures of Target's product display). Of note, the submitted pictures of Target's product display shows that both in–scope petroleum wax candles and mixed–wax candles, which contain more than fifty–two percent palm oil–based wax, are displayed without any differentiation between these types of candles. *Id.* at Exhibit Z.

The Department does note that some Respondents submitted product catalogues as evidence that mixed–wax candles are displayed differently than petroleum wax candles. However, the Department finds that the product catalogues submitted by these Respondents do not indicate whether the mixed–wax candles, in the specific wax proportions subject to this inquiry, are displayed in a manner different than petroleum wax candles. One of the Respondents, CCA, submitted a catalogue from Blyth Homescents International that contains pictures of palm and vegetable–based wax candles. *See CCA's February 15, 2006, Comments*, at Exhibit 35. However, the labels on the candles noted within this catalogue only indicate that they are made of soy or palm wax, but not the wax proportion and, therefore, could be one hundred percent soy or palm wax and not subject this inquiry or could be less than fifty percent soy or palm wax and already be in the scope of the *Order*. *Id.* at 52. Of the advertisements and submitted copies of displays that show mixed–wax candles, in the specific wax proportion, subject to this inquiry, the Department observes that mixed and petroleum wax candles are advertised and displayed in mostly the same manner.

Additional Factors

(A) Tariff Classification

The Department notes that all imports of candles, regardless of the majority wax ingredient, into the United States are classified under HTSUS 3406.00.00. Therefore, this factor would not impact the Department's analysis in determining whether mixed–wax candles should be excluded from the *Order*.

(B) Additional Functions

As explained in the above analysis, the Department finds the record does not indicate that mixed–wax candles perform any additional function that would result in a determination that these candles are not the same class or kind of merchandise as petroleum wax candles. Rather, our analysis has led us to conclude that consumers would not derive any significant benefit from using mixed–wax candles instead of petroleum wax candles.

Conclusion

Based on our analysis, on balance the limited evidence available shows that the addition of palm and/or other vegetable–oil based waxes to a petroleum wax candle that results in a mixed–wax candle does not exclude such later–developed mixed–wax candles from the scope of the *Order*. Mixed–wax candles appear to be indistinguishable from petroleum wax candles based on physical characteristics, (*i.e.*, appearance, feel, and scent), from petroleum wax candles. The ultimate purchasers of mixed and petroleum wax candles appear to have the same expectations because it does not appear that consumers can always identify the candle's wax composition. While some purchasers of mixed–wax candles may base their purchase on the expectation that the candle will provide health benefits, there is little evidence on the record as it stands to support that claim. Moreover, the evidence on the record tends to support that most purchasers base their purchasing decision on the scent of the candle. Both mixed–wax candles and petroleum wax candles are used for the same applications, (*i.e.*, to provide light, scent, and for decorative purposes). Additionally, the channels of trade for mixed–wax candles and petroleum wax candles appear to be largely identical and thus, channels of trade is not dispositive that mixed–wax candles are outside the scope of the *Order*. Similarly, mixed–wax candles and petroleum wax candles are generally advertised and displayed together; therefore, advertisement and display are not dispositive in this case. Finally, mixed–wax candles are neither classified under a different tariff classification nor do these candles appear to perform any additional function. Therefore, the Department finds that the record indicates that mixed–wax candles are of the same class or kind of merchandise as petroleum wax candles and thus, are within the scope of the *Order*.

III. Other Comments

Adverse Facts Available

In light of Respondents' allegation that Petitioners should receive adverse facts available for providing minimal annual sales data for only some of its member companies, the Department must determine whether it should apply adverse facts available to Petitioners pursuant to section 776(a) and (b) of the Act. The Department finds that there is no basis, under sections 776(a)(1) and (2) of the Act to resort to facts available. While Petitioners only provided sales data for five member companies, the Department notes that there is no evidence on the record indicating that Petitioners did not provide all relevant information available to them, as stated by Petitioners at the hearing. *See Hearing Transcript*, at 105–106; *Petitioners' February 15, 2006, Comments*, at Exhibit A.[28] Accordingly, the use of facts available is not warranted. As such, there is no basis to conclude that Petitioners failed to act to the best of their ability.

Summary

The evidence on the record of this inquiry, taken as a whole, leads to our preliminary determination that U.S. imports of mixed–wax candles are later–developed products of the subject merchandise, within the meaning of section 781(d) of the Act.

In addition, as a result of our analysis, we have determined that exports of mixed–wax candles containing up to 87.80 percent of palm and/or other vegetable oil–based waxes mixed with petroleum wax candles, are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

Suspension Of Liquidation

Section 351.225(l)(2) of the Department's regulations states: ''If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of

[28] The Department also notes that four of the respondents did not respond to the same request for annual sales data and other supporting sales documentation. *See CCA's February 15, 2006, Comments* at 1; *Lava Enterprises Comments* at 2; *Target's February 15, 2006, Comments*; and *MVP Group's February 15, 2006, Comments.*

initiation of the scope inquiry.'' In accordance with section 351.225(l)(2) of the Department's regulations, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of mixed–wax candles containing up to 87.80 percent of palm and/or other vegetable oil–based waxes mixed with petroleum wax candles, from the People's Republic of China that were entered, or withdrawn from warehouse, for consumption on or after February 25, 2005, the date of initiation of this anticircumvention inquiry. *See Notice of Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order: Anti–Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy*, 63 FR 18364, 18366 (April 15, 1998); *Notice of Affirmative Final Determination of Circumvention of Antidumping Duty Order: Anti–Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy*, 63 FR 54672, 54675–6 (October 13, 1998).

The merchandise subject to suspension of liquidation based on this determination is limited to mixed–wax candles containing up to 87.80 percent of palm and/or other vegetable oil–based waxes mixed with petroleum wax candles. CBP shall require a cash deposit in the amount of 108.30 percent for all such unliquidated entries, which is the most recently calculated PRC–wide rate. *See Amended Notice of Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 20858, 20859 (April 19, 2004).

This suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 781(d) of the Act, we have notified the ITC of the proposed inclusion of mixed–wax candles in the antidumping duty order on petroleum wax candles from the PRC. Pursuant to section 781(e)(2) of the Act, the ITC has determined that consultations are not necessary. *See May 23, 2006, Additional Information*, at Attachment 5.

Public Comment

The Department will be setting a briefing schedule following the publication of this preliminary determination.

Final Determination

The final determination will be issued not later than ninety days from the date of publication of this notice.

This determination is issued and published in accordance with section 781(d) of the Act and section 351.225(j) of the Department's regulations.

Dated: May 23, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–8629 Filed 6 –1–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established to ensure regular communication between Government and the manufacturing sector. This meeting of The Manufacturing Council will include updates by the Council's three subcommittees and discussion on research and development, and trade. For information about the Council, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm.*

DATES: June 16, 2005. *Time:* 10:30 a.m.

ADDRESSES: National Institute of Standards and Technology, 100 Bureau Drive, Administration Building, Employees Lounge, Gaithersburg, MD 20899. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than June 12, 2006, to The Manufacturing Council, Room 4043, Washington, DC 20230.

To Attend: Due to security rules, if you would like to attend, please send your full name and affiliation to *sam.giller@mail.doc.gov* no later than June 12, 2006.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369). The Executive Secretariat encourages interested parties to refer to The Manufacturing Council Web site (*http://www.manufacturing.gov/council/*) for the most up-to-date information about the meeting and the Council.

Dated: May 26, 2006.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. E6–8622 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052406C]

Marine Mammals; File Nos. 455–1760, 116–1786, 898–1764

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits to conduct research and/or enhancement activities on captive Hawaiian monk seals (*Monachus schauinslandi*) have been issued to the following organizations:

File No. 455–1760: The Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815 (Dr. Andrew Rossiter, Responsible Party).

File No. 116–1786: Sea World, Inc., 7007 Sea World Dr., Orlando, FL 32821 (Brad Andrews, Responsible Party).

File No. 898–1764: Sea Life Park Hawaii, 41–202 Kalanianaole Highway, Waimanalo, HI 96795 (Dr. Renato Lenzi, Responsible Party).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 19, 2005, notice was published in the **Federal Register** (70 FR 28909) that a request for an enhancement permit had been submitted by Sea World, Inc. On July 15, 2004, notice was published in the **Federal Register** (69 FR 42424) that a request for a scientific research and

enhancement permit application had been submitted by the Waikiki Aquarium, and an enhancement permit application had been submitted by Sea Life Park Hawaii. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permits authorize continued captive maintenance, enhancement, and research (at the Waikiki Aquarium only) on endangered Hawaiian monk seals. The permits will expire in 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of these permits, as required by the ESA, were based on a finding that such permit: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 26, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–8621 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 042706C]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 1008–1637; U.S. Fish and Wildlife Service File No. MA100875

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that John Wise, Ph.D., Maine Center for Toxicology and Environmental Health, University of Southern Maine, P.O. Box 9300, Portland, ME 04104, has been issued an amendment to Permit No. 1008–1637–01 to receive, import, and export marine mammals parts for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before July 3, 2006.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, Office of Protected Resources, NMFS, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 20, 2005, notice was published in the **Federal Register** (70 FR 35396) that a request for an amendment to scientific research permit No. 1008–1637–01 had been submitted by the above-named individual. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit amendment authorizes Dr. Wise to receive, import, and export species under the jurisdiction of the USFWS, authorizes world-wide import and export, and extends the permit 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 (1–800–358–2104).

Dated: May 15, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: May 15, 2006.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 06–5054 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032906E]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Surveys in the Beaufort and Chukchi Seas off Alaska

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from GX Technologies, Inc of Houston, TX (GXT) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine geophysical program, including deep seismic surveys, on oil and gas lease blocks located on Outer Continental Shelf (OCS) waters in the Chukchi Sea. Under the Marine Mammal Protection Act (MMPA), NMFS

is requesting comments on its proposal to issue an IHA to GXT to incidentally take, by harassment, small numbers of several species of marine mammals between June and November, 2006 incidental to conducting seismic surveys.

DATES: Comments and information must be received no later than July 3, 2006.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here. The mailbox address for providing email comments is *PR1.032906E @noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application (containing a list of the references used in this document) may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm✖sign;iha*.

A copy of Minerals Management Service's (MMS) Programmatic Environmental Assessment (PEA) is available on-line at: *http://www.mms.gov/alaska/ref/eis__ea.htm*.

Documents cited in this document, that are not available through standard public library access may be viewed, by appointment, during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 28, 2006, NMFS received an IHA application from GXT to take several species of marine mammals incidental to conducting a marine seismic survey in the Chukchi and Beaufort Seas. On March 31, 2006, GXT notified NMFS that it would not be conducting surveys in the U.S. Beaufort Sea, but would instead conduct seismic surveys in the Canadian Beaufort Sea.

GXT plans to collect seismic reflection data that reveal the sub-bottom profile for assessments of petroleum reserves in the area. Ultra-deep 2D lines such as those to be collected are used to better evaluate the evolution of the petroleum system at the basin level, including identifying source rocks, migration pathways, and play types. All planned geophysical data acquisition activities will be conducted by GXT. The geophysical survey will be performed from the *M/V Discoverer II*.

The *M/V Discoverer II* will arrive in Dutch Harbor about June 1st where it will be resupplied and the crew will change in preparation for the beginning of seismic surveys in the Chukchi Sea. Depending on ice conditions, the vessel will mobilize to arrive off Cape Lisburne and begin survey data acquisition as soon as possible; the expected date is June 15, 2006, depending upon ice conditions. Two alternative schedule scenarios are planned depending on the seasonal ice conditions encountered in 2006.

The primary (and most likely) scenario entails operations beginning in the Chukchi Sea about July 10, 2006. Collection of seismic data will continue there until about July 25th or whenever there is sufficient open water near Point Barrow and in the Alaskan Beaufort Sea to allow passage east into the Canadian Beaufort Sea. The *M/V Discoverer II* will then proceed out of the Chukchi Sea, traverse the Alaskan Beaufort Sea, and begin surveying within the Canadian Beaufort Sea. Seismic operations will continue in the Canadian Beaufort Sea until all planned seismic lines have been completed, or new ice begins forming in the fall. The vessel will then travel west across the Beaufort Sea and return to the Chukchi Sea to complete any lines not surveyed in July, or until weather and sea ice force an end to the survey season, which is not expected to continue past November 30, 2006.

The second scenario will occur only if sea ice in the Beaufort Sea does not move far enough offshore to allow the *M/V Discoverer II* to travel to the Canadian Beaufort. In that case, the vessel will continue operations in the Chukchi Sea until all survey lines there are completed. The *M/V Discoverer II* will then exit the area and transit to Dutch Harbor to de-mobilize. Helicopter operations are not planned as a part of the seismic survey and would occur only in the case of an emergency.

The total seismic survey program, if it can be completed, will consist of a total of about 5302 km (3294.5 mi) of surveys, not including transits when the airguns are not operating. Water depths within the study area are 30–3800 m (98–12467 ft). Approximately 14 percent of the survey (about 742 km (461 mi)) will occur in water depths greater than 500 m (1640 ft), 5 percent of the survey (about 265 km (165 mi)) will be conducted in water 200–500 m (656–1640 ft) deep, and most (81 percent) of the survey (about 4295 km (2669 mi)) will occur in water less than 200 m (656 ft). None of the survey will take place in nearshore waters within 25 km (15.5 mi) of the coast (the Chukchi polynya zone).

The *M/V Discoverer II* will tow an airgun array directly astern and a single hydrophone streamer up to 9 km long. The array will consist of 36 sleeve airguns (eight 40 in^3, four 70 in^3, four

80 in^3, tweleve 100 in^3, and eight 150 in^3) that produce a total discharge of 3320 in^3. The vessel will travel along pre-determined lines at about 4–5 knots while the airgun array discharges about every 20 seconds (shot interval about 46 m (151 ft). The towed hydrophone streamer will receive the reflected signals and transfer the data to an on-board processing system. The proposed survey lines cover a large portion of the Chukchi Sea, and tie together known wells, core locations, fault lines and other geophysical points of interest. Specifications of the *M/V Discoverer II* and the 36–airgun array that will be used can be found in GXT's application (Appendices A and B).

The survey consists of a large grid of 14 lines oriented to connect previous well locations and core sample locations as well as geological structures in the sub-surface. The extent of the lines allows flexibility to mitigate any interaction with seasonal subsistence hunting as well as species migration patterns. GXT has restricted its survey lines along the shore to the area of the MMS lease sales (greater than 25 km (15.5 mi) offshore) to exclude the nearshore Chukchi polynya, through which marine mammals migrate in the spring. Lines will be chosen based on marine mammal migration and subsistence hunting, as well as ice movement and geophysical importance. If heavy ice conditions are encountered in the northern portions of the survey area, some trackline planned for that region may be shifted to ice-free waters within the central or southern portions of the survey area. There will be additional seismic operations associated with airgun testing, start up, and repeat coverage of any areas where initial data quality is sub-standard. In addition to the airgun array, a pinger system will be used to position the 36–airgun array and streamer relative to the vessel.

The *M/V Discoverer II* will serve as the platform from which vessel-based marine mammal observers will watch for marine mammals before and during airgun operations (see Mitigation and Monitoring later in this document). A ''chase boat'' will be used to protect the streamer from damage and otherwise lend support to the *M/V Discoverer II*. It will not be introducing sounds into the water beyond those associated with normal vessel operations.

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here. Additional information can be found in the MMS PEA and Appendix C in GXT's application. Reviewers are encouraged to read these documents for additional information.

Safety Radii

The rms (root mean square) received sound pressure levels that are used as impact criteria for marine mammals in U.S. marine mammal research are not directly comparable to the peak or peak-to-peak values normally used by geophysicists to characterize source levels of airguns (GXT IHA Application, Appendix C). The measurement units used to describe airgun sources, peak or peak-to-peak dB, are always higher than the rms dB referred to in much of the biological literature and by NMFS. A measured broadband received level of 160 dB re 1 microPa (rms) in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a peak-to-peak measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.*,1998, 2000a). The precise difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source.

Received sound fields have been modeled by GXT using the Gundalf software suite (Gundalf, 2002) for the 36–airgun array that will be used during this survey (GXT IHA Application Appendix B). GXT used an advanced version of the Gundalf modeling program to estimate the rms received sound levels (in dB re 1 microPa) at different distances from the seismic source on a broadband basis (0–256 Hz). These estimates are believed by GXT to be conservative (i.e., likely to overestimate the distance at which received levels will be ≥160 dB) and most applicable to the 36–airgun array discharging 3320 in^3 in water depths between 200 and 500 m (656–1640 ft), or ''intermediate depths.'' The safety radii are expected by GXT to be smaller in ''deep'' (greater than 500 m) and ''shallow'' (less than 200 m) water. Empirical data do not exist for this airgun array's sound propagation, so those data will be collected at the beginning of seismic operations. During this initial period, a 1.5X precautionary factor will be applied to the 190 dB and 180 dB radii listed here in Table 1, for use as shutdown radii for marine mammals in the water. Once empirical measurements of the sound produced by GXT's airgun array have been collected, the safety radii presented in Table 1 may be adjusted to reflect those results.

For purposes of estimating sound exposures in this document, the intermediate depth radii (expected by GXT to be the largest of the radii for any of the three water depth categories) will be used along tracklines occurring in all three depth categories. GXT believes this precautionary procedure will likely overestimate the area ensonified and, therefore, the numbers of marine mammals exposed to various applicable received sound levels.

As discussed in detail later in this document (see Mitigation), the airguns will be powered down immediately (or shut down if necessary) when marine mammals are detected within or about to enter the appropriate ≥180 dB or ≥190 dB radii. A single 40 in^3 sleeve airgun will be used as the power down source. The 160–190 dB re 1 microPa (rms) radii for this source will be measured during acoustic verification measurements at the beginning of seismic shooting.

TABLE 1. Estimated distances to which sound levels ≥190, 180, and 160 dB re 1 μPa (rms) might be received from a 36-airgun array (8 × 40 in^3, 4 × 70 in^3, 4 × 80 in^3, 12 × 100 in^3, 8 × 150 in^3) that will be used during the seismic survey. The ≥190 and ≥180 dB radii will be scaled upward by a factor of 1.5× when defining the shut-down radii to be applied before empirical sound level data are collected for this airgun array. The shut-down and assumed harassment radii used during the survey will be adjusted depending on results of empirical measurements conducted at the start of seismic shooting, and may vary with depth. A single 40 in^3 G. gun will be used during power downs, and empirical measurements of that source will be made at the start of seismic shooting to determine the power down safety radii. Distances are based on Gundalf model computations provided by GXT (Gundalf 2002).

		Estimated Distances for Received Levels (m)		
Seismic Source Volume	Water depth	**190 dB** (shut-down criterion for pinnipeds)	**180 dB** (shut-down criterion for cetaceans)	**160 dB** (assumed onset of behavioral harassment)
3320 in^3 (36-airgun array)	<200 m	60	250	6000
	200–500 m	60	250	6000
	>500 m	60	250	6000

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Chukchi Sea ecosystem and its associated marine mammals can be found in several documents, including the MMS PEA and does not need to be repeated here.

Marine Mammals

The Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leucas*), killer whales (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*), bearded seals (*Erignathus barbatus*), walrus (*Odobenus rosmarus*) and polar bears (*Ursus maritimus*). These latter two species are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and are not discussed further in this document. Abundance estimates of these species can be found in Table 2 in GXT's application. Descriptions of the biology and distribution of the marine mammal species under NMFS' jurisdiction can be found in GXT's application, MMS' PEA, and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Hill *et al.*, 1999). Information on marine mammal hearing capabilities can be found in GXT's application.

Information on these species can also be found in NMFS Stock Assessment Reports. The Alaska stock assessment document is available at: *http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/sar2003akfinal.pdf*. Updated species reports are available at: *http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/2005alaskasummarySARs.pdf*. Please refer to these documents for information on these species.

Potential Impacts of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and marine mammal survey aircraft (if required) may provide a potential secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues.

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (*i.e.*, lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Potential Effects of Seismic Airgun Arrays on Marine Mammals

GXT believes that the effects of sounds from airguns might include one or more of the following: (1) Tolerance; (2) masking of natural sounds; (2) behavioral disturbance; and (3) at least in theory, hearing impairment and other non-auditory physical effects (Richardson *et al.*, 1995). Discussion on marine mammal tolerance to noise, masking effects of noise, temporary or permanent hearing impairment, and non-auditory effects can be found in GXT's IHA application and previous IHAs for seismic activities (e.g., see 69 FR 74906, December 14, 2004). In summary, GXT believes that it is unlikely that there would be any cases of temporary or permanent hearing impairment, non-auditory physical effects or strandings. However, because of public interest in potential behavioral disturbance and marine mammal strandings by seismic arrays, NMFS has provided GXT's analysis of those topics in this document.

NMFS has also provided information previously on the potential effects of noise on marine mammal species expected to be in the Chukchi Sea region (see 71 FR 26055, May 3, 2006). Readers are encouraged to review those documents for additional information.

Behavioral Disturbance

Disturbance to marine mammals includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals will be present within a particular distance of industrial activities, or exposed to a particular level of industrial sound. The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, and bowhead whales, and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, and small whales.

Baleen Whales

According to GXT, baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away (see GXT's IHA Application Appendix C for detailed information). In the case of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 microPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those sound levels at distances ranging from 4.5 to 14.5 km (2.8 to 9 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and recent studies (see Appendix C) show that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re 1 microPa rms. Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20–30 km (12.4–18.6 mi) from a medium-sized airgun source (Miller *et al.*, 1999; Richardson *et al.*, 1999; see Appendix C). More recent research on bowhead whales (Miller *et al.*, 2005) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. In summer, bowheads typically begin to show avoidance reactions at a received level of about 160–170 dB re 1 microPa rms (Richardson *et al.*, 1986; Ljungblad *et al.*, 1988; Miller *et al.*, 1999). The GXT project is to be partly in summer, when feeding bowheads might be encountered (although the primary bowhead summer feeding grounds are far to the east in the Canadian Beaufort Sea), and partly in autumn, when the bowheads are commonly involved in migration (though bowheads also continue to feed in autumn).

Malme *et al.* (1986, 1988) studied the responses of feeding eastern gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 microPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast, and on observations of Western Pacific gray whales feeding off Sakhalin Island, Russia (Johnson, 2002).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. It is not known whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or

years. However, gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (Malme *et al.*, 1984). Bowhead whales continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987). Populations of both gray whales and bowhead whales grew substantially during this time. In any event, the brief exposures to sound pulses from the proposed airgun source are highly unlikely to result in prolonged effects.

Toothed Whales

Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work previously summarized (and discussed in more detail in Appendix C of GXT's IHA application) have been reported for toothed whales. However, systematic work on sperm whales is underway (Tyack et al., 2003), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, in press).

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away, or maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.*, Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone 2003). The beluga may be a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi)(Miller *et al.*, 2005).

Captive bottlenose dolphins and (of more relevance in this project) beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2002, 2005). However, the animals tolerated high received levels of sound (pk-pk level >200 dB re 1 microPa) before exhibiting aversive behaviors. With the presently-planned seismic source, such levels would be limited to distances less than 200 m (656 ft) of the 36–airgun array in shallow water. The reactions of belugas to the GXT survey are likely to be more similar to those of free-ranging belugas exposed to airgun sound (Miller *et al.*, 2005) than to those of captive belugas exposed to a different type of strong transient sound (Finneran *et al.*, 2000, 2002).

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes (see GXT IHA Application, Apppendix C).

Pinnipeds

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources that will be used. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior (see GXT's IHA Application, Appendix C). Ringed seals frequently do not avoid the area within a few hundred meters of operating airgun arrays (Harris *et al.*, 2001; Moulton and Lawson, 2002; Miller *et al.*, 2005). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with several naval exercises using mid-frequency tactical sonar and, in one case, a scientific seismic survey, has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding. Appendix C in GXT's application provides additional details.

Seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by airgun arrays are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time and are directed horizontally, not directly downward as is the case with seismic arrays. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. .

In September, 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the research vessel *Maurice Ewing* was operating a 20 airgun, 8490 in^3 array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, that incident plus the incidents involving beaked whale strandings near naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales. However, no beaked whales are found within the GXT project area and the planned monitoring and mitigation measures are expected to minimize any possibility for mortality of other species.

Potential Effects of Pinger Signals on Marine Mammals

A pinger system (DigiRANGE I and II, Input/Output, Inc.) will be used during seismic operations to position the airgun array and hydrophone streamer relative to the vessel. Sounds from the pingers are very short pulses, occurring for 10 ms, with source level approximately 180 dB re 1 microPa @ 1 m at 55 kHz, approximately 188 dB re microPa @ 1 m at 75 kHz, and approximately 184 dB re 1 microPa @ 1 m at 95 kHz. One pulse is emitted on command from the operator aboard the source vessel, which under normal operating conditions is approximately once every 10 sec. Most of the energy in the sound pulses emitted by this pinger is at very high frequencies between 50 and 100 kHz. The signal is omnidirectional.

The pinger produces sounds that are above the range of frequencies produced

or heard by many of the marine mammals expected to occur in the study area. However, the beluga whale produces echolocation sounds (clicks) within the 50–100 kHz range (Au *et al.*, 1985, 1987; Au, 1993), and belugas have good hearing sensitivity across this ultrasonic frequency band (White *et al.*, 1978; Johnson *et al.*, 1989). In the event that killer whales or harbor porpoises are encountered, they could also hear the pinger signals. Some seals also can hear sounds at frequencies up to somewhat above 55 kHz. Baleen whales would not hear sounds at and above 55 kHz.

Masking

Marine mammal communications will not be masked appreciably by the pinger signals. This is a consequence of the relatively low power output, low duty cycle, and brief period when an individual mammal is likely to be within the area of potential effects. Also, in the case of seals, the pulses do not overlap with the predominant frequencies in the calls, which would avoid significant masking. As baleen whales would not hear sounds at and above 55 kHz, the pinger would have no effect on them.

Behavioral Responses

Marine mammal behavioral reactions to other pulsed sound sources are discussed under seismic impacts, and responses to the pinger are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the pinger are much weaker than those from airguns. Therefore, behavioral responses are not expected unless marine mammals are very close to the source. In GXT's project, odontocetes and seals are the types of marine mammals that might hear the pings if these animals were close to the source. The maximum reaction that might be expected would be a startle reaction or other short-term response.

Hearing Impairment and Other Physical Effects

As source levels of the pinger are much lower than those of the airguns, it is unlikely that the pinger produces pulse levels strong enough to cause temporary hearing impairment or (especially) physical injuries even in an animal that is (briefly) in a position near the source.

Potential Numbers of Marine Mammals that Might be Exposed to Sound Pressure Levels of 160 dB and Higher (Level B Harassment)

The methodology used, and the assumptions made, by GXT to estimate incidental take by Level B harassment, at sound pressure levels at 160 dB or above, by seismic and the numbers of marine mammals that might be affected during the proposed seismic survey area in the Chukchi Sea are presented in the GXT application. This document provides here the estimates of the number of potential sound exposure to levels 160 dB re 1 microPa (rms) or greater. While GXT believes, based on the evidence summarized in the application, that the 170–dB criterion is considered appropriate for estimating Level B harassment for delphinids and pinnipeds, which tend to be less responsive (whereas the 160–dB criterion is considered relevant for other cetaceans), NMFS has noted in the past that there is no empirical evidence to indicate that some delphinid species do not respond at the lower level (*i.e.*, 160 dB). Also, since delphinids are not found in the Chukchi Sea, this suggested new criterion is irrelevant for this action. While the application cites recent empirical information regarding responses of pinnipeds to low-frequency seismic sounds, the information cited in the application is less than convincing. As a result, NMFS proposes to continue to use the 160–dB isopleth to estimate the numbers of pinnipeds that may be taken by Level B harassment, but has also shown the estimated numbers of pinnipeds that might be taken at the higher SPL of 170 dB. However, while some autumn migrating bowheads in the Beaufort Sea have been found to react to a noise threshold closer to 130 dB re 1 microPa (rms; Miller *et al.*, 1999; Richardson *et al.*, 1999), evidence in Richardson *et al.* (1986) and Miller *et al.* (2005) indicate that the 160–dB criterion is suitable for summering bowhead whales.

The following estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably by about 5302 line-km (3294 mi) of seismic surveys across the Chukchi Sea. An assumed total of 6628 km (4118 mi) of trackline in the Chukchi Sea includes a 25 percent allowance over and above the planned trackline to allow for turns and lines that might have to be repeated because of poor data quality, or for minor changes to the survey design.

The anticipated radii of influence of the pinger system are much less than those for the airgun array (for those species that can hear it). It is assumed that, during simultaneous operations of the airgun array and pinger system, any marine mammals close enough to be affected by the pingers would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the pinger system, odontocetes and seals are expected to exhibit no more than momentary and inconsequential responses to the pingers, similar to reactions from the pingers on the thousands of maritime private and commercial vessels using similar instrumentation for obtaining bathymetric information. Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, no additional allowance is included for animals that might be affected by sound sources other than the airguns.

The estimates of marine mammals that might be present and, therefore, potentially disturbed are based on available data about mammal distribution and densities at different locations and times of the year. The proposed survey covers a large area in the Chukchi Sea in two different seasons. The estimates of marine mammal densities have therefore been separated both spatially and temporarily in an attempt to represent the distribution of animals expected to be encountered over the duration of the survey. Density estimates in the Chukchi Sea have been derived for two time periods, the early summer period covering the months of June and July (Table 3 in GXT's IHA application), and the late fall period including most of October and November (Table 4 in GXT's IHA application). For the Chukchi Sea, cetacean densities during the summer were estimated from effort and sighting data in Moore *et al.* (2000) and Richardson and Thomson (eds., 2002), while pinniped densities were estimated from Bengtson (2005) and Moulton and Lawson (2002).

The potential number of events when members of each species might be exposed to received levels 160 dB re 1 microPa (rms) or greater was calculated by summing the results for each season and habitat zone by multiplying:

(1) The expected species density, either ''average'' (i.e., best estimate) or ''maximum'' (see Tables 3 and 4 in GXT's IHA application),

(2) The anticipated total line-kilometers of operations with the 36–airgun array in the time period, and habitat zone to which that density applies after applying a 25 percent allowance for possible additional line kilometers (see GXT IHA application) and

(3) The cross-track distances within which received sound levels are predicted to be ≥160 (Table 1 in this document).

Some marine mammals that are estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to 160 dB re 1 microPa (rms). Thus, these calculations actually estimate the number of exposures to ≥160 dB that would occur if there were no avoidance of the area ensonified to that level.

For the 36–airgun array, the cross track distance is 2X the predicted 160–dB radius predicted by the Gundalf model or 6000 m (19685 ft). Applying the approach described above, 55,560 km^2 of open-water habitat in the Chukchi Sea would be within the 160–dB isopleth over the course of the seismic project. After adding the 25 percent contingency to the expected number of line kilometers of seismic run, the number of exposures is calculated based on 69,450 km^2.

The numbers of exposures in the two habitat categories (open water and ice margin) were then summed for each species. GXT's estimate of marine mammal exposures to SPL of 160 dB (and greater) is provided in Tables 5, 6, and 7 in the IHA application. Table 2 in this document is a summary of that information.

TABLE 2. Summary of the number of potential exposures of marine mammals to received sound levels in the water of ≥160 dB during GXT's proposed seismic program in the Chukchi Sea, Alaska, ~15 June – 25 July and ~1 October – 30 November, 2006. Not all marine mammals will change their behavior when exposed to these sound levels, although some might alter their behavior somewhat when levels are lower.

	Number of Exposure to Sound Levels ≥160 dB					
	Summer		Fall		Total	
Species	**Average**	**Maximum**	**Average**	**Maximum**	**Average**	**Maximum**
Odontocetes						
Monodontidae						
Beluga	3	11	160	639	163	650
Delphinidae						
Killer whale	3	11	5	22	8	33
Phocoenidae						
Harbor porpoise	0	0	0	0	0	0
Mysticetes						
Bowhead whale	1	8	57	328	59	337
Gray whale	1	4	83	333	84	337
Minke whale	3	11	5	22	8	33
Fin whale	1	2	1	4	2	7
Total Cetaceans	11	47	313	1349	324	1396
Pinnipeds						
Bearded seal	586	2344	1190	4760	1776	7104
Spotted seal	6	23	12	47	17	70
Ringed seal	1008	4033	2047	8189	3056	12223
Harbor seal	0	0	0	0	0	0
Total Pinnipeds	1600	6401	3249	12996	4849	19397

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GXT estimates that bowhead, beluga, and gray whales are the only cetaceans expected to be exposed to noise levels ≥160–dB levels. The estimates show that one endangered cetacean species (the bowhead whale) is expected to be exposed to such noise levels, unless bowheads avoid the approaching survey vessel before the received levels reach 160 dB. Migrating bowheads are likely to do so, though summering bowheads, if encountered may not. For convenience, GXT refers to either eventuality as an ''exposure''. As a result, GXT's average and maximum estimates for bowhead whale exposures are 59 and 337, respectively (Table 2). The average and maximum estimates of the number of exposures of cetaceans are beluga (163 and 650) and gray whale (84 and 337). The seasonal breakdown of these numbers is shown in Tables 5 and 6 and totaled in Table 7 in the application and Table 2 in this document. Other cetacean species may occasionally occur near the seismic areas, but given their low estimated densities in the area, they are not likely to be exposed to SPLs of 160 dB or greater.

The ringed seal is the most widespread and abundant pinniped in ice-covered arctic waters, but there is a great deal of annual variation in population size and distribution of these marine mammals. Ringed seals account for the vast majority of marine mammals expected to be encountered, and, therefore, exposed to airgun sounds with received levels ≥160 dB re 1 microPa (rms) during the proposed seismic survey. Haley and Ireland (2006) reported that 20 percent of ringed seals remained on the ice when a seismic vessel passed. Because the SPL radii for this project are assumed to be larger than those found in the Haley and Ireland (2006) project, GXT believes a larger percent of ringed seals within the 160–dB radii are likely to remain on the ice while the *M/V Discoverer II* passes. Therefore, GXT's estimates of numbers of ringed seals that might be exposed to sound levels 160 dB re 1 microPa (rms) were reduced by 50 percent to account for animals that are expected to be out of the water, and hence exposed to much lower levels of seismic sounds. The average (and maximum) estimate is that 3056 (max. 12,223) ringed seals out of a Beaufort/Chukchi Sea population of 245,048 seals might be exposed to seismic sounds with received levels ≤ 160 dB. This assumes as many as 50 percent of seals encountered in the ice margin will be hauled out on ice and not exposed to seismic sounds.

However, GXT believes that pinnipeds are not likely to react to seismic sounds unless the received levels are ≥170 dB re 1 microPa (rms), and many of those exposed to 170 dB also will not react overtly (Harris *et al.*, 2001; Moulton and Lawson, 2002; Miller *et al.*, 2005). In any event, the best and maximum estimates of numbers of ringed seals that might be exposed to sounds ≥170 dB are 514 and 2493, respectively, if 50 percent of ringed seals encountered in the ice margin were in or entered the water (see Table 7 in GXT's IHA application).

Two other species of pinnipeds are expected to be encountered during the proposed seismic survey. With Alaskan stock estimates of 300–450,000 and 1000 respectively, the bearded seal has average and maximum exposure estimates of 1776 and 7104, and the spotted seal has average and maximum exposure estimates of 17 and 70, respectively. Finally, the harbor seal is unlikely to be encountered so no exposure estimates have been made.

Effects of Seismic Noise and Other Activities on Subsistence Uses

GXT (2006) reports that marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives; species hunted include bowhead and beluga whales; ringed, spotted, and bearded seals; walruses, and polar bears. The importance of each of the various species varies among the communities based largely on availability. Bowhead whales, belugas, and walruses are the marine mammal species primarily harvested during the time of the proposed seismic survey. There is little or no bowhead hunting by the community of Point Lay, so beluga and walrus hunting are of more importance there. Members of the Wainwright community do hunt bowhead whales in the spring, although bowhead whale hunting conditions there are often more difficult than elsewhere, and traditionally they do not hunt bowheads during seasons when GXT's seismic operation would occur. Depending on the level of success during the spring bowhead hunt, Wainwright residents may be very dependent on the presence of belugas in a nearby lagoon system during July and August. Barrow residents focus hunting efforts on bowhead whales during the spring and generally do not hunt beluga then. Barrow residents also hunt in the fall.

Bowhead whale hunting is the key activity in the subsistence economies of Barrow and Wainwright. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

An overall quota system for the hunting of bowhead whales was established by the International Whaling Commission in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC). The AEWC allots the number of bowhead whales that each whaling community may harvest annually (USDI/BLM, 2005).

Bowhead whales migrate around northern Alaska twice each year, during the spring and autumn, and are hunted in both seasons. Bowhead whales are hunted from Wainwright only during the spring migration and animals are not successfully harvested every year. The spring hunt there and at Barrow occurs after leads open due to the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. Fall migration into Alaskan waters is primarily during September and October. However, in recent years a small number of bowheads have been seen or heard offshore from the Prudhoe Bay region during the last week of August (Treacy, 1993; LGL and Greeneridge, 1996; Greene, 1997; Greene *et al.*, 1999; Blackwell *et al.*, 2004).

The location of the fall subsistence hunt near Barrow depends on ice conditions and (in some years) industrial activities that influence the bowheads movements as they move west (Brower, 1996). In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km (50 mi). The autumn hunt usually begins in Barrow in mid-September, and mainly occurs in waters east and northeast of Point Barrow. The whales have usually left the Beaufort Sea by late October (Treacy, 2002a,b).

The scheduling of this seismic survey has been discussed with representatives of those concerned with the subsistence bowhead hunt, most notably the AEWC, the Barrow Whaling Captains' Association, and the North Slope Borough (NSB) Department of Wildlife Management.

The planned starting date for seismic surveys in the Chukchi Sea (about July 10) is well after the end of the spring bowhead migration and hunt at Wainwright and Barrow. Similarly, the resumption of seismic activities in the Chukchi Sea in October will occur after most subsistence whaling from Barrow

has been completed and if the hunt is still active, seismic operations will be conducted far from Barrow to avoid conflicting with subsistence hunting activities.

Beluga whales are available to subsistence hunters along the coast of Alaska in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in coastal areas or lagoons through June and sometimes into July and August. The community of Point Lay is heavily dependent on the hunting of belugas in Kasegaluk Lagoon for subsistence meat. From 1983–1992 the average annual harvest was about 40 whales (Fuller and George, 1997). In Wainwright and Barrow, hunters usually wait until after the spring bowhead whale hunt is finished before turning their attention to hunting belugas. The average annual harvest of beluga whales taken by Barrow for 1962–1982 was five (MMS, 1996). The Alaska Beluga Whale Committee recorded that 23 beluga whales were harvested by Barrow hunters from 1987 to 2002, ranging from 0 in 1987, 1988 and 1995 to the high of 8 in 1997 (Fuller and George, 1997; Alaska Beluga Whale Committee, 2002 in USDI/BLM, 2005). GXT states that it is possible, but unlikely, that accessibility to belugas during the subsistence hunt could be impaired during the survey. However, very little of the proposed survey is within 25 km (15.5 mi) of the Chukchi coast. That means the vessel will usually be well offshore away from areas where seismic surveys would influence beluga hunting by these communities.

Because seals (ringed, spotted, bearded) are hunted in nearshore waters and the seismic survey will remain offshore of the coastal and nearshore areas of these seals, seismic surveys should not conflict with harvest activities.

Impact on Habitat

GXT states that the proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. Although feeding cetaceans and pinnipeds may occur in the area, the proposed activities will be of short duration in any particular area at any given time; thus any effects would be localized and short-term.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that, unlike explosives, they do not result in any appreciable fish kill. However, the existing body of information relating to the impacts of seismic on marine fish and invertebrate species, the primary food sources of pinnipeds and belugas, is very limited.

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer, 1952; Wardle *et al.*, 2001). Generally, the higher the received pressure and the less time it takes for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan *et al.*, 2004).

Therefore, NMFS has preliminarily determined that the proposed Chukchi Sea seismic program for 2006 will have negligible to low physical effects on the various life stages of fish and invertebrates or have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations, since operations at any specific location will be limited in duration.

Proposed Mitigation Measures

For the proposed seismic survey in the Chukchi Sea, GXT proposes to deploy an airgun source composed of 36 sleeve airguns. The airguns comprising the array will be spread out horizontally, so that most the energy will be directed downward. GXT believes that the directional nature of this array is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance compared to levels expected at that distance if the source were omnidirectional with the stated nominal source.

Important mitigation factors built into the design of the survey include the fact that the spring migration and hunt for bowhead whales in Chukchi waters will be completed prior to the start of the survey. Also, it is likely that many bowhead whales have already reached Russian waters north of the Chukotsk Peninsula when surveying is expected to resume in the autumn. Thus, the density of bowhead whales encountered during the fall in the Chukchi Sea, where the migration corridor becomes bifurcated and broad, is expected to be much lower than that of the Beaufort Sea during the fall, where the migration corridor is narrow (Richardson and Thomson, 2002).

Received sound fields were modeled by GXT for the 36–airgun configuration, in relation to distance and direction from the array. The distance from the array by which received levels would have diminished to 190, 180, 160 and other levels (in dB re 1 microPa rms) are likely to depend on water depth and location. Table 1 presents the predicted sound radii for the 36–airgun array in intermediate (200–500 m (656–1640 ft)) water depths. The radii for deeper or shallower water are predicted by GXT to be smaller than those for intermediate depths.

Empirical data concerning these radii are not yet available, but will be acquired early in the 2006 field season. In addition to performing an acoustic characterization/verification of the full 36–airgun array at different depths, the output from a single 40 in^3 sleeve gun source will also be measured in order to determine the appropriate safety radius for use during power downs. A summary report on the acoustic measurements and proposed refinements to the safety radii will be made available for review shortly after the data have been collected. Until these empirical data are available, the radii predicted to be applicable to intermediate water depths (with a precautionary 1.5X adjustment) will also be applied for deep and shallow water operations when estimating the required safety radii. More detailed modeling of the airgun array may be completed prior to the beginning of the field season and the resulting 180 and 190 dB (rms) safety radii (with 1.5X factor) will be applied at the start of the season if that occurs.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) power-down/shut-down procedures; and (3) ramp-up procedures.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed to avoid the mammal in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken

(*i.e.*, either further course alterations or shut down of the airguns).

Power-down and Shut-down Procedures

A power-down involves decreasing the number of airguns in use such that the radii of the 190–dB and 180–dB zones are decreased to the extent that observed marine mammals are not in the applicable safety zone. A power-down may also occur when the vessel is moving from one seismic line to another. During a power-down, one airgun (or some other number of airguns less than the full airgun array) is operated. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of the seismic vessel in the area, and (b) retain the option of initiating a ramp up to full operations under poor visibility conditions. In contrast, a shut-down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radius but appears likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the airguns may (as an alternative to a complete shut down) be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down immediately if this is a reasonable alternative to a complete shut down. During a power-down of the 36–airgun array, the number of guns operating will be reduced to a single 40 in^3 sleeve airgun. The 190–dB (rms) safety radius around the power down source has not yet been estimated, but will be estimated before the field season and verified during acoustic verification measurements made at the start of seismic operations. If a marine mammal is detected within or near the smaller safety radius around the single 40 in^3 sleeve airgun, all airguns will be shut down.

Following a power-down, operation of the full airgun array will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it is visually observed to have left the safety zone, or has not been seen within the zone for 15 minutes in the case of small odontocetes and pinnipeds, or has not been seen within the zone for 30 minutes in the case of mysticetes (large odontocetes do not occur within the activity area).

Shut-down Procedures

The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the applicable safety radius and a power-down is not practical or adequate to reduce exposure to less than 190 or 180 dB (rms), as appropriate. The operating airgun(s) will also be shut down completely if a marine mammal approaches or enters the estimated safety radius around the reduced source (one 40 in3 sleeve gun) that will be used during a power down.

Airgun activity will not resume until the marine mammal has cleared the safety radius. The animal will be considered to have cleared the safety radius as described previously. Ramp-up procedures will be followed during resumption of full seismic operations.

Ramp-up Procedure

A ''ramp-up'' or ''soft start'' procedure will be followed when the airgun array begins operating after a specified-duration period with no or reduced airgun operations. The specified period depends on the speed of the source vessel, the size of the airgun array that is being used, and the size of the safety radii, but is often about 10 minutes or the time the vessel would reach the location of the 180–dB radius at the time of shut-down or power-down, whichever is greater.

NMFS normally requires that, once ramp up commences, the rate of ramp-up be no more than 6 dB per 5 min period. Ramp-up will likely begin with a single airgun (the smallest, or 40 in^3). The precise ramp-up procedure will be determined prior to start-up (based upon array configuration), but will follow NMFS' guideline with a ramp-up rate of no more than 6 dB per 5 min period. The standard industry procedure is to double the number of operating airguns at 5–minute intervals which is equal to about a 6 dB increase. During the ramp-up, the safety zone for the full 36–airgun array (or whatever smaller source might then be in use) will be maintained. If the complete 180–dB safety radius has not been visible for at least 30 minutes prior to the planned start of a ramp-up in either daylight or nighttime, ramp up will not commence unless at least one airgun has been operating during that period. This means that it will not be permissible to ramp up the 36–airguns from a complete shut down in thick fog when the entire 180–dB safety zone is not visible. If the entire safety radius is visible using vessel lights and/or night-vision devices (NVDs), then start up of the airguns from a complete shut down may occur at night. If one airgun has operated during a power-down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will either be alerted by the sounds from the single airgun and could move away, or may be detected by visual observations. Given the responsiveness of bowhead and beluga whales to airgun sounds, it can be assumed that those species, in particular, will move away during a ramp up. There have been direct observations of bowheads moving away when a single airgun begins to operate (Richardson *et al.*, 1986; Ljungblad *et al.*, 1988).

Ramp-up of the airguns will not be initiated during the day or at night if a marine mammal has been sighted within or near the applicable safety radius during the previous 15 minutes.

Mitigation for Subsistence Needs

GXT is completing negotiations on a Plan of Cooperation (POC)(also called a Conflict Avoidance Agreement (CAA)) for the proposed 2006 seismic survey in the Chukchi Sea, in consultation with representatives of communities along the Alaska coast including Pt. Hope, Pt. Lay, Wainwright, and Barrow. GXT is working with the people of these communities to identify and avoid areas of potential conflict, and provided a presentation at the AEWC mini-convention in Anchorage, AK, on March, 15 2006. Meetings with AEWC and NSB representatives also occurred at the time of the convention, and further communication is ongoing leading toward adoption of a POC/CAA. Also, GXT participated in the open water peer/stakeholder review meeting that was convened by NMFS in Anchorage on April 18–21, 2006, along with representatives of the AEWC and NSB.

The POC/CAA will cover the phases of GXT's seismic survey planned to occur in the Beaufort and Chukchi seas between July 1 and November 30, 2006. The purpose will be to identify measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses, and to ensure good communication between GXT (including the project leaders and the *M/V Discoverer II*), native communities along the coast, and subsistence hunters at sea.

Subsequent meetings with whaling captains, other community representatives, the AEWC, NSB, and any other parties to the POC/CAA will be held as necessary to negotiate the terms of the POC/CAA and to coordinate the planned seismic survey operation with subsistence hunting activity.

The proposed POC/CAA may address the following: (1) operational agreement and communications procedures; (2) where/when agreement becomes

effective; (3) general communications scheme; (4) on-board Inupiat observer; identification of seasonally sensitive areas; (5) vessel navigation; (6) air navigation; (7) marine mammal monitoring activities; (8) measures to avoid impacts to marine mammals; (9) measures to avoid conflicts in areas of active whaling; (10) emergency assistance; and (11) dispute resolution process.

In the unlikely event that subsistence hunting or fishing is occurring within 5 km (3 mi) of the *M/V Discoverer II*'s trackline, or in other situations inconsistent with the CAA, the airgun operations will be suspended until the vessel is greater than 5 km (3 mi) away and otherwise in compliance with the CAA.

A signed POC/CAA provides NMFS with information to make a determination that the activity will not have an unmitigable adverse impact on the subsistence use of marine mammals. If one or both parties fail to sign the CAA, then NMFS will make the determination that the activity will or will not have an unmitigable adverse impact on subsistence use of marine mammals, and NMFS may require that the IHA contain additional mitigation measures.

Proposed Monitoring

GXT proposes to implement a marine mammal monitoring program during the present project, in order to implement the proposed mitigation measures that require real-time monitoring, to satisfy the anticipated monitoring requirements of the NMFS and USFWS IHAs, and to meet any monitoring requirements agreed to as part of the POC/CAA. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions.

Vessel-based Visual Monitoring

Vessel-based observers will monitor marine mammals near the seismic source vessel during all daytime hours and during any power ups of the airgun(s) at night. Airgun operations will be powered down or (if necessary) shut down when marine mammals are observed within, or about to enter, designated safety radii. Vessel-based marine mammal observers (MMOs) will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the planned start of airgun operations and after any shut downs of the airgun array that do not have at least 30 minutes of continuous marine mammal observations prior to start-up. When feasible, observations will also be made during daytime periods without seismic operations (e.g., during transits).

During seismic operations when there is 24 hrs of daylight, four observers will be based aboard the vessel. As the number of hours of daylight decreases in the fall, the number of MMOs on the vessel will be reduced to three or two, if full-time visual observations are not required at night. MMOs will be appointed by GXT with NMFS and USFWS concurrence. An Alaska native resident knowledgeable about the mammals and fish of the area is expected to be included as one of the team of MMOs aboard the *M/V Discoverer II.* At least one observer, and when practical, two observers will monitor marine mammals near the seismic vessel during ongoing daytime operations and any nighttime start ups of the airguns. (There will be no periods of total darkness until mid-August.) Use of two simultaneous observers will increase the proportion of the animals present near the source vessel that are detected. MMOs will be on duty in shifts of duration no longer than 4 hours. The *M/V Discoverer II* crew will be instructed by the MMOs onboard to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction by the MMOs regarding implementation of mitigation measures.

The *M/V Discoverer II* is a suitable platform for marine mammal observations. Observations will be made from either the bridge or the flying bridge, which are greater than 12 m (40 ft) above sea level. From the bridge, about 45o of the view will be obstructed directly to the stern. During daytime, the MMO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 50 Fujinon), and with the naked eye. During any periods of darkness, NVDs will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), if and when required. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation; these are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly.

When marine mammals in the water are detected within or about to enter the designated safety radius, the airgun(s) will be powered down or shut down immediately. To assure prompt implementation of shut-downs, multiple channels of communication between the MMOs and the airgun technicians will be established. During power-downs and shut-downs, the MMO(s) will continue to maintain watch to determine when the animal(s) are outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius. Marine mammals will be considered to have cleared the safety radius if they are visually observed to have left the safety radius, or if they have not been seen within the radius for 15 minutes (pinnipeds and small cetaceans) or for 30 minutes (large cetaceans).

All observations and airgun power-downs or shut-downs will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide: (1) the basis for real-time mitigation (airgun power or shut down), (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS, (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted, (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity, and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Acoustic Verification and Modeling

Measurements of received sound levels as a function of distance and direction from the proposed airgun arrays will be made prior to, or at the beginning of, the seismic survey. Results of this acoustic characterization/verification will be used to refine the pre-season estimates of safety and disturbance radii applicable to the sources during the remainder of seismic operations. A preliminary report of the measurement results concerning (at minimum) the 190–dB and 180- dB (rms) safety radii will be submitted shortly after data collection.

Additionally, more extensive modeling of the sounds that will be produced by the airgun array may be completed prior to the field season. The results of this modeling, if done, will be

made available before the field season and the safety radii adjusted accordingly.

Additional Comprehensive Monitoring Plan

On April 19–20, 2006, NMFS held a scientific peer-review meeting in Anchorage, AK to discuss appropriate mitigation and monitoring measures for Arctic Ocean seismic activities in 2006. In addition to mitigation and monitoring measures proposed by Shell, the workshop participants recommended several monitoring measures to increase our knowledge of marine mammal distribution and abundance in the Chukchi Sea. These included use of passive acoustics, either towed from a vessel or set out in a series of arrays along the Chukchi Sea coast. As of the publication date of this notice, GXT is studying these recommendations and will inform NMFS prior to the close of the comment period on this document.

Other Mitigation and Monitoring Measures

The 2006 MMS Draft PEA, which was open for public comment until May 10, 2006, contains multiple alternatives with several different mitigation and monitoring measures beyond those proposed by GXT in its IHA application, such as more effective monitoring methods and expanded power-down and shut-down zones for bowhead and gray whales during certain periods of time. NMFS' final IHA (if issued) may include some portion or combination of those additional mitigation and monitoring measures.

Reporting

During the field season, NMFS proposes to require brief bi-weekly progress reports on the status of the activity and level of marine mammal interactions. A report on the preliminary results of the acoustic verification measurements, including as a minimum the measured 190 and 180 dB (rms) radii of the airgun sources, will be submitted shortly after collection of those measurements at the start of the field season. This report will specify the refinements to the safety radii that are proposed for adoption.

A report on GXT's activities and on the relevant monitoring and mitigation results will be submitted to NMFS within 90 days after the end of the cruise. The report will provide full documentation of methods, results, and interpretation pertaining to all acoustic characterization work and vessel-based monitoring. The 90–day report will summarize the dates and locations of seismic operations, and all cetacean and seal sightings (dates, times, locations, activities, associated seismic survey activities). The number and circumstances of ramp ups, power downs, shutdowns, and other mitigation actions will be reported. The report will also include estimates of the numbers of mammals affected and the nature of observed impacts on cetaceans and seals.

NMFS proposes that the Final Technical Report will contain a cumulative analysis of the data and information of the 90–day report with similar data and information from other seismic activities in the Beaufort and Chukchi seas in 2006.

Research Coordination

GXT proposes to coordinate the planned marine mammal monitoring program associated with GXT's seismic survey with other parties that may be interested in this area and/or be conducting marine mammal studies or monitoring in the same region during operations. This is expected to include a number of other seismic surveys planned for the Chukchi Sea for parts of the 2006 open water season, each of which will presumably include a marine mammal monitoring component. As determined at the April, 2006 scientific peer-review meeting in Anchorage, GXT will participate in a combined research effort to document the distribution, abundance, and disturbance responses of marine mammals in the Chukchi Sea. Coordination of the planned monitoring program with research activities that NMFS and USFWS may have scheduled will also be sought. Among other things, GXT will also coordinate with other applicable Federal, State and Borough agencies, and will comply with their requirements.

Endangered Species Act (ESA)

Under section 7 of the ESA, the MMS has begun consultation on the proposed seismic survey activities in the Beaufort and Chukchi seas during 2006. NMFS will also consult on the issuance of the IHA under section 101(a)(5)(D) of the MMPA to GXT for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

NEPA

The MMS has prepared a PEA for the oceanographic surveys. NMFS is a cooperating agency in the preparation of the PEA. In addition, NMFS is reviewing this PEA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the MMS PEA for this activity is available upon request and is available online (see **ADDRESSES**).

Essential Fish Habitat (EFH)

The action area has been identified and described as EFH for 5 species of Pacific salmon (pink (humpback), chum (dog), sockeye (red), chinook (king), and coho (silver)) occurring in Alaska. The issuance of this proposed incidental harassment authorization is not anticipated to have any adverse effects on EFH, and therefore no consultation is required.

Preliminary Conclusions

Summary

Based on the information provided in GXT's application and the MMS PEA, NMFS has preliminarily determined that the impact of GXT conducting seismic surveys in the northern Chukchi Sea in 2006 will have a negligible impact on marine mammals and that there will not be any unmitigable adverse impacts on their availability for taking for subsistence uses, provided the mitigation measures required under the proposed authorization are implemented and a POC/CAA is implemented.

Potential Impacts on Marine Mammals

NMFS has preliminarily determined that the relatively short-term impact of conducting seismic surveys in the U.S. Chukchi may result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise, this behavioral change is expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of seismic operations (as shown in Table 2 in the GXT IHA application), which will vary annually due to variable ice conditions and other factors, the number of potential harassment takings is estimated to be small (see Table 1 in this document) in comparison to the population estimate.

In addition, no take by death or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures proposed for GXT's IHA. This preliminary determination is supported by: (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the seismic

array, marine mammals (especially bowhead, gray, and beluga whales in Arctic waters) are expected to move away from seismic noise that is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely at SPLs as low as 180 dB re 1 microPa;(at least in delphinids); (3) the fact that injurious levels would be very close to the vessel; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night close to the seismic vessel. Finally, no known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals are known to occur within or near the planned areas of operations during the season of operations.

Potential Impacts on Subsistence Uses of Marine Mammals

Preliminarily, NMFS believes that the proposed seismic activity by GXT in the northern Chukchi Sea in 2006, in combination with other seismic and oil and gas programs in this area, will not have an unmitigable adverse impact on the subsistence uses of bowhead whales and other marine mammals. This preliminary determination is supported by the following: (1) Seismic activities in the Chukchi Sea will not begin until after the spring bowhead hunt is expected to have ended; (2) although unknown at this time to NMFS, the CAA conditions will significantly reduce impacts on subsistence hunters; (3) while it is possible that accessibility to belugas during the spring subsistence beluga hunt could be impaired by the survey, it is unlikely because very little of the proposed survey is within 25 km (15.5 mi) of the Chukchi coast, meaning the vessel will usually be well offshore and away from areas where seismic surveys would influence beluga hunting by communities; and (4) because seals (ringed, spotted, bearded) are hunted in nearshore waters and the seismic survey will remain offshore of the coastal and nearshore areas of these seals where natives would harvest these seals, it should not conflict with harvest activities.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to GXT for conducting a seismic survey in the northern Chukchi Sea, provided the previously proposed mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: May 25, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–5025 Filed 6–1–06; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Notice of Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 71 FR 30665.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE PUBLIC HEARING: 10 a.m., Tuesday, June 27, 2005.

CHANGES IN THE HEARING: The time of the public hearing on the Issue of What constitutes a Board of Trade Located Outside of the United States Under Section 4(a) of the Commodity Exchange Act has been changed to 9 a.m.

CHANGES IN THE CONTACT PHONE NUMBER: The phone number of Duane Andresen previously read ''(202) 418–5429'' and should read ''(202) 418–5492''.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–5117 Filed 5–31–06; 3:29 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Joint Military Intelligence College Board of Visitors Meeting

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, June 6, 2006, 0800 to 1700; and Wednesday, June 7, 2006, 0800 to 1200.

ADDRESSES: Point Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College. Due to an unforeseen delay in administrative processing, our notification does not meet the minimum 15 day advanced notification.

Dated: May 26, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–5041 Filed 6–1–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Final Supplemental Environmental Impact Statement for the Boston Harbor Inner Harbor Maintenance Dredging Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, New England District has prepared a Final Supplemental Environmental Impact Statement to maintenance dredge the following Federal navigation channels: The Main Ship Channel upstream of Spectacle Island to the Inner Confluence, the upper Reserved Channel, the approach to the Navy Dry Dock, a portion of the Mystic River, and a portion of the Chelsea River (previously permitted) in Boston Harbor, MA. Maintenance dredging of the navigation channels landward of Spectacle Island is needed to remove shoals and restore the Federal navigation channels to their authorized depths. Materials dredged from the Federal channels will either be disposed at the Massachusetts Bay Disposal Site (for the material suitable for unconfined open water disposal) or, for the material not suitable for unconfined open water

disposal, in confined aquatic disposal (CAD) cell(s). Major navigation channel improvements (deepening) were made in 1999 through 2001 in the Reserved Channel, the Mystic River, Inner Confluence and the Chelsea River. A Final EIS prepared for this previous navigation improvement project in June of 1995 identified selected use of CAD cells in the Mystic River, Inner Confluence, and Chelsea River were investigated. A new CAD cell for the proposed maintenance project will be constructed in the Mystic River and in the Main Ship Channel just below the Inner Confluence.

DATES: Submit comments on or before July 1, 2006.

ADDRESSES: If you wish to receive a copy of the FSEIS, Executive Summary, or provide comments on the FSEIS, please contact Mr. Michael F. Keegan, U.S. Army Corps of Engineers, New England District, Programs & Civil Project Management Branch, 696 Virginia Road, Concord, MA 01742.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Keegan, (978) 318–8087.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers is authorized by the various River and Harbor Acts and Water Resources Development Acts to conduct maintenance dredging of the Federal navigation channels and anchorage areas in Boston Harbor.

Dated: May 23, 2006.

Curtis L. Thalken,

Colonel, Corps of Engineers, New England District.

[FR Doc. 06–5058 Filed 6–1–06; 8:45am]

BILLING CODE 3710–24–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Environmental Impact Statement for the White River Minimum Flow Reallocation Study, AR

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers (USACE), Little Rock District, has prepared a Draft Environmental Impact Statement (DEIS) for the proposed implementation of the White River Minimum Flow, Arkansas. This DEIS is being made available for a 45-day public comment period.

DATES: Public meetings for receiving comments on the DEIS are tentatively scheduled for June 19, 2006 at Springdale, AR; June 20, 2006 at Branson, MO; and June 21, 2006 at Mountain Home, AR. Specific times and locations will be announced at a later date. Written comments on the DEIS should be submitted on or before July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the DEIS should be addressed to Mike Biggs, Project Manager, Programs and Project Management Division, P.O. Box 867, Little Rock, Arkansas 72203–0867, telephone 501–324–5842, x1071, e-mail: *mike.l.biggs@swl102.usace.army.mil*.

SUPPLEMENTARY INFORMATION:

Setting: The White River and its tributaries drain a total area of 27,765 square miles (10,620 square miles in Missouri and 17,145 square miles in Arkansas). The White River basin originates in the Boston Mountains of northwest Arkansas (AR), near the city of Fayetteville. Three forks, the White River, the Middle Fork, and the West fork, come together in Washington County, AR to form the mainstem of the White River. The White River is first impounded as Lake Sequoyah, a 500-acre impoundment at the junction of the Middle Fork and the White River, near Fayetteville. The White River flows south out of Lake Sequoyah and joins the West Fork before entering Beaver Lake just west of Eureka Springs, AR. The White flows out of Beaver Dam (the first in a series of four hydroelectric dams) northward into Missouri (MO) near the town of Eagle Rock, Barry County. The White then flows eastward where it has been impounded as Table Rock Lake, just below its confluence with the James River near Branson. The White River below Table Rock Lake is again impounded by Powersite Dam near Forsythia, MO and forms Lake Tenneco. The river flow takes a southerly turn and flows back into Arkansas where it has again been impounded by Bull Shoals Dam near Cotter, Marion County. The White River flows towards the southeast from Bull Shoals Dam. The White river exits the Ozark Plateau and enters the Mississippi Alluvial Plain near Newport, AR. The White River continues to flow in a southerly direction from where it enters the delta until its confluence with the Mississippi River near Montgomery Point, AR, some 720 miles from its origin.

The primary focus of the White River Minimum Flow Reallocation Study was to look at the five USACE reservoirs and associated tailwaters (TW). The TW below Beaver is considered as White River Mile (WRM) 609.0–604.5, Bull Shoals WRM 418.6–329.1, Table Rock WRM 528.7–506.0, below Norfork, North Fork River mile (NRM) 4.75 to 0.0, and the Buffalo National River enters at WRM 387.8 and the Norfork enters at WRM 376.4. The Greers Ferry TW Little Red River mile (LRRM) 78.7–48.7 is below Greers Ferry dam.

Background: The Department of the Army, Corps of Engineers, published a Notice of Intent in the **Federal Register** (65 FR 51299), August 23, 2000, stating its intent to prepare an EIS for a proposed water storage reallocation for the 5 White River lakes.

The Corps was directed to complete a study and report to determine if minimum flow reallocations adversely affect other authorized purposes under section 374 of the Water Resources Development Act (WRDA) 1999 and section 304 of WRDA 2000.

Under the original authorization, water levels were managed primarily for flood control and hydroelectric power generation at four of the White River Reservoirs as well as water supply at Beaver Lake. WRDA 1999 and 2000 provided minimum flows necessary to sustain tailwater trout fisheries by reallocating the following recommended amounts of project storage: Beaver Lake, 1.5 feet; Table Rock Lake, 2 feet; Bull Shoals Lake, 5 feet; Norfork Lake, 3.5 feet; and Greers Ferry Lake, 3 feet. The Act further stated that no funds may be obligated to carry out work on the modification under subsection (a) until the Chief of Engineers, through completion of a final report, determines that the work is technically sound, environmentally acceptable, and economically justified.

Proposed Action and Alternatives: WRDA 1999 and 2000 authorized the Little Rock District Corps of Engineers to reallocate specific ''feet'' of storage from each of the five White River reservoirs. WRDA did not specify which storage zone to take the ''feet'' of storage. Currently the lakes are divided into two zones, flood pool and conservation pool. The volume of storage provided by reallocating ''feet'' of storage from conservation pool is less than the volume of storage provided by the same ''feet'' of storage from the flood pool.

The White River Reallocation Study completed in 2004 and the DEIS evaluated three reallocation plans at each reservoir, (1) reallocation from the flood pool, (2) reallocation from the conservation pool and, (3) splitting the reallocation 50:50 from each pool. The study also looked at different methods of water release such as through existing station service units and siphons, new

station service units, through the main turbines, or through siphons only.

After the submittal of the 2004 reallocation study, authorization was included in the FY 2006 Energy and Water Resources Development Act (EWRDA) that selected alternatives BS3 (reallocation at Bull Shoals Lake from the flood pool released through an existing hydropower main turbine) and NF7 (reallocation from a 50:50 split between the flood pool and the conservation pool with releases through existing station service units and siphons). These alternatives were designated the ''preferred alternatives'' and as such comply with Congressional directives and provide compensation to the hydropower users and affected facilities.

DEIS Availability: The DEIS will be available for public review at the following locations:

U.S. Army Corps of Engineers, 700 West Capital Avenue, ATTN: CESWL–PE, Room 7500, Little Rock, AR 72203

U.S. Army Corps of Engineers, Beaver Lake Project Office, 2260 N. 2nd Street, Rogers, AR 72756

U.S. Army Corps of Engineers, Table Rock Lake Project Office, 3530 US Highway 165, Branson, MO 65616

U.S. Army Corps of Engineers, Mountain Home Project Office, 324 W. 7th Street, Mountain Home, AR 72653

U.S. Army Corps of Engineers, Greers Ferry Project Office, 700 Heber Springs Road North, Heber Springs, AR 72543

Commenting: Comments received in response to this DEIS, including names and address of those who comment will be considered part of the public record. Comments submitted anonymously will also be accepted and considered. Pursuant to Title 7 of the CFR 1.27(d), any person may request that the Corps withhold a submission from the public record if he or she can demonstrate that the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality. If the request is denied, the Corps will return the submission with notification that the comments may be resubmitted either with or without the commenter's name and address.

Affected local, State, or Federal agencies, affected American Indian tribes, and other interested private organizations and parties may participate in the review process by forwarding written comments to the address given previously or by attending the public meetings.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–5057 Filed 6–1–06; 8:45 am]

BILLING CODE 3710–57–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[PH06–1–000; PH06–2–000; PH06–3–000; PH06–5–000; PH06–6–000; PH06–7–000; PH06–8–000; PH06–9–000; PH06–10–000]

Berrick Gold Corporation; DPL Inc.; AGL Resources Inc.; Hawaiian Electronic Industries; TransCanada Corporation; Broad Street Contract Services, Inc.; DTE Energy Company; Mitsubishi Corporation, et al.; Kandiyohi Power Cooperative; Notice of Effectiveness of Exemptions and Waivers

May 26, 2006.

Take notice that in March and April 2006 the exemptions and waivers requested in the above-captioned proceedings are deemed to have been granted by operation of law pursuant to 18 CFR 366.4.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8601 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–153]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

May 26, 2006.

Take notice that on May 19, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amended negotiated rate agreement for wheeling service under Rate Schedule PHS between CEGT and Dynegy Marketing and Trade to be effective May 23, 2006.

CEGT also has submitted as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 867, also to be effective May 23, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8594 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–366–000]

Cheyenne Plains Gas Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 26, 2006.

Take notice that on May 23, 2006, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following

tariff sheets to become effective June 22, 2006.

First Revised Sheet No. 269
First Revised Sheet No. 279
Original Sheet No. 279A
First Revised Sheet No. 280
Third Revised Sheet No. 402
First Revised Sheet No. 403

Cheyenne Plains states that the tariff sheets specify a timeline for the prospective sale of available firm capacity as well as a right of first refusal limitation on the sale of certain future capacity.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8606 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR06–8–000]

Colonial Pipeline Company; Notice of Petition for Declaratory Order

May 26, 2006.

Take notice that on May 22, 2006, Colonial Pipeline Company (Colonial) pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2005), has petitioned the Commission to issue a declaratory order confirming the proposed rate structure for Colonial's planned mainline expansion from Baton Rouge, Louisiana to Atlanta, Georgia. Colonial requests a Commission decision on its petition by July 31, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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 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 June 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8600 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–365–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 26, 2006.

Take notice that on May 22, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of June 22, 2006:

Fourth Revised Sheet No. 406
Third Revised Sheet No. 407

Columbia states that this filing is being made to incorporate into its FERC Gas Tariff certain gas quality specifications that Columbia has used in its meter set agreements for receipt interconnects on Columbia's pipeline system since 1996.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8605 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–8–002]

Dow Intrastate Gas Company; Notice of Compliance Filing

May 26, 2006.

Take notice that on May 18, 2006, Dow Intrastate Gas Company filed a revised Statement of Operating Conditions in compliance with the Commission's letter order issued on May 3, 2006, in Docket Nos. PR06–8–000 and PR06–8–001.

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 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 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 June 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8602 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–29–002]

Freebird Gas Storage, L.L.C.; Notice of Tariff Filing

May 25, 2006.

Take notice that on May 18, 2006, Freebird Gas Storage, L.L.C. (Freebird) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on the filing, with an effective date of June 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 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 May 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8526 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–216–002]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

May 26, 2006.

Take notice that on April 26, 2006, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 50B, with an effective date of March 9, 2006.

Iroquois states that the filing is being made in response to the Commission's March 9, 2006 order accepting and suspending subject to conditions, earlier tariff sheets filed by Iroquois on February 7, 2006. Iroquois states that the above referenced tariff sheet replaces Fifth Revised Sheet No. 50B that was erroneously filed with Iroquois' April 10, 2006 compliance filing.

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. E6–8604 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–122–000]

James A. Goodman, as Receiver for Certain Assets of PMCC Calpine New England Investment LLC; U.S. Bank National Association, Trustee; Notice of Filing

May 25, 2006.

Take notice that on May 22, 2006, James A. Goodman, as Receiver For Certain Assets of PMCC Calpine New England Investment LLC and U.S. Bank National Association, as Trustee for certain creditors, filed an application, pursuant to section 203 of the Federal Power Act and part 33 of the Commission's Regulations, to transfer control of two electric generating plants located in Tiverton, Rhode Island and Rumford, Maine.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8524 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF87–531–010 and EL06–73–000]

Lyonsdale Biomass, LLC; Notice of Filing

May 26, 2006.

Take notice that on May 23, 2006, Lyonsdale Biomass, LLC (Petitioner) filed an application for request of recertification of its qualifying small power production facility located in Lyons Falls, New York, pursuant to 18 CFR 292.207(B) of the Commission's regulations, and a petition for declaratory order finding that the Petitioner is exempt for Sections 205 and 206 of the Federal Power Act, pursuant to 18 CFR 292.601(c)(1).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 22, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8603 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–335–000 and CP96–810–006]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Application

May 26, 2006.

Take notice that on May 16, 2006, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), 890 Winter Street, Suite 300, Waltham, Massachusetts 02451, filed in Docket No. CP06–335–000, an application pursuant to section 7 of the Natural Gas Act (NGA) for authorization to construct, own, operate and maintain certain pipeline facilities, consisting of approximately 99,000 horsepower of compression at five new compressor stations and two existing compressor stations and approximately 1.7 miles of pipeline loop, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Additionally, in Docket No.CP96–810–006, Maritimes seeks an amendment to its authorization under section 3 of the NGA and its Presidential Permit to construct and operate facilities for the importation of natural gas, reflecting increased volumes of natural gas to be imported in connection with the proposed facilities. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the

document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, M&N Management Company, 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on June 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8597 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–367–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 26, 2006.

Take notice that on May 24, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 16 and Sixth Revised Sheet No. 17, to become effective June 24, 2006.

Northwest states that the purpose of this filing is to revise the minimum temporary conversion term from one month to twelve months for a Rate Schedule TF–1 (Small Customer) shipper who temporarily converts to Rate Schedule TF–1 (Large Customer) status to participate in Northwest's capacity release program, and to clarify the administrative process for electing this temporary conversion.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8607 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–84–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

May 26, 2006.

Take notice that on May 23, 2006 Transcontinental Gas Pipe Line Corporation (Transco) submitted a compliance filing pursuant to the Commission's order issued May 9, 2006, in Docket No. CP06–84–000. Transco states that the filing removes Rate Schedules X–35, X–78, X–128, X–152, X–157, X–197, X–215, and X–263 from Transco's Original Volume No. 2, FERC Gas Tariff.

Transco states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

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 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 June 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8598 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–009]

Trunkline LNG Company, LLC; Notice of Compliance Filing

May 26, 2006.

Take notice that on May 24, 2006, Trunkline LNG Company, LLC (Trunkline LNG) submitted a compliance filing pursuant to the Commission's order issued September 17, 2004 in Docket Nos. CP04–64–000 and CP02–60–004. This compliance filing includes tariff sheets to place facilities in service upon completion of the Modified Expansion Project.

Trunkline LNG states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8608 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 24, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER99–2251–005; ER99–2252–006; ER98–2491–011; ER97–705–016; ER02–2080–005; ER02–2546–006; ER99–3248–008; ER99–1213–006; ER01–1526–006.

Applicants: Consolidated Edison Co. of New York, Inc; Orange and Rockland Utilities, Inc.; Consolidated Edison Energy, Inc.; Ocean Peaking Power, L.L.C.; CED Rock Springs, Inc.; Consolidated Edison Energy of Massachusetts, Inc.; Lakewood Cogeneration, L.P.; Newington Energy, L.L.C.

Description: The Con Edison Companies submits a non-material change in status, in compliance with FERC's Order 652.

Filed Date: May 12, 2006.

Accession Number: 20060522–0028.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER02–2074–002; ER00–1372–003.

Applicants: Alcoa Power Marketing, Inc.; Alcoa Power Generating Inc.

Description: Alcoa Power Generating, Inc & Alcoa Power Marketing, Inc submit an amendment to the affidavit in their April 13, 2006 filing.

Filed Date: May 17, 2006.

Accession Number: 20060519–0007

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER04–691–072; ER04–106–019; EL04–104–066.

Applicants: Midwest Independent Transmission System Operator, Inc.; Michigan Public Power Agency; Michigan South Central Power Agency.

Description: Midwest Independent Transmission Operator, Inc *et al.* submit a joint informational filing in compliance with the order of the Commission issued September 19, 2005.

Filed Date: May 17, 2006.

Accession Number: 20060519–0119.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Docket Numbers: ER06–783–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits its Substitute Sixth Revised Sheet 191 *et al.* to revise Section 7.5 of its Services Tariff filed March 24, 2006.

Filed Date: May 16, 2006.

Accession Number: 20060519–0116.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–809–001.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc on behalf of Northern States Power Co submits an amendment to its March 30, 2006 filing, pursuant to the Commission's oral request.

Filed Date: May 12, 2006.

Accession Number: 20060519–0120.

Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ER06–844–001.

Applicants: LSF Limited.

Description: LSF Limited submits two amended Petitions for acceptance of initial rate schedule, waivers and blanket authority on May 11, 2006 and May 12, 2006.

Filed Date: May 11, 2006 and May 12, 2006.

Accession Number: 20060522–0077 and 20060522–0076.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 23, 2006.

Docket Numbers: ER06–1011–000.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England, Inc and the New England Power Pool Participants submit corrected 2nd Revised Sheet 113 *et al.* to the ISO Financial Assurance Policy for Market Participants.

Filed Date: May 16, 2006.

Accession Number: 20060522–0013.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–1012–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Deseret Generation & Transmission Co-operative, Inc submits an amendment to its Large Industrial Incentive Rate Agreement with Mt Wheeler Power, Inc.

Filed Date: May 18, 2006.

Accession Number: 20060522–0014.
Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1013–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed interconnection service agreement with Allegheny Energy Supply Company, LLC *et al.* and on May 17, 2006 submitted an Certificate of Service which was inadvertently omitted from this filing.
Filed Date: May 16, 2006.
Accession Number: 20060522–0015.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–1014–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits revisions to its Market Administration and Control Area Services Tariff & Open Access Transmission Tariff.
Filed Date: May 16, 2006.
Accession Number: 20060522–0016.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–1015–000.
Applicants: Pacific Gas & Electric Company.
Description: Pacific Gas and Electric Co submits Revised Appendix B to the Generator Special Facilities Agreement and an unexecuted Generator Interconnection Agreement with Lompoc Wind Project, LLC.
Filed Date: May 18, 2006.
Accession Number: 20060522–0022.
Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1016–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc on behalf of Entergy Arkansas, Inc submits the Thirty-Sixth Amendment to the Power Coordination, Interchange and Transmission Service Agreement with Arkansas Electric Coop Corp.
Filed Date: May 18, 2006.
Accession Number: 20060522–0017.
Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1017–000.
Applicants: Allegheny Power.
Description: Allegheny Power submits a notice of cancellation of the Power Supply Agreement with Atlantic City Electric Company.
Filed Date: May 18, 2006.
Accession Number: 20060522–0018.
Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1018–000.
Applicants: Power Hedging Dynamics, LLC.
Description: Power Hedging Dynamics, LLC submits a petition for acceptance of initial rate schedule FERC No. 1, waivers and blanket authority.
Filed Date: May 18, 2006.
Accession Number: 20060522–0030.
Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–8576 Filed 6–1–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

May 24, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES06–47–000.
Applicants: Kansas City Power & Light Company.
Description: Kansas City Power & Light Co submits an application to amend authorization to issue short-term debt instruments.
Filed Date: 5/5/2006.
Accession Number: 20060517–0076.
Comment Date: 5 p.m. Eastern Time on Friday, June 2, 2006.

Docket Numbers: ES06–48–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group Inc. submits its application for authorization to issue securities and engage in methods of issuance other than competitive bidding and negotiated offers.
Filed Date: 5/17/2006.
Accession Number: 20060519–0154
Comment Date: 5 p.m. Eastern Time on Wednesday, June 7, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the

FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8577 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 26, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–1150–006; EL05–87–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Co submits this compliance filing pursuant to the 4/19/06 letter issued by FERC.

Filed Date: 5/19/2006.

Accession Number: 20060523–0062.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER00–3614–000; ER04–611–003.

Applicants: BP Energy Company; BP West Coast Products, LLC.

Description: BP Energy Co submits an informational filing re updates of several non-material events that have occurred since its submission of its 6/17/05 triennial market power update.

Filed Date: 5/3/2006.

Accession Number: 20060524–0187.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 24, 2006.

Docket Numbers: ER05–1082–004.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co dba Progress Energy Carolinas, Inc submits a corrected tariff sheet no. 9, to Original Volume No 6.

Filed Date: 5/11/2006.

Accession Number: 20060524–0209.

Comment Date: 5 p.m. Eastern Time on Thursday, June 1, 2006.

Docket Numbers: ER05–1316–002.

Applicants: Kumeyaay Wind LLC.

Description: Kumeyaay Wind, LLC submits its notice of change in status as a result of an acquisition of an interest in a generating plant by an affiliate of one of its upstream owners pursuant to FERC's Order 652.

Filed Date: 5/18/2006.

Accession Number: 20060524–0124.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–710–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator Inc submits its response to FERC's deficiency letter issued on 4/28/06.

Filed Date: 5/19/2006.

Accession Number: 20060524–0199.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–792–001.

Applicants: Norge Power Marketing Corporation.

Description: Norge Power Marketing Corporation submits an amendment to its Electric Tariff Market-Based Rate Schedule.

Filed Date: 5/18/2006.

Accession Number: 20060524–0197.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–911–001.

Applicants: DC Energy Midwest, LLC.

Description: DC Energy Midwest, LLC submits a revised amendment to its FERC Electric Tariff No. 1.

Filed Date: 5/22/2006.

Accession Number: 20060524–0203.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–912–001.

Applicants: DC Energy New York, LLC.

Description: DC Energy New York, LLC submits a revised amendment to its FERC Electric Tariff No. 1.

Filed Date: 5/22/2006.

Accession Number: 20060524–0201.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–913–001.

Applicants: DC Energy Mid-Atlantic, LLC.

Description: DC Energy Mid-Atlantic, LLC submits a revised amendment to its FERC Electric Tariff No. 1.

Filed Date: 5/22/2006.

Accession Number: 20060524–0205.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–914–001.

Applicants: DC Energy New England, LLC.

Description: DC Energy New England, LLC submits a revised amendment to its FERC Electric Tariff No. 1.

Filed Date: 5/22/2006.

Accession Number: 20060524–0204.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–915–001.

Applicants: DC Energy, LLC.

Description: DC Energy, LLC submits a revised amendment to its FERC Electric Tariff No. 1.

Filed Date: 5/22/2006.

Accession Number: 20060524–0202.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–944–001.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Co submits a certificate of concurrence to the Public Service Co of New Mexico's amended & restated San Juan Project Participation Agreement.

Filed Date: 5/22/2006.

Accession Number: 20060524–0018.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–944–001.

Applicants: Tri-State Generation and Transmission Association.

Description: Tri-State Generation and Transmission Association Inc submits a certificate of concurrence to the Public Service Co of New Mexico's amended and restated San Juan Project Participation Agreement.

Filed Date: 5/19/2006.

Accession Number: 20060524–0017.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–944–001.

Applicants: Utah Association Municipal Power Systems.

Description: Utah Association Municipal Power Systems certificate of concurrence to the Public Service Company of New Mexico's amended and restated San Juan Project Participation Agreement.

Filed Date: 5/18/2006.

Accession Number: 20060518–5015.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–944–001.

Applicants: The City of Farmington, New Mexico.

Description: The City of Farmington, New Mexico submits its certificate of concurrence to the Public Service Co of New Mexico's amended and restated San Juan Project Participation Agreement and on 5/22/06 submitted a revision to this filing.

Filed Date: 5/18/2006.

Accession Number: 20060524–0019.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–987–001.

Applicants: HLM Energy LLC.

Description: HLM Energy LLC submits an amended Petition for Acceptance of Initial Rate Schedule No. 1.

Filed Date: 5/16/2006.

Accession Number: 20060516–5052.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 6, 2006.

Docket Numbers: ER06–1020–000.

Applicants: American Transmission Company LLC.

Description: American Transmission Co LLC submits an executed Distribution—Transmission Interconnection Agreement with Brodhead Water & Light.

Filed Date: 5/19/2006.

Accession Number: 20060524–0216.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1021–000.

Applicants: American Transmission Company LLC.

Description: American Transmission Co LLC submits an executed Distribution—Transmission Interconnection Agreement with the City of Richland Center Utility Commission.

Filed Date: 5/19/2006.

Accession Number: 20060524–0215.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1022–000.

Applicants: American Transmission Company LLC.

Description: American Transmission Co LLC submits an executed Distribution—Transmission Interconnection Agreement with Florence Utilities.

Filed Date: 5/19/2006.

Accession Number: 20060524–0214.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1023–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co submits its 2005 costs and accruals report for PBOP, as recorded in FERC Uniforms System of Accounts 926.

Filed Date: 5/19/2006.

Accession Number: 20060524–0213.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1024–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co submits a revision to its Service Agreement Nos 4 and 6, Original Volume 11, to become effective 5/11/06.

Filed Date: 5/19/2006.

Accession Number: 20060524–0170.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1025–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Michigan Transmission Co, LLC submits a Letter Agreement with Wabash Valley Power Association, Inc as agent for Midwest Energy Corp.

Filed Date: 5/19/2006.

Accession Number: 20060524–0212.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1026–000.

Applicants: American Electric Power Service Corporation.

Description: The American Electric Power Service Corp as agent for its affiliate Ohio Power Co submits an interconnection and local delivery service agreement with Dayton Power & Light Co for the Middleboro Delivery Point.

Filed Date: 5/19/2006.

Accession Number: 20060524–0211.

Comment Date: 5 p.m. Eastern Time on Friday, June 9, 2006.

Docket Numbers: ER06–1028–000.

Applicants: American Electric Power Service Corporation

Description: American Electric Service Corp as agent for Indiana Michigan Power Co submits amendments to its Interconnection & Operating Agreement with DPL Energy, Inc.

Filed Date: 5/18/2006.

Accession Number: 20060524–0206.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1029–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Co submits three of its Generator Interconnection Agreements with Global Common, LLC & Ameresco Half Moon Bay, LLC.

Filed Date: 5/18/2006.

Accession Number: 20060524–0111.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1030–000.

Applicants: Goodman, James A.

Description: James Goodman submits an application requesting authorization for market-based rate authority for Electric Rate Tariff, Original Volume No. 1, pursuant to section 205 of the Federal Power Act.

Filed Date: 5/22/2006.

Accession Number: 20060524–0198.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–1031–000.

Applicants: Pacificorp.

Description: PacifiCorp submits a Notice of Cancellation of Rate Schedule FERC No. 225, to be effective 3/9/06.

Filed Date: 5/22/2006.

Accession Number: 20060524–0185.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–1033–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits service agreements with Shelter Cove Resort Improvement District 1.

Filed Date: 5/22/2006.

Accession Number: 20060524–0217.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–1038–000.

Applicants: BP Energy Company.

Description: BP Energy Co submits its application for authorization to transmit electric energy to Canada.

Filed Date: 5/22/2006.

Accession Number: 20060524–0200.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–1039–000.

Applicants: Freedom Partners, LLC.

Description: Freedom Partners, LLC submits an application for acceptance of initial market-based rate tariff, waivers and blanket authority.

Filed Date: 5/22/2006

Accession Number: 20060524–0194.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Docket Numbers: ER06–1040–000.

Applicants: Duke Power Company LLC.

Description: Duke Power Co, LLC dba Duke Energy Carolinas, LLC submits Partial Requirements Service Agreement with Blue Ridge Membership Corp, Piedmont Electric Membership and Rutherford Electric Membership.

Filed Date: 5/18/2006.

Accession Number: 20060524–0092.

Comment Date: 5 p.m. Eastern Time on Thursday, June 8, 2006.

Docket Numbers: ER06–1041–000.

Applicants: American Electric Power Service Corporation.

Description: The American Electric Power Service Corp as agent for Indiana and Michigan Power Co submits an Original Interconnection and Local

Delivery Service Agreement with the City of Sturgis, Indiana.

Filed Date: 5/22/2006.

Accession Number: 20060524–0195.

Comment Date: 5 p.m. Eastern Time on Monday, June 12, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8578 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–85–000]

Centerpoint Energy Gas Transmission Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Carthage to Perryville Project

May 26, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Draft Environmental Impact Statement (EIS) for the natural gas pipeline facilities proposed by CenterPoint Energy Gas Transmission (CEGT) under the above-referenced docket. CEGT's Carthage to Perryville Project (Project) would be located in various counties and parishes in eastern Texas and northern Louisiana.

This Draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that the proposed Project, with the appropriate mitigation measures as recommended, would have limited adverse environmental impact.

The U.S. Fish and Wildlife Service (FWS) and the U.S. Army Corps of Engineers (COE) are Federal cooperating agencies for the development of this EIS. A Federal cooperating agency has jurisdiction by law or special expertise with respect to any environmental impact involved with the proposal and is involved in the NEPA analysis.

The general purpose of the proposed Project is to facilitate the transport of up to 1.2 billion cubic feet per day of natural gas received from production areas in eastern Texas, as well as northern Louisiana, to markets in the Midwest and Northeastern regions of the United States that can be accessed through interconnects with existing pipeline infrastructure.

The Draft EIS addresses the potential environmental effects of construction and operation of the following facilities:

- About 171.9 miles of 42-inch-diameter natural gas pipeline in Panola County, Texas, and Caddo, DeSoto, Red River, Bienville, Jackson, Ouachita, and Richland Parishes, Louisiana;
- Two new, 20,620 horsepower (hp) gas-turbine-driven compressor stations, the Panola and Vernon Compressor Stations, located in Panola County, Texas, and Jackson Parish, Louisiana, respectively;
- Two meter and regulator stations at receipt points with three intrastate pipelines, including:
  - —Houston Pipe Line (HPL) Meter/Regulator (M/R) Station in Panola County, Texas;
  - —Duke Energy Field Services-Enbridge M/R Station in Panola County, Texas;
- Four new meter and regulator stations at interconnects with existing interstate pipelines, including:
  - —Texas Gas M/R Station in Ouachita Parish, Louisiana;
  - —ANR M/R Station in Richland Parish, Louisiana;
  - —Trunkline M/R Station in Richland Parish, Louisiana;
  - —Columbia Gulf M/R Station in Richland Parish, Louisiana;
- 11 mainline valves; and
- Four pig launcher/receiver facilities associated with the Panola and Vernon Compressor Stations and the HPL and Columbia Gulf M/R Stations.

CEGT proposes to construct its pipeline facilities in two phases. Construction of Phase I would be initiated in October 2006 and completed by February 2007, at which point CEGT would place the proposed Project in-service. Under Phase I, a single, 10,310-hp turbine compressor would be installed at each compressor station. Under Phase II, a second compressor would be installed to bring the total installed compression at each facility to 20,620 hp. CEGT indicates that Phase II facilities would be installed and operational by October 2008.

Comment Procedures and Public Meetings

Any person wishing to comment on the Draft EIS may do so. To ensure that your comments are timely and properly recorded so that they may be considered in the Final EIS, please carefully follow these instructions:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 3, DG2E;
- Reference Docket No. CP06–85–000 on the original and both copies; and
- Mail your comments so that they will be received in Washington, DC on or before July 17, 2006.

To expedite the FERC's receipt and consideration of your comments, electronic submission of comments is strongly encouraged by the Commission. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can

submit comments you will need to create a free account, which can be created on-line by clicking on ''Sign-up'' under ''New User.'' You will also be asked to select the type of filing you are making. This filing is consisdered a ''Comment on Filing.''

In lieu of or in addition to sending written comments, we invite you to attend the public comment meetings the FERC will conduct in the project area to receive comments on the Draft EIS. The public comment meetings on the Draft EIS for the Carthage to Perryville Project will be conducted jointly with the public scoping meetings for the East Texas Expansion Project (FERC Docket No. PF06–17–000), which we are currently evaluating under our Pre-Filing Process. All meetings will begin at 7 p.m. (CDT), and are scheduled as follows:

Date and time	Location
Wednesday, June 21, 2006	Quitman High School Auditorium, 181 Wolverine Drive, Quitman, LA 71268, Telephone: (318) 259–2698.
Thursday, June 22, 2006	Delhi High School Auditorium, 413 Main Street, Delhi, LA 71232, Telephone: (318) 878–2235.

The public comment meetings will be posted on the FERC's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx*. Interested groups and individuals are encouraged to attend and present oral comments on the Draft EIS. Transcripts of the meetings will be prepared.

After the comments received are reviewed, any significant new issues are investigated, and modifications are made to the Draft EIS, a Final EIS will be published and distributed by the FERC staff. The Final EIS will contain the staff's responses to timely comments received on the Draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this Draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The Draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street N.E., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the Draft EIS are available from the Public Reference Room identified above. In addition, CD copies of the Draft EIS have been mailed to affected landowners; various Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; intervenors; and other individuals that expressed an interest in the proposed Project. Hard-copies of the Draft EIS have also been mailed to those who requested that format during the scoping period for the proposed Project.

To reduce printing and mailing costs for the Final EIS, the FERC will be issuing that document in both CD and hard-copy formats. In a separate mailing, the parties on the current mailing list for the Draft EIS will be sent a postcard providing an opportunity to select the format of the Final EIS that they wish to receive. The FERC is strongly encouraging the use of the CD format in their publication of large documents.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary link,'' select ''General Search'' and enter the project docket number excluding the last three digits (*i.e.*, CP06–85) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8599 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–143–000]

Algonquin Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Algonquin Cape Cod Project; Request for Comments on Environmental Issues and Notice of Site Visit

May 26, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Algonquin Cape Cod Project (Project) involving construction, and operation of facilities by Algonquin Gas Transmission, LLC (Algonquin) in Barnstable County, Massachusetts. The project would provide firm transportation service for new deliveries of natural gas to KeySpan Energy Delivery Services Company of New England (Keyspan) to ensure reliability and meet future demand. The project would provide up to 38,000 dekatherms per day (dth/d) of transportation capacity. In general, the project consists of about 3.5 miles of new pipeline and other auxiliary facilities.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Please note that the scoping period will close on June 26, 2006.

This notice is being sent to potentially affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes, other interested parties; local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

Summary of the Proposed Project

Algonquin proposes to construct and operate [1] approximately 3.5 miles of 18-inch-diameter pipeline in the towns of Bourne and Sandwich in Barnstable County, Massachusetts. The line would commence at the Mirant Energy Generation Facility and terminate at a new proposed meter station west of Route 130 in Sandwich. Algonquin also proposes to construct a pig [2] launcher upstream of the proposed facilities in the town of Bourne at the beginning of the G–24 pipeline and a pig receiver at the proposed meter station.

The general location of Algonquin's proposed facilities is shown on the map attached as Appendix 1.[3]

Land Requirements for Construction

Construction of Algonquin's proposed facilities would require about 45.35 acres of land for the construction right-of-way for the pipelines, additional temporary workspaces, staging areas, and access roads. The construction right-of-way for the pipelines would typically be 75 feet wide. Following construction, a 50-foot wide permanent right-of-way would be maintained.

Construction access to Algonquin's project would be via existing public and private roads. Algonquin has identified 19 existing access roads necessary for the construction of its project.

The EA Process

We [4] are preparing the EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the project. We will also evaluate possible alternatives to the proposed project or portions of the project.

We have already identified some issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

- Impact of crossing the Shawme-Crowell State Forest and Massachusetts Military Reservation.
- Disturbance of 20.39 acres of forest land.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP06–143–000.
- Mail your comments so that they will be received in Washington, DC on or before June 26, 2006.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created online.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14

[1] Algonquin's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] A pipeline ''pig'' is a device used to clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] ''We'', ''us'', and ''our'', refer to the environmental staff of the Office of Energy Projects (OEP).

paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Site Visit

On June 20, 2006, the OEP staff will conduct a pre-certification site visit of the planned Cape Cod Project.

We will view the proposed route and variations that are being considered for the planned pipeline. Staff will view the area by automobile and on foot. Representatives of Algonquin will be accompanying the OEP staff.

All interested parties may attend the site visit on June 20, 2006. Those planning to attend must provide their own transportation. If you are interested in attending the site visit, please meet us at 9 a.m. in the parking lot of ENSR, 95 State Road, Sagamore Beach, Massachusetts.

If you plan on attending and will be entering the Massachusetts Military Reservation along with FERC on the site visit, it will be necessary that you provide certain information no later than Monday, June 12, 2006. We will attempt to get pre-approval for anyone attending. Please e-mail the following information to *jzimmer@ensr.com:* Name; Drivers License Number; Agency/Affiliation; Vehicle make, model, color, year, and license plate number of vehicle entering the base.

Anyone attending who will be entering the Massachusetts Military Reservation needs to be pre-approved and must bring a Photo ID to gain access.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–8596 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–115–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Texas Eastern Incremental Market Expansion II Project and Request for Comments on Environmental Issues

May 26, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Texas Eastern Incremental Market Expansion (TIME) II Project involving construction, replacement, and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Pickaway and Monroe Counties, Ohio and Somerset, Bedford, Franklin, Bucks, Fayette, and Adams Counties, Pennsylvania. The TIME II Project would provide additional natural gas pipeline capacity to the New Jersey market area, alleviating the constraints currently experienced as a result of increasing market demand. The TIME II Project would provide up to 150,000 dekatherms per day (dth/d) of transportation capacity.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Please note that the scoping period will close on June 30, 2006.

This notice is being sent to potentially affected landowners; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes, other interested parties; local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project [1]

In 2007, Texas Eastern proposes to:

- Remove about 6.4 miles of its existing 24-inch-diameter Line 1 pipeline and replace it, within the same trench, with a 36-inch-diameter pipeline in Somerset and Bedford Counties, Pennsylvania (Uniontown Discharge);
- Remove about 4.9 miles of its existing 24-inch-diameter Line 1 pipeline and replace it, within the same trench, with a 36-inch-diameter pipeline in Franklin County, Pennsylvania (Bedford Discharge);
- Remove about 10.3 miles of its existing 20-inch-diameter Line 2 pipeline and replace it, within the same

[1] Texas Eastern's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

trench, with a 36-inch-diameter pipeline in Bucks County, Pennsylvania (Eagle Discharge);

• Construct the new Heidlersburg Compressor Station, which would include a 16,000 horsepower (hp) electric motor/centrifugal compressor and related facilities near Heidlersburg in Adams County, Pennsylvania; and

• Remove, relocate, or install appurtenant facilities.

In 2008, Texas Eastern proposes to:

• Remove about 6.3 miles of its existing 24-inch-diameter Line 1 pipeline and replace it, within the same trench, with a 36-inch-diameter pipeline in Pickaway County, Ohio (Five Points Discharge);

• Construct about 4.0 miles of 36-inch-diameter pipeline loop [2] in Monroe County, Ohio (Berne Discharge);

• Install a 16,000 hp electric motor/centrifugal compressor unit at its existing Uniontown Compressor Station in Fayette County, Pennsylvania; and

• Install appurtenant facilities.

The general location of Texas Eastern's proposed facilities is shown on the map attached as Appendix 1.[3]

Land Requirements for Construction

Construction of Texas Eastern's proposed pipeline facilities would require about 571.6 acres of land, including construction rights-of-way for the loop and replacements, additional temporary workspaces, access roads, staging areas, and pipeyards/wareyards. Following construction, about 319.9 acres would be maintained as permanent rights-of-way. The remaining 251.7 acres would be restored and allowed to revert to its former use.

Construction at the existing Uniontown Compressor Station would require disturbance of about 0.5 acre within the existing compressor station site and would not require the clearing of additional land.

Construction of the Heidlersburg Compressor Station would require about 6.3 acres of land. Following construction, about 6.2 acres would be maintained as a new aboveground facility site.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. By this notice, we are also asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the project. We will also evaluate possible alternatives to the proposed project or portions of the project.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, environmental information provided by Texas Eastern, and comments gathered from concerned citizens at Texas Eastern's open houses. This preliminary list of issues may be changed based on your comments and our analysis.

• Potential noise levels due to the operation of the compressor stations;

• Safety concerns;

[4] ''We'', ''us'', and ''our'', refer to the environmental staff of the Office of Energy Projects (OEP).

• Eight federally-listed threatened and endangered species may potentially occur in the project areas;

• 56 perennial waterbodies would be crossed; and

• About 6.2 acres of agricultural land would be converted to industrial use for the Heidlersburg Compressor Station.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Branch 1.

• Reference Docket No. CP06–115–000.

• Mail your comments so that they will be received in Washington, DC on or before June 30, 2006.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created online.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated

previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8595 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–126–000]

Texas Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Texas Gas Storage Expansion Project—Phase 2 and Request for Comments on Environmental Issues

May 25, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Texas Gas Storage Expansion Project—Phase 2 involving construction and operation of facilities by Texas Gas Transmission, LLC (Texas Gas) in Webster, Hopkins, and Muhlenberg Counties, Kentucky.[1] Texas Gas' project purpose is to enable it to withdraw on a firm basis up to an additional 100,749 MMBtu per day from the Midland and Hanson Gas Storage Fields. Also the project would enable Texas Gas to utilize an additional 9,320,500 MMBtu in the Midland Gas Storage Field to accommodate demand on Texas Gas' system. In general these facilities would consist of 7 new horizontal injection/withdrawal wells, abandoning 2 horizontal injection/withdrawal wells, several segments of pipeline connecting the wells to lateral pipelines and replacing several segments of pipeline, addition of compression at 2 compressor stations, and increasing the certificated field capacity at one of the storage fields. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Texas Gas proposes to add three compressor units at two existing compressor stations (CS), add seven new horizontal injection/withdrawal wells and related field piping modifications at two existing gas storage fields, and abandon two existing injection/withdrawal wells all in Kentucky. Also Texas Gas proposes an increase in certificated field capacity at one gas storage field. Specifically, the project includes:

- *Slaughters CS (Webster County, KY)*—A new 13,338 horsepower (hp) turbine compressor unit and associated equipment, and a new power generator to be installed at an existing compressor station site;
- *Hanson CS (Hopkins County, KY)*—Two new 1,774 hp reciprocating compressor units and associated equipment replacing two existing reciprocating units, a new power generator, a dehydration plant, and a new boiler to be installed at an existing compressor station site;
- *Hanson Gas Storage Field (Hopkins County, KY)*—Two new horizontal injection/withdrawal wells (Well Nos. 17567 and 17568); and
- *Midland Gas Storage Field (Muhlenberg County, KY)*—Five new horizontal injection/withdrawal wells (Well Nos. 17562, 17563, 17564, 17565, and 17566), plugging existing Well Nos. 16774 and 16812, new pig trap receiver/launcher facilities, and increased certificated field capacity by 2,000,000 MMBtu by increasing the maximum allowable field pressure.

Also, Texas Gas indicates it would construct and operate, under a Blanket Certificate from Docket No. CP82–407–000, the following facilities at the Hanson and Midland Gas Storage Fields:

- *Hanson Gas Storage Field*—900 feet (ft) of new 8-inch (in) diameter pipeline from Well No. 17567 to the 12-in East Header pipeline, and 800 ft of new 8-in diameter pipeline from Well No. 17568 to the 8-in West Header pipeline.
- Midland Gas Storage Field—1,200 ft of new 8-in diameter pipeline from Well No. 17562 to the E–11 lateral pipeline, 800 ft of new 8-in diameter pipeline from Well No. 17563 to the E–7 lateral pipeline, 1,000 ft of new 8-in diameter pipeline from Well No. 17564 to the E–4 lateral pipeline, 200 ft of new 8-in diameter pipeline from Well No. 17565 to the E–1 lateral pipeline, 500 ft of new 8-in diameter pipeline from well No 17566 to the W–4 lateral pipeline, 1,600 ft of 6-in diameter pipeline to replace the existing 4-in pipeline tributary to existing Well No 16947, 1,500 ft of 6-in pipeline to replace the existing 4-in and 6-in tributary pipeline segments extending from the E–11 lateral pipeline to the E–7 lateral pipeline.

[1] Texas Gas' application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 113.39 acres of land. All work at the Slaughters and Hanson compressor Stations would occur within the existing station yards. Of the 20.0 acres needed for construction at the Hanson Storage Field, 1.34 acres would be maintained as new permanent easements and access road. Of the 39.45 acres needed for construction at the Midland Storage Field, 31.9 acres would occur within existing permanent easements and 2.75 acres would become maintained as new permanent easements and access roads.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified air and noise impacts as issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Gas. This preliminary list of issues may be changed based on your comments and our analysis.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP06–126–000.
- Mail your comments so that they will be received in Washington, DC on or before June 23, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*)

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Additional Information section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8523 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

May 25, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to exemption; Change in mode of operation from store-and-release to run-of-river.

b. *Project No:* 7253–008.

c. *Date Filed:* January 24, 2006.

d. *Applicant:* Swift River Company.

e. *Name of Project:* Sebec Hydro.

f. *Location:* The Sebec Hydro Project (FERC No. 7253) is located on the Sebec River near the town of Sebec in Piscataquis County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 18 CFR 4.104.

h. *Applicant Contact:* Mr. Peter Clark, President, Swift River Company, P.O. Box 149A, Hamilton, MA 01936—0149, Phone: (508) 468–3999, Fax: (978) 468–1210.

i. *FERC Contact:* Any questions regarding this notice should be addressed to Brandi Sangunett at (202) 502–8393 or e-mail at: *brandi.sangunett@ferc.gov.*

j. *Description of Request:* Sebec hydro requests to amend its exemption by changing the project's mode of operation from store-and-release to run-of-river. The exemptee proposes to install a lake level control system at the project to maintain a minimum flow of 40 cubic feet per second (cfs) and to maintain the reservoir elevation within 6 inches of full elevation (332.8 feet and 322.3 feet). The exemptee would continue to drawn down lake levels in winter to 317.8 feet on or before March 31, and release a minimum flow of 40 cfs.

k. *Deadline for Filing Comments or Motions:* June 26, 2006.

l. *Locations 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 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, 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. Anyone may submit responses 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 responses must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the project number (P–7253–008) to which the filing refers. All documents (original and eight copies) should be filed with: 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.

o. 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. 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, that agency 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. E6–8522 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 2230–034]

City and Borough of Sitka, AK; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 25, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2230–034.

c. *Date Filed:* March 28, 2006.

d. *Applicant:* City and Borough of Sitka, Alaska.

e. *Name of Project:* Blue Lake Hydroelectric Project.

f. *Location:* On Sawmill Creek, 5 miles southeast of the City of Sitka, Alaska. The project occupies land of the United States administered by the Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Charles Walls, Utility Director, City and Borough of Sitka, 105 Jarvis Street, Sitka, AK 99835, (907) 747–4000.

i. *FERC Contact:* Thomas Dean, (202) 502–6041 or *thomas.dean@ferc.gov.*

j. *Deadline for Filing Motions To Intervene and Protests:* July 24, 2006.

All documents (original and eight copies) should be filed with: Magalie R.

Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person that is on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The existing Blue Lake Project consists of one development and two units as follows: The Blue Lake development consists of: (1) A 211-foot-high, 256-foot-long concrete arch dam equipped with a 140-foot-long spillway and a release valve at the base of the dam; (2) a 1,225-acre reservoir with a normal water surface elevation of 342 feet msl; (3) a 7,110-foot-long power conduit consisting of: (a) an 11.5-foot-diameter, 1,500-foot-long penstock; (b) an 84-inch-diameter, 460-foot-long penstock; (c) a 10-inch-diameter, 4,650-foot-long lower penstock; (d) an 84-inch-diameter, 500-foot-long penstock; (e) a 20-inch-diameter water supply tap; (f) an 84-inch-diameter butterfly valve; and (g) a 24-inch conduit drain valve; (4) a powerhouse containing two 3,000 kW generating units; (5) a 150-foot-long tailrace; (6) a 5-mile-long, 69-kV transmission line; and (7) appurtenant facilities.

The Fish Valve Unit consists of: (1) A 36-inch-diameter wye penstock connected to the power conduit; (2) a powerhouse containing one 670 kW generating unit; (3) a 7,700-foot-long, 12.47-kV transmission line; and (4) appurtenant facilities.

The Pulp Mill Feeder Unit consists of: (1) A 36-inch-diameter tee connected to the power conduit; (2) a 36-inch-diameter, 24-foot-long penstock; (3) a powerhouse containing one 870 kW generating unit; (4) a 470-foot-long 4.16-kV transmission line; and (5) other appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received at the Commission on or before the specified deadline date.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8525 Filed 6–1–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0500; FRL–8178–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; ENERGY STAR Program in the Residential Sector, EPA ICR Number 2193.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 3, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2004–0500, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Brian Ng, Office of Air and Radiation, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9162; fax number: (202) 343–2200; e-mail address: *ng.brian@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 11, 2005 (70 *FR* 46836), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0500, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to

4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available at *http://www.regulations.gov*. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.regulations.gov*.

Title: ENERGY STAR Program in the Residential Sector.

Abstract: The Environmental Protection Agency (EPA) introduced ENERGY STAR in 1992 to label energy efficient computers. Since then, EPA and the Department of Energy (DOE) have expanded the ENERGY STAR Program to promote energy efficiency in over 40 product categories and in commercial and residential buildings. Increased energy efficiency through ENERGY STAR provides cost savings to businesses and homeowners, reduces greenhouse gas emissions from power plants, and increases U.S. energy security and reliability. EPA announced ENERGY STAR for New Homes in 1995 as part of its effort to promote energy efficient construction in the new homes market. EPA rolled out its existing homes effort in 2000 to promote cost-effective upgrades to the existing homes market. These two efforts promote home envelope improvements such as the proper installation of adequate insulation, and installation of energy efficient windows, lights, and appliances. Currently, partners to these two ENERGY STAR efforts are not required to report information to EPA. Information received to date has been submitted voluntarily to EPA and is not of a confidential nature. EPA believes that industry feedback is essential for EPA to ensure that ENERGY STAR meets partners' expectations in participating in a voluntary program promoting energy efficiency, and EPA's expectations for educating the public about energy efficiency and its impact on air pollution. EPA has developed this ICR to obtain authorization to collect information from the public, including businesses, for the following activities:

ENERGY STAR Partnership: An organization interested in joining ENERGY STAR as a partner is asked to submit a partnership agreement establishing their commitment to ENERGY STAR. Partners agree to undertake efforts such as educating staff and the public about their partnership with ENERGY STAR, developing and implementing a plan to improve energy performance in homes, and highlighting achievements utilizing the ENERGY STAR brand. Partners are encouraged to undertake related activities for added benefit and/or public recognition, such as committing to build 100% ENERGY STAR qualified new homes. Information collected is used to inform the public of organizations that build and promote ENERGY STAR qualified homes and make energy-efficient improvements to existing homes. Partnership is voluntary and can be terminated at any time. EPA does not expect organizations to join the program unless they expect participation to be cost-effective and otherwise beneficial for them.

Outreach Partnership: Partners have the opportunity to participate in an outreach partnership with EPA to develop public education campaigns featuring the benefits of ENERGY STAR qualified homes. Partners interested in participating in the outreach program are asked to submit a form detailing their level of participation.

ENERGY STAR Awards: Each year partners are eligible for an ENERGY STAR award, which recognizes organizations demonstrating outstanding support in promoting ENERGY STAR. This award program provides partners public recognition and market differentiation. An application form is submitted to EPA by partners interested in being eligible for an award.

Quarterly Reporting: Partners are asked to submit information each calendar quarter to assist EPA in tracking and measuring progress in building and promoting ENERGY STAR qualified homes. This includes submitting quarterly updates on partners' level of activity in qualifying new homes for the ENERGY STAR label and activity in improving the energy efficiency of existing homes. This information is used by EPA to determine ENERGY STAR's impact on the market for energy efficient new and existing homes, its impact on residential energy demand and air pollution, and to recognize partners for promoting energy efficient homes.

Evaluation: Partners and other program participants are asked to periodically submit information to EPA as needed to assist in evaluating ENERGY STAR's effectiveness in helping organizations promote energy efficiency in homes, to assess partners' level of interest and ability in promoting ENERGY STAR in the residential sector, and to determine the impact that ENERGY STAR has on the supply and demand for energy-efficient homes and home improvement products and services. This information is used by EPA to make changes to ENERGY STAR's outreach efforts to better serve the needs of partners.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Home Builders, Home Energy Verification Organizations, Lenders, Regional Energy Efficiency Programs/Utilities, Home Improvement Contractors, Product Retailers, Manufactured Home Retailers, Realtors, Architects.

Estimated Number of Respondents: 1,441.

Frequency of Response: On occasion, quarterly, annually.

Estimated Total Annual Hour Burden: 175,449.

Estimated Total Annual Cost: $9,133,098, which includes $8,320 annualized capital/startup costs, $120,358 annual O&M costs, and $9,004,420 annual labor costs.

Dated: May 23, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–8614 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0043, FRL–8178–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for the Wood Building Products Surface Coating Industry (Renewal); EPA ICR Number 2034.03, OMB Control Number 2060–0510

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 3, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0043, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, (2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2005–0043, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing 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 public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for the Wood Building Products Surface Coating Industry (Renewal).

ICR Numbers: EPA ICR Number 2034.03, OMB Control Number 2060–0510.

ICR Status: This ICR is scheduled to expire on May 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Respondents are owners or operators of large appliance surface coating operations. Owners or operators of the affected facilities described must make initial reports when a source becomes subject to the standard, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to National Emission Standards for Hazardous Air Pollutants (NESHAP). Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 109 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of wood building products surface coating operations.

Estimated Number of Respondents: 232.

Frequency of Response: Initially, semiannually, on occasion.

Estimated Total Annual Hour Burden: 75,771.

Estimated Total Annual Cost: $6,695,525, includes $0 capital/startup costs, $278,000 annualized O&M costs and $6,417,525 annualized labor costs.

Changes in the Estimates: There is an increase of 73,595 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase in burden is due to the actions taken by the facilities to comply with 40 CFR part 63, subpart QQQQ. The previous ICR included only the burden incurred by facilities initiating activities related to compliance in advance of the compliance date. The increase in burden reflects the need for facilities to fully comply with the rule requirements. The increase in O&M costs is due to maintenance of equipment used to verify compliance with the rule requirements.

Dated: May 23, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–8615 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0036; FRL–8179–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State and Federal Emission Guidelines for Hospital/Medical/ Infectious Waste Incinerators (Renewal), EPA ICR Number 1899.03, Control Number 2060–0422

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 3, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0036, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gregory Fried, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7016; fax number: (202) 564–0050; e-mail address: *fried.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005, (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–OECA–2005–0036, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing 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 public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: State and Federal Emission Guidelines for Hospital/Medical/ Infectious Waste Incinerators (Renewal).

ICR Numbers: EPA ICR Number 1899.03, OMB Control Number 2060–0422.

ICR Status: This ICR is scheduled to expire on May 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Respondents subject to subparts Ce and HHH are owners or

operators of hospital, medical, or infectious waste incinerators. Subpart Ce was promulgated on September 15, 1997, and requires states or tribes to develop plans to implement the Emission Guidelines. If approvable state or tribal plans were not developed, EPA was required to develop a Federal plan to implement the Emission Guidelines in such states or tribes. The Federal plan, subpart HHH was promulgated on September 14, 2000.

Subparts Ce and HHH require initial notifications, performance tests, and annual and semi-annual reporting. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the state or tribal authority with an approved plan. In the event that there is no such approved plan, the reports are sent directly to the EPA regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 320 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of hospital, medical, or infectious waste incinerators.

Estimated Number of Respondents: 72.

Frequency of Response: Initially, on occasion, semiannually and annually.

Estimated Total Annual Hour Burden: 69,067.

Estimated Total Annual Cost: $5,705,702 includes $0 annualized capital startup costs, $130,000 annualized O&M costs and $5,575,702 annualized labor costs.

Changes in the Estimates: There is a decrease of 36,161 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease in burden from the most recently approved ICR is due to an adjustment. The decrease in burden from the most recently approved ICR is due to a decrease in the number of sources. Our estimate is based on a facility and emissions index of Hospital/Medical/Infectious Waste Incinerator sources developed by the Office of Air Quality Planning and Standards. The data in the index was collected directly from industry and updated March 2006. The previous estimate of 189 respondents was derived from approximated state agency data. In addition, the standard applies only to facilities which commenced construction on or before June 20, 1996. Hence, the current estimate of 72 sources represents a source-by-source count and takes into account those sources which have shutdown. Therefore, we have adjusted the number of respondents from 189 to 72. The decrease in Operations and Maintenance cost from $295,407,000 to $130,000 is primarily due a typographical error in the last approval.

Dated: May 26, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–8616 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–8178–7]

California State Nonroad Engine and Vehicle Pollution Control Standards; Amendments to the California Small Offroad Emission Standards; Opportunity for Public Hearing and Request for Written Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted revised exhaust emissions standards and test procedures and new evaporative emissions standards and test procedures (and certification procedures) for small offroad engines. By letter dated April 11, 2005, CARB requested that EPA confirm that its exhaust emission standards and test procedures are within the scope of prior authorizations issued by EPA, and requested a new authorization for the evaporative emission standards, test procedures and certification procedures. This notice announces that EPA has tentatively scheduled a public hearing concerning California's requests and that EPA is accepting written comment on the requests.

DATES: EPA has scheduled a public hearing concerning CARB's requests on June 29, 2006 beginning at 10 a.m. Any party may submit written comments by August 1, 2006.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket and Information Center materials submitted by CARB, written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is EPA–HQ–OAR–2005–0133. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. EPA will hold the public hearing in room 1153 at EPA's ''East Building'' located at 1201 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, e-mail address: *Dickinson.David@EPA.GOV.*

For Obtaining and Submitting Electronic Copies of Comments

Submit your comments, identified by Docket ID No. EPA–HQ–2005–0133, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: dickinson.david@epa.gov.*
- *Fax:* (202) 343–2804.

• *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2005–0133. Please include a total of two copies.

• *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID No EPA–HQ–OAR–2005–0133.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

SUPPLEMENTARY INFORMATION:

(A) Background and Discussion

Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.[1]

Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[2]

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1).[3] The section 209(e) rule and its codified regulations[4] formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards and they are as follows:

(a) The Administrator shall grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[5] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[6] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[7]

Congress further directed EPA to ''give appropriate consideration to

[1] Section 209(e)(1) of the Act provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. (B) New locomotives or new engines used in locomotives. Subsection (b) shall not apply for purposes of this paragraph.

[2] See 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR part 85, subpart Q, §§ 85.1601–85.1606.

[3] As discussed above, states are permanently preempted from adopting or enforcing standards relating to the control of emissions from new engines listed in section 209(e)(1).

[4] See 40 CFR part 85, subpart Q, § 85.1605.

[5] See 59 FR 36969, 36983 (July 20, 1994).

[6] Section 209(e)(1) of the Act has been implemented, see 40 CFR part 85, subpart Q §§ 85.1602, 85.1603.

[7] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. See, *e.g.,* 43 FR 32182 (July 25, 1978).

safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard'' when considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emission from new non-road spark-ignition engines smaller than 50 horsepower.[8]

When EPA receives new waiver or authorization requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA usually publishes a decision in the **Federal Register** and concurrently invites public comment if an interested part is opposed to EPA's decision.

Although CARB in its April 11, 2005 letter to EPA seeks confirmation that it exhaust emission amendments are within the scope of previous authorizations, EPA invites comment on whether California's exhaust emission standards and test procedures amendments, within the context of a within the scope analysis (a) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 209 of the Act, and (c) raise new issues affecting EPA's previous authorization determinations. EPA also asks comment on how safety factors, including the potential increased risk of burn or fire, are affected by the California standards. Please also provide comment that if CARB's exhaust emission standards and test procedures amendments were not found to be within the scope of previous authorizations and instead required a full authorization analysis, whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act. EPA also asks comment on how safety factors, including the potential increased risk of burn or fire, are affected by the California standards.

[8] *See* Fiscal Year 2004 Omnibus Appropriations Act (Pub. L. 108–199 Division G Section 428).

EPA also invites comment on CARB's evaporative emission standards and test procedures (for which CARB seeks a full authorization) and whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act. EPA also asks comment on how safety factors, including the potential increased risk of burn or fire, are affected by the California standards.

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

The Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. EPA will keep the record open until August 1, 2006. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that he deems pertinent. All information will be available for inspection at EPA Air Docket. (EPA–HQ–OAR–2005–0133).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: May 26, 2006.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E6–8611 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. II–2003–02, II–2005–05; FRL–8179–2]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for G–P Gypsum Corporation; and Request for Reconsideration of Order Regarding Eastman Kodak Company, Kodak Park Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decisions concerning State operating permits.

SUMMARY: This document announces two decisions the EPA Administrator has made. First, the Administrator has partially granted and partially denied a citizen petition submitted by the South Jersey Environmental Justice Alliance (SJEJA) requesting that EPA object to an operating permit issued to the G–P Gypsum Corporation by the New Jersey Department of Environmental Protection (NJDEP). Secondly, the Administrator has granted a request from the New York State Department of Environmental Conservation (NYSDEC) that EPA reconsider certain revisions to the Kodak Park Facility's operating permit mandated by the Administrator's February 18, 2005 Order, which was issued in response to a citizen petition. In granting NYSDEC(s request, the Administrator has amended the February 18, 2005 Order. While some changes have been made, none of the Administrator's previous issue-specific decisions to grant the Kodak Park petition have been reversed in the amendment.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner (SJEJA) may seek judicial review of those portions of the G–P Gypsum petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this

notice appears in the **Federal Register**, pursuant to section 307 of the Act. The Administrator's action amending the February 18, 2005 Order on Kodak is not subject to judicial review, as no portions of the original citizen petition were denied.

ADDRESSES: You may review copies of the final order, the petition, and all relevant information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for G–P Gypsum is available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm*, and the amended Kodak order is available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2003.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. G–P Gypsum Corporation

On September 15, 2005, the EPA received a petition from SJEJA, requesting that EPA object to the issuance of the title V operating permit for G–P Gypsum based on the following allegations: (1) The draft permit was not accompanied by a statement of basis explaining various permitting decisions, particularly eight monitoring provisions that NJDEP added after the close of public comment; (2) the facility should have filed a compliance plan and the permit should have contained a compliance schedule; (3) the permit fails to address past violations; (4) the permit has inadequate monitoring and reporting provisions; (5) NJDEP failed to ensure safe ambient air quality levels in the Camden area; and (6) NJDEP did not adequately address environmental justice issues.

On April 4, 2006, the Administrator issued an order partially granting and partially denying the petition on G–P Gypsum. The order explains the reasons behind EPA's conclusion that the NJDEP must re-issue the statement of basis to provide an explanation for the eight monitoring provisions added after the close of the public comment period. The order also explains the reasons for denying SJEJA's remaining claims.

II. Kodak Park

On August 16, 2005, the EPA received a letter from NYSDEC, requesting that EPA reconsider certain revisions to the Kodak Park Facility's operating permit, mandated by the Administrator's February 18, 2005 Order. This Order granted in part and denied in part a petition filed by the New York Public Interest Research Group, asking EPA to object to the Kodak Park Facility(s operating permit. In its letter, NYSDEC sought reconsideration of EPA's objections for the following reasons: (1) The actual annual quantity of benzene in facility waste is very low compared to the permitted cap; (2) the standard test method for volatile organic compounds (VOC) in coatings and fountain solutions is burdensome and yields unreliable results, and actual VOC levels are low compared to permitted levels; and (3) frequent monitoring on several small cold cleaning units is overly burdensome.

On April 4, 2006, the Administrator issued an amended order, granting the request for reconsideration on Kodak Park. The amended Order explains the reasons behind EPA's decision to provide the NYSDEC with some flexibility in resolving EPA's February 18, 2005 objections regarding these three issues. The amended Order also explains why EPA believes there continue to be sufficient bases on which to grant the citizen petition on these issues.

Dated: May 22, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E6–8617 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6675–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060034, ERP No. D–NRC–F06028–MN, GENERIC—License Renewal of Nuclear Plants, Supplement 26 to NUREG 1437, Regarding Monticello Nuclear Generating Plant (TAC NO. MC6441) Renewal of Operating License DRP–22 for Additional 20-Years of Operation, Mississippi River, City of Monticello, Wright County, MN.

Summary: EPA expressed environmental concerns about radiological impacts and risk estimates, future up rates, spent fuel storage facilities, and abnormal effluent releases.

Rating EC2.

EIS No. 20060077, ERP No. D–COE–E36184–FL, Central and Southern Florida Project, New Authorization for Broward County Water Preserve Areas, South Florida Water Management District (SFWMD), Comprehensive Everglades Restoration Plan, (CERP), Broward County, FL.

Summary: EPA fully supports the restoration components of the project and its expedited implementation. EPA requested quantification of water quality benefits and an exotics management plan.

Rating EC1.

EIS No. 20060089, ERP No. DS–AFS–L65400–ID, West Gold Creek Project, Updated Information, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID.

Summary: EPA expressed environmental concerns about the potential adverse impacts to water

quality and on the bull trout spawning area under the preferred alternative. The Final EIS should evaluate additional reductions in sediment loading to West Gold Creek.

Rating EC2.

Final EISs

EIS No. 20060112, ERP No. F–OSM–D36120–PA, ADOPTION—Dents Run Watershed Ecosystem Restoration, Construction and Operation of Six Acid Mine Drainage Abatement Projects, Implementation, Benezette Township, Susquehanna River Basin, Elk County, PA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060116, ERP No. F–NPS–F65076–OH, First Ladies National Historic Site General Management Plan, Implementation, Canton, OH.

Summary: EPA does not object to the proposed action.

EIS No. 20060129, ERP No. F–FRC–E03014–FL, Cypress Pipeline Project and Phase VII Expansion Project, Construction and Operation, U.S. Army COE Section 10 and 404 Permits, Northern and Central Florida.

Summary: EPA continues to have environmental concerns about impacts to wetland.

EIS No. 20060134, ERP No. F–SFW–K99034–CA, Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP), Santa Rosa and San Jacinto Mountains Trails Plan, Issuance of Incidental Take Permit, Riverside County, CA.

Summary: EPA does not object to the proposed action.

Dated: May 30, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–8593 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6675–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed May 22, 2006 through May 26, 2006 pursuant to 40 CFR 1506.9.

EIS No. 20060217, Final Supplement, COE, IL, Upper Des Plaines River, Proposed Flood Damage Reduction (Site 37 on Upper Des Plaines River), Prospect Heights, Cook County, IL, Wait Period Ends: June 26, 2006, Contact: Keith Ryder 312–846–5587

The above EIS should have appeared in FR on May 26, 2006 the Wait Period is Calculated from May 26, 2006.

EIS No. 20060218, Draft EIS, FHW, NY, Williamsville Toll Barrier Improvement Project, Improvements from New York Thruway, Interstate 90 between Interchange 48A and 50, Funding, Erie and Genesee Counties, NY, Comment Period Ends: July 17, 2006, Contact: Amy Jackson-Grove 518–431–4125.

EIS No. 20060219, Final EIS, COE, VA, Craney Island Eastward Expansion, Construction of a 580-acre Eastward Expansion of the Existing Dredged Material Management Area, Port of Hampton Roads, Norfolk Harbor and Channels, VA, Wait Period Ends: July 3, 2006, Contact: Craig Seltzer 757–201–7390.

EIS No. 20060220, Draft EIS, BLM, ID, Snake River Birds of Prey National Conservation Area, Resource Management Plan, Implementation, Ada, Canyon, Elmore, Owyhee Counties, ID, Comment Period Ends: August 17, 2006, Contact: Mike O'Donnell 208–384–3315.

EIS No. 20060221, Draft EIS, CGD, MA, Neptune Liquefied Natural Gas Deepwater Port License Application, Proposes to Construct, Own and Operate a Deepwater Port, northeast of Boston and south-southeast of Gloucester, MA, Comment Period Ends: July 17, 2006, Contact: M.A. Prescott 202–372–1451.

EIS No. 20060222, Draft EIS, COE, 00, Kansas Citys, Missouri and Kansas Flood Damage Reduction Study, Improvements to the Existing Line of Protection, Birmingham, Jackson, Clay Counties, MO and Wyandotte County, KS, Comment Period Ends: July 17, 2006, Contact: Christopher M. White 816–389–3158.

EIS No. 20060223, Draft EIS, FRC, 00, Carthage to Perryville Project, Construction and Operation of a Natural Gas Pipeline Facilities, CenterPoint Energy Gas Transmission, Located in various counties and parishes in eastern Texas and northern Louisiana, Comment Period Ends: July 17, 2006, Contact: Todd Sedmak 1–866–208–3372.

EIS No. 20060224, Final EIS, GSA, WA, Peace Arch Port of Entry Redevelopment Project, Improvements to Security, Safety and Functionality, Canadian Border in Blaine, Whatcom County, WA, Wait Period Ends: July 3, 2006, Contact: Michael Levine 253–931–7263.

EIS No. 20060225, Final EIS, BLM, NV, Sheep Complex, Big Springs and Owyhee Grazing Allotments Sensitive Bird Species Project, Determine Impacts of Livestock Grazing, Elko County, NV, Wait Period Ends: July 3, 2006, Contact: Bryan Fuell 775–753–0200.

EIS No. 20060226, Final EIS, FHW, CA, Lincoln Bypass Construction, South of Industrial Boulevard to North of Riosa Road, Funding and U.S. Army COE Section 404 Permit, Issuance, Placer County, CA, Wait Period Ends: July 5, 2006, Contact: Maiser Khaled 916–498–5020.

EIS No. 20060227, Draft EIS, COE, 00, White River Minimum Flood Study, Manages the Water and Land Areas at Five Reservoirs: Beaver, Table Rock, Bull Shoals, Norfork and Greers Ferry, Little Rock District, AR and MO, Comment Period Ends: July 17, 2006, Contact: Mike Biggs 501–324–5842.

EIS No. 20060228, Final Supplement, COE, MA, Boston Harbor Inner Harbor Maintenance Dredging Project, Updated Information, Boston Harbor, Mystic River and Chelsea River, MA, Wait Period Ends: July 3, 2006, Contact: Michael F. Keegan 978–318–8087.

Amended Notices

EIS No. 20060132, Draft EIS, AFS, ID, White/White Analysis Project, Proposes Vegetative Management and Watershed Improvement, Lolo Creek, Chamook Creek, White Creek, Mike White Creek, Nevada Creek, and Utah Creek, Lochsa Ranger District, Clearwater National Forest, Idaho and Clearwater County, ID, Comment Period Ends: June 15, 2006, Contact: Steve Bess 208–926–4274.

Revision to FR Notice Published April 14, 2006: Comment Period Extended from May 30, 2006 to June 15, 2006.

EIS No. 20060183, Final EIS, FAA, UT, St. George Municipal Airport Replacement, Funding, City of St. George, Washington County, UT, Wait Period Ends: July 3, 2006, Contact: T.J. Stetz 425–227–2611.

Revision to **Federal Register** Notice Published May 19, 2006: Wait Period Extend from June 19, 2006 to July 3, 2006.

EIS No. 20060190, Final EIS, AFS, MI, Ottawa National Forest, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Baraga, Gogebic, Houghton, Iron, Marquette and Ontonagan Counties,

MI, Wait Period Ends: June 19, 2006, Contact: Robert Brenner 906–932–1330 x317.

Revision to **Federal Register** Notice Published May 19, 2006: Correction to Contact Person Telephone Number.

EIS No. 20060199, Final EIS, AFS, MI, Huron-Manistee National Forests, Land and Resource Management Plan, Implementation, Several Counties, MI, Wait Period Ends: June 26, 2006, Contact: Jeffery G. Pullen 231–775–2421 Revision to FR Notice Published May 26, 2006: Correction to Contact Person Telephone Number.

EIS No. 20060200, Draft EIS, COE, 00, PROGRAMMATIC—Ohio River Mainstem System Study, System Investment Plan (SIP) for Maintaining Safe, Environmentally Sustainable and Reliable Navigation on the Ohio River, IL, IN, OH, KY, PA and WV, Comment Period Ends: July 25, 2006, Contact: Veronica Rife 502–315–6785.

Revision to **Federal Register** Notice Published May 26, 2006: Comment Period Extended from July 18, 2006 to July 25, 2006.

Dated: May 30, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–8592 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0477; FRL–8070–5]

Pesticide Program Dialogue Committee; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) on June 15, 2006. In addition, the PPDC Work Groups will meet on June 13–14, 2006, following the schedule described under **DATES**. A draft agenda has been developed and is posted on EPA's web site. Agenda topics will include a report from each of the PPDC Work Groups: Spray Drift/NPDES; Consumer Pesticide Label Improvements; Performance Measures; Worker Safety; and Pesticide Registration Improvement Act Process Improvements. The agenda will also include program updates on Registration and Reregistration/Tolerance Reassessment; a presentation on Impaired Water Body Data Pilot Program with the Office of Water; a brief update on human studies; and a discussion of the Enhancements being made to the Incident Data Base.

DATES: The PPDC meeting will be held on Thursday, June 15, 2006, from 9 a.m. to 5:30 p.m.

1. The PPDC Spray Drift/NPDES Work Group will meet on Tuesday, June 13, 2006, from 9 a.m. to 5 p.m.

2. On Wednesday morning, June 14, 2006, the PPDC Worker Safety Work Group will meet from 9 a.m. to noon, and the PPDC Performance Measures Work Group will also meet from 9 a.m. to noon.

3. On Wednesday afternoon, June 14, 2006, the PPDC Consumer Pesticide Label Improvement Work Group will meet from 1 p.m. to 4 p.m. and the PPDC PRIA Process Improvement Work Group will also meet from 1 p.m. to 4 p.m.

ADDRESSES: All of the meetings will be held in the Conference Center on the lobby level at EPA's location at 1 Potomac Yard South, 2999 Crystal Drive, Arlington, VA. This location is approximately a half mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address: *fehrenbach.margie@epa.gov*.

For information on facilities or services for the handicapped or to request special assistance for the handicapped at the meetings, contact the Designated Federal Officer, Margie Fehrenbach, at (703) 308–4775 as soon as possible.

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 particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0477. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), 2777 South Crystal Drive (7502P), Room 4400, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the**Federal Register** listings at*http://www.regulations.gov/*.

A draft agenda has been developed and is posted on EPA's web site at*http://www.epa.gov/pesticides/ppdc/*.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for the Environmental Protection Agency's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed November 5, 2005, for a 2–year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public

policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides and pests, Public health.

Dated: May 22, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–8671 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8178–2]

Release of the U.S. Environmental Protection Agency's Third Edition of the Peer Review Handbook

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is committed to providing quality environmental information to its partners and the public. This commitment is integral to its mission to protect human health and the environment. High quality information enables stakeholders to effectively participate in managing human health and environmental risks. Peer Review, the evaluation of a product by experts in that field, is a critical tool used to ensure that only high-quality, sound science is released. Peer Review has a long and exemplary history at the EPA. In response to recommendations in the 1993 SAB report *Safeguarding the Future: Credible Science, Credible Decisions*, EPA issued an Agency-wide policy for peer review. In 1994 EPA reaffirmed the central role of peer review and instituted an Agency-wide implementation program. In 1998, a Peer Review Handbook was created as a single, centralized form of implementation guidance for Agency staff and managers. An updated Peer Review Policy was signed by the Administrator on January 31, 2006. A third edition of the Peer Review Handbook is now being released. It incorporates insights gained from implementing the program over the last decade as well as the provisions of the OMB Final Information Quality Bulletin for Peer Review (PRB). The OMB PRB contains provisions for the conduct of peer review at all federal agencies in order to enhance transparency and accountability. The OMB Bulletin applies to ''influential scientific information'' and ''highly influential scientific assessments.'' Peer Review brings independent expert experience and judgment to Agency issues and plays a large part in ensuring that EPA's decisions rest on sound, credible science and data.

FOR FURTHER INFORMATION CONTACT: Go to *http://www.epa.gov/peerreview* or contact Barbara Klieforth, (202.564.6787) Science Policy Council Staff, Office of the Science Advisor, U.S. EPA.

Dated: May 24, 2006.

George Gray,

EPA Science Advisor.

[FR Doc. E6–8612 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2006–0183; FRL–8179–3]

Public Water Supply Supervision Program Rules for the State of Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative approval.

SUMMARY: EPA is proposing to approve the State of Alabama's drinking water regulations for the Interim Enhanced Surface Water Treatment, Disinfectants and Disinfection By-Products, and Filter Backwash Recycling Rules. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

DATES: All interested parties may request a public hearing and/or submit comments on or before July 3, 2006.

ADDRESSES: Submit your requests and/or comments, identified by Docket ID No. EPA–R04–OW–2006–0183, in one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: plouff.tom@epa.gov.*
3. *Fax:* (404) 562–9476.
4. *Mail:* EPA–R04–W–2006–0183, U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Tom Plouff, U.S. Environmental Protection Agency, Region 4, Water Management Division, Drinking Water Section, 15th Floor, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business is Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–04–W–2006–0183. 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Alabama Department of Environmental Management, Water Supply Branch, PO Box 301463, Montgomery, Alabama 36130–1463 or Mr. Tom Plouff, U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Please contact Mr. Plouff at (404) 562–9479 and/or electronic mail address at *plouff.tom@epa.gov* for questions and/or comments regarding this tentative approval.

Authority: Section 1442 of the Safe Drinking Water Act as amended in 1996 and 40 CFR part 142.

Dated: May 22, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E6–8618 Filed 6–1–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–06–66–C (Auction No. 66); FCC 06–71; AU Docket No. 06–30]

Auction of Advanced Wireless Services Licenses Rescheduled for August 9, 2006, Revised Schedule, Filing Requirements and Supplemental Procedures for Auction No. 66

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the revised schedule, filing requirement and supplemental procedures for the upcoming auction of Advanced Wireless Service licenses (Auction No. 66).

DATES: Auction No. 66 is scheduled to begin on August 9, 2006. Short-form applications to participate in Auction No. 66 must be submitted by June 19, 2006.

FOR FURTHER INFORMATION CONTACT: Auctions and Spectrum Access Division, Wireless Telecommunications Bureau: *for legal questions:* Scott Mackoul at (202) 418–0660, for general auction questions: Lisa Stover at (717) 338–2888. Broadband Division: *For legal and technical questions:* David Hu and John Spencer at (202) 418–0200 and *for licensing questions:* Beth Fishel at (717) 338–2649.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 66 Supplemental Procedures Public Notice* released on May 19, 2006. The complete text of the *Auction No. 66 Supplemental Procedures Public Notice,* including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 66 Supplemental Procedures Public Notice* and related Commission documents 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 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* Remember when ordering documents from BCPI please provide the appropriate FCC document number (for example FCC 06–71). The *Auction No. 66 Supplemental Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site at: *http://wireless.fcc.gov/auctions/66/.*

I. Introduction

1. The Federal Communications Commission (Commission) announces the revised schedule, filing requirements and supplemental procedures for the upcoming auction (Auction No. 66) of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands (AWS–1) to provide applicants additional time for preparation and planning. With the exception of the changes set forth in the *Auction No. 66 Supplemental Procedures Public Notice,* the Commission's procedures, terms and conditions previously announced in the *Auction No. 66 Procedures Public Notice,* 71 FR 20672, (April 21, 2006), will apply in Auction No. 66.

II. Rescheduled Auction Start Date and Pre-Auction Dates

A. Auction Date

2. Bidding in Auction No. 66 will begin on Wednesday, August 9, 2006. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

B. Pre-Auction Dates and Deadlines

3. In light of the new Auction Date, the Commission extends the deadline for participants to file a short-form application (FCC Form 175) to participate in the auction, and revises other pre-auction dates and deadlines as follows:

Short-Form Application (FCC Form 175): Filing Window Opens June 5, 2006; 12 p.m. ET
Short-Form Application (FCC Form 175): Filing Window Deadline June 19, 2006; 6 p.m. ET
Upfront Payments (via wire transfer): July 17, 2006; 6 p.m. ET
Mock Auction: August 7, 2006
Auction Begins: August 9, 2006

C. Requirements for Participation

4. Those wishing to participate in Auction No. 66 must: (a) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. eastern time (ET), June 19, 2006, following the electronic filing procedures set forth in Attachment D to the *Auction No. 66 Procedures Public Notice;* (b) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6 p.m. ET, July 17, 2006; and (c) comply with all provisions outlined in the *Auction No. 66 Procedures Public Notice,* the *Auction No. 66 Supplemental Procedure Public Notice* and applicable Commission rules.

III. Short-Form Application (FCC Form 175) Filing Requirements

5. Except as set forth in the *Auction No. 66 Supplemental Procedures Public Notice,* the short-form application (FCC Form 175) requirements previously announced in the *Auction No. 66 Procedures Public Notice* will apply in Auction No. 66.

A. Effect of New Short-Form Application Filing Deadline

6. Any party, whether it wishes to claim designated entity benefits or not, may submit a short-form application to

participate in Auction No. 66 by the June 19, 2006, deadline, regardless of whether that party previously submitted an application pursuant to the prior deadline, once the short-form application filing window opens on June 5, 2006.

7. Any party that previously submitted a short-form application pursuant to the prior deadline may use the application previously submitted, subject to compliance with newly effective Commission rules; may change any or all of the information in a previously submitted short-form application; may withdraw a previously submitted short-form application; and may create and submit a new short-form application in place of a withdrawn application. Applications may be withdrawn by using the *withdraw application* function of the Auction Application Manager.

8. All applicants, particularly those that choose to retain their current applications on file, are reminded to review all information contained in their applications, including all information that may have been automatically entered, to confirm that it is complete and accurate as of the new deadline for filing the short-form application. If a party that previously submitted a short-form application pursuant to the prior deadline chooses to retain its current application on file and determines that it is still complete and will be accurate as of the new filing deadline for short-form applications, the party does not need to resubmit the application.

9. Since the Commission's collusion prohibitions set forth in section 1.2104(c) (the anti-collusion rule) are not triggered until after the short-form application filing deadline, the release of the *Auction No. 66 Supplemental Procedures Public Notice* extending this deadline has the effect of lifting the prohibitions until the short-form filing period expires on June 19, 2006. (These prohibitions had been in effect since the expiration of the prior short-form filing application period on May 10, 2006.) After the new short-form filing deadline on June 19, 2006, the prohibitions of the anti-collusion rule will again apply. Although the prohibitions of the Commission's anti-collusion rule are not triggered until the new short-form filing deadline, applicants have continuing obligations to avoid anti-competitive behavior, including communications about auction plans or applications that might have anti-competitive effects. As noted in the *Auction No. 66 Procedures Public Notice,* regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.

B. Short-Form Application Certification of Compliance With Commission Rules

10. Applicants that submit short-form applications to participate in Auction No. 66 by the June 19, 2006, deadline are reminded that their application must be in compliance with Commission rules as of that date, regardless of whether the short-form application was previously submitted on an earlier date and regardless of whether there has been any change in circumstances between the date of submission and the short-form application deadline.

11. Applicants are reminded that they must comply with the various certifications required in the short-form application pursuant to Commission rules. Applicants are required to be in compliance with the certifications, made by a person with authority to bind the applicant, as of the deadline for filing the short-form applications. Applicants must assure the accuracy of these certifications as of the deadline.

12. Applicants are strongly cautioned to avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction No. 66. Applicants should carefully review the *Auction No. 66 Procedures Public Notice* with respect to both the prohibition of collusion and the information available to bidders before and during the auction.

C. Designated Entity Applicant Certification of Compliance With Rules Effective as of Short-Form Filing Window Deadline

13. The Commission adopted new rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order,* 71 FR 26245 (May 4, 2006). In the *Designated Entity Second Report and Order,* the Commission stated that applicants seeking to participate in Auction No. 66 as designated entities would be required to amend their applications for that auction on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to section 1.2110 of the Commission's rules effective as of the date of the statement. The Commission adopted and released the new rules on April 25, 2006, and published the new rules in the **Federal Register** on May 4, 2006. The new rules will become effective on June 3, 2006.

14. The Commission's rules require, and the short-form application provides, that any applicant applying as a designated entity certify that the applicant is qualified as a designated entity under the Commission's rules. Pursuant to the new schedule for Auction No. 66, applicants to participate in Auction No. 66 must file a short-form application by June 19, 2006, which is after the effective date of the Commission's new rules governing eligibility for designated entity benefits. Applicants may withdraw, or effectively delete, any application that has been submitted until that deadline occurs. It is no longer necessary for entities applying as designated entities to amend their applications as described in the Designated Entity Second Report and Order. The certification made as part of the short-form application will constitute a certification by any applicant applying as a designated entity that the applicant will be qualified as a designated entity pursuant to the Commission's rules as of the June 19, 2006, deadline for filing the short-form application, regardless of the date on which the applicant submits the application. Applicants that previously certified their designated entity eligibility must revise their application and resubmit or withdraw by the filing deadline of June 19, 2006 if they will not be qualified pursuant to the Commission's rules as of that deadline.

D. Additional Information Required in Short-Form Application From Designated Entity Applicants Pursuant to Newly Effective Rules

15. The Commission's new rules regarding applicants seeking eligibility for designated entity benefits requires the disclosure of information not previously required on a short-form application. Applicants must submit all information required to be disclosed on the applicant's application to participate in the auction pursuant to Commission rules in effect as of the deadline for submitting the short-form applications in order to qualify as a designated entity. Such information includes disclosures required pursuant to newly effective section 1.2112 as adopted in the *Designated Entity Second Report and Order:* (a) a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum; and (b) a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship, as defined in section 1.2110(b)(3)(iv)(B). Failure to provide any additional

information required under the designated entity rules effective as of the deadline for filing a short-form application may result in the applicant being ineligible to qualify as a designated entity.

16. An applicant may provide information not previously required on FCC Form 175 by including the information in an attachment to the application. When uploading an attachment providing information required by the newly effective designated entity rules, applicants should identify the attachment type as: *Other.*

IV. Information Regarding Bidders' Own Round Results

17. Applicants are reminded that Auction No. 66 may be conducted pursuant to procedures that limit the information available prior to and during the auction. If Auction No. 66 is conducted with limited information released prior to and during the auction, two types of reports will be available to bidders: (1) Publicly-available information and (2) bidder-specific information available only to that bidder when logged in to the FCC Auction System.

18. The public information will be available on the FCC Auction System results page that will list for each license the following information: the provisionally winning bid amount, the minimum acceptable bid amount for the next round, the number of bids received in the most recently-completed round, and whether the license has a provisionally winning bid or is held by the FCC.

19. When a bidder is logged in to the FCC Auction System, it will have a selection of *My Bid Reports* available to it on the FCC Auction System's bidding page. Information in *My Bid Reports* allows only the respective bidder to view all of its actions in the current and previous rounds of the auction.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 06–5084 Filed 6–1–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, June 14, 2006. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION: *Financing Corporation 2006 Supplemental Budget Request.* Consideration of the Financing Corporation (FICO) request to increase its 2006 budget to cover unanticipated legal expenses.

Proposed Rule on Sharing Information Among the Banks and the Office of Finance and Clarifying Audit Requirements. Consideration of a proposed rule that would remove impediments to the sharing of information among the Federal Home Loan Banks (Banks) and the Office of Finance (OF) and would clarify the audit requirements for the Banks, OF, and FICO.

Data Reporting Reorganization. Consideration of a final rule that would move certain data reporting requirements from regulation to the Data Reporting Manual.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: *Periodic Update of Examination Program Development and Supervisory Findings.*

FOR FURTHER INFORMATION CONTACT: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: May 30, 2006.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 06–5082 Filed 5–31–06; 10:10 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 15, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Harvey N. Gainey, Sr., Ada, Michigan; to acquire voting shares of Northpointe Bancshares, Inc., Grand Rapids, Michigan, and thereby indirectly acquire Northpointe Bank, Grand Rapids, Michigan.

Board of Governors of the Federal Reserve System, May 26, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–8542 Filed 6–1–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 June 26, 2006.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. New Century Bancorp, Inc., Dunn, North Carolina; to acquire 100 percent of the voting shares of Progressive State Bank, Lumberton, North Carolina.

Board of Governors of the Federal Reserve System, May 26, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–8541 Filed 6–1–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice of proposed information collection.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project ''Continuance of the Medical Expenditure Panel Survey—Household and Medical Provider Component through 2009''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed collection.

DATES: Comments on this notice must be received by August 1, 2006.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, AHRQ, Reports Clearance Officer, 540 Gaither Road, Suite 5036, Rockville, MD 20850. Copies of the proposed collection plans, data collection instruments and specific details of the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Continuance of the Medical Expenditure Panel Survey—Household and Medical Provider Component through 2009''

AHRQ has conducted an annual panel survey of U.S. households and their associated medical providers since 1996, through the Medical Expenditures Panel Survey (MEPS)—Household Component (MEPS–HC) and Medical Provider Component (MEPS–MPC). This clearance requests continuance of this annual survey through 2009. The MEPS is jointly sponsored by AHRQ and the National Center for Health Statistics (NCHS). The MEPS is conducted using a sample of households that responded to a prior year's National Health Interview Survey (NHIS) which is sponsored by the NCHS. The NHIS surveys approximately 40,000 households (110,000 persons) each year.

The NHIS is used as a sampling frame for the MEPS and other surveys to increase efficiency of data collection efforts within the Department of Health and Human Services.

Data to be collected from each household is completed through the MEPS–HC and includes detailed information on demographics, health conditions, health status, use of health care services, charges and payments for medical care, medications, and employment and health insurance. Data to be collected from medical providers including hospitals, physicians, and pharmacies is completed through the MEPS–MPC which supplements and verifies information provided by the households. With the written permission of household members of the MEPS–HC, the MEPS–MPC collects actual stages of services, diagnosis and service codes, as well as charges and payments for services. Subject to AHRQ and NCHS confidentiality statutes, data will be made available through Agency publications, journals, public use files and web-based statistical tools. the data are intended for multiple purposes including:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, cost and scope of private health benefits among Americans.
- Examining the quality of care for Americans, especially those with chronic conditions.
- Examining access to and costs of health care for common diseases and conditions, health care quality, prescribed medications and other health issues.

Statisticians and researchers will use these data to make important generalizations about the civilian non-institutionalized population of the United States and to conduct research in which the family is the unit of analysis.

Data Confidentiality

The confidentiality of MEPS data is protected under the NCHS and AHRQ confidentiality statutes, found in sections 934(c) and 308(d) of the Public Health Service Act (42 U.S.C. 299c–3(c) and 42 U.S.C. 424m(d)).

Methods of Collection

AHRQ introduces the study to respondents of the MEPS–HC through an advance mailing. This first contact will provide the respondent with information on the importance and uses of the data. Once consent for participation is established, AHRQ, through its contractors will conduct five, in person, interviews over a 30 month time period with each participating household to obtain information to support two years of national estimates. Computer-assisted personal interviewing will be used. In uncommon instances, the identical interview may be administered over the phone. Respondents may also be asked to complete one or more short, self-administered questionnaires over the course of the study.

The MEPS–MPC is predominantly completed by telephone and mail. However, a substantial portion of the pharmacy providers elect to submit their responses electronically.

MEPS.–HC ANNUAL DATA COLLECTION ESTIMATED BURDEN

Activity	Unit	Number of responses	Hours per response	Burden in hours
Jan–July:				
07 panel interview	Households	7,900	2.0	15,800
06 panel interview	Households	7,650	1.5	11,475
06 panel DCS	Persons 18+ with diabetes	800	0.1	80

MEPS.–HC ANNUAL DATA COLLECTION ESTIMATED BURDEN—Continued

Activity	Unit	Number of responses	Hours per response	Burden in hours
05 panel interview	Households	7,400	1.5	11,100
05 panel DCS	Persons 18+ with diabetes	750	0.1	75
Reinterview	Responses	2,065	0.1	207
Aug–Dec:				
07 panel interview	Households	7,700	1.5	11,550
07 panel SAQ	Persons 18+	6,950 × 1.8	0.2	2,502
06 panel interview	Households	7,550	1.5	11,325
06 panel SAQ	Persons 18+	6,800 × 1.8	0.2	2,448
Reinterview	Responses	1,373	0.1	138
Total				66,700

MEPS.—MPC ANNUAL DATA COLLECTION ESTIMATED BURDEN—PAIR LEVEL CALCULATION

Type	Number of patient/provider pairs	Events per pair	Total events	Response time/event (minutes)	Burden in hours
Hospitals	10,500	3.2	33,600	5	2800
HMO	450	5.0	2250	5	187
SBD	15,500	1.4	21,700	3	1085
Home health	440	5.8	2552	5	212
OBDS	23,210	3.5	81,235	5	6770
Pharmacy	14,410	10.3	148,423	3	7421
Institutions	100	1.2	120	5	10
Total					18,485

MEPS.—SUMMARY DATA COLLECTION BURDEN 2007–2009

	2007	2008	2009	Total
Unit Type:				
Households	66,700	66,700	66,700	200,100
Medical Provider	18,485	18,485	18,485	55,455
Total	85,185	85,185	85,185	255,555

Request for Comments

In accordance with the above cited legislation, comments on AHRQ's information collection are requested with regard to any of the following: (1) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public records.

Dated: May 25, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–5056 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: National Minority Aging Organizations—Technical Assistance Centers.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2006–AoA–HD–0607.

Statutory Authority: The Older Americans Act of 1965, as amended, Public Law 106–501.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048.

Key Dates: The deadline date for receipt of applications is July 14, 2006.

I. Funding Opportunity Description

The Administration on Aging (AoA) wishes to promote improvement of the health status of racial and ethnic minority older individuals by increasing the efficiency of the NMAO Technical Assistance Centers Program to disseminate culturally competent health promotion and disease prevention information. To this end, the AoA plans to award four (4) new cooperative agreements for National Minority Aging Organization Technical Assistance Centers (NMAOs) for the development of culturally competent and linguistically appropriate front line health promotion and disease prevention strategies for racial and ethnic minority older individuals. Projects will develop practical, nontraditional, community-based interventions for reaching older individuals who experience barriers to accessing home and community-based

services due to language and low literacy as well as other barriers directly related to cultural diversity.

The NMAO Centers will incorporate the latest technology to generate and disseminate knowledge in appropriate forms that can assist racial and ethnic minority older individuals to practice positive health behaviors that can strengthen their capacity to maintain active, independent life styles. Technology may be used in any number of formats or strategies from development and dissemination of CDs or DVDs or other portable electronics for senior center or at home use by older individuals, to PowerPoint Presentations for use by, as well as to train, senior center and nutrition site staff, visiting service providers, family members, etc. Technology can be especially helpful for reaching limited English speaking older individuals, both directly and through mass media such as public service announcements (PSAs). For many who may be unable to read, family members can be provided a way to help seniors get clear information which they received from an electronic device. The NMAO Centers will serve as national points of contact for tools and information on health promotion and disease prevention. They will pilot culturally competent activities and work products tailored to meet the special needs of racial and ethnic minority older individuals, including limited English speaking individuals.

The awards will be cooperative agreements because the Administration on Aging will be substantially involved in the development and execution of the activities of the technical assistance centers. The Administration on Aging will work closely with the grantees to affect collaborative partnerships among the other NMAO Centers. Consultation will be provided on the development, modification and execution of Center work plans, the identification of emerging issues, potential strategies and their impact on racial and ethnic minority older individuals nationwide.

A detailed description of the funding opportunity may be found at: *http://www.aoa.gov/doingbus/fundopp.asp.*

II. Award Information

Through this competition, AoA plans to award approximately four (4) new cooperative agreements for new projects, for a first year total of $1,069,186. Each project should focus on older individuals in one of the following four major racial and ethnic minority groups: African American (1 project @ $294,622); American Indian and Alaska Native (1 project @ $127,669); persons of Hispanic origin (1 project @ $294,622); and Asian American and Pacific Islander (1 project @ $352,273). Projects will be funded for a 3 year period, contingent upon the availability of federal funds. Grantees are required to cover at least 25% of the total program costs from non-federal cash or in-kind resources.

III. Eligibility Criteria and Other Requirements

This competition is open to public and private non profit agencies and organizations, including faith- and community-based organizations (FBOs and CBOs), with a nationally known presence and the capacity to reach one of the target populations on a nationwide basis. It is not limited to previous grantees. Awards made under this competition will develop health promotion and disease prevention information that specifically targets one of the four major racial and ethnic minority groups of older individuals nationwide. For this reason, the competition is limited to organizations with national presence and the capacity to mount the type of strategic, broad based effort that can reach large segments of each population. To be considered for funding, applicants must be experienced in providing health promotion and disease prevention education to racial and ethnic minority older individuals, including persons with limited English speaking proficiency on a nationwide basis. Applicants should ideally be a well-established, known presence in their respective professional communities, and must present a comprehensive plan to allow nationwide access to products produced by the project.

IV. Application and Submission Information

All applicants are required to submit electronically through *http://www.grants.gov* by midnight July 14, 2006.

Exceptions to this requirement may only by made by the AOA grants office. Contact Stephen Daniels (202–357–3464). Exceptions may only be made to allow for catastropic events such as tornadoes, floods, etc.

Please note that applicants are responsible for mailing or hand delivering applications to AOA in sufficient time to be received by 5 p.m. eastern time July 14, 2006.

1. Address To Request Application Package

Application materials can be obtained from *http://www.grants.gov* or *http://www.aoa.gov/doingbus/fundopp/fundopp.asp.*

Applicants with prior approval may write for materials to:

U.S. Department of Health and Human Services, Administration on Aging, Dianne A. Freeman, Center for Wellness and Community Based Services, Washington, DC 20201, or call: Dianne A. Freeman at 202–357–3536, e-mail: *Dianne.Freeman@aoa.hhs.gov.*

U.S. Department of Health and Human Services, Administration on Aging, Margaret Graves, Center for Wellness and Community Based Services, Washington, DC 20201, or call: Margaret Graves at 202–357–3502, e-mail: *Margaret.Graves@aoa.hhs.gov.*

Please note that AoA is requiring applications for this announcement to be submitted electronically through *http://www.grants.gov*. The Grants.gov registration process can take several days. If your organization is not currently registered with *http://www.grants.gov*, please begin this process immediately. For assistance with *http://www.grants.gov*, please contact Arthur Miller at AoA's Grants.gov helpdesk at 202–357–3438. At *http://www.grants.gov*, you will be able to download a copy of the application packet, complete it off-line, and then upload and submit the application via the Grants.gov Web site.

Applications submitted via *http://www.grants.gov:*

- You may access the electronic application for this program on *http://www.Grants.gov*. You must search the downloadable application page by the CFDA number (93.048).
- At the *http://www.grants.gov* Web site, you will find information about submitting an application electronically through the site, including the hours of operation. AoA strongly recommends that you do not wait until the application due date to begin the application process through *http://www.grants.gov* because of the time delay.
- All applicants must have a Dun and Bradstreet (D&B) Data Universal Numbering System number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You may submit all documents electronically, including all information included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from *http://*

www.grants.gov that contains a Grants.gov tracking number. The Administration on Aging will retrieve your application form from Grants.gov.

• We may request that you provide original signatures on forms at a later date.

2. Content and Form of Application Submission

a. DUNS Number

The Office of Management and Budget requires applicants to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. It is entered on the SF 424. It is a unique, nine-digit identification number, which provides unique identifiers of single business entities. The DUNS number is free and easy to obtain.

Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by using this link: *https://www.whitehouse.gov/omb/grants/duns_num_guide.pdf.*

Applicants unable to submit their application via *http://www.grants.gov* may request permission to submit a hard copy from the AoA Grants Management Officer: Stephen Daniels, *daniels.stephen@aoa.hhs.gov*, (202) 357–3464.

If you mail or hand deliver your application, you must submit one original application and two copies, plus a completed application checklist to AoA. The application deadline for applications sent by U.S. Postal Service must be post-marked by midnight July 14, 2006 or hand-delivered by 5 p.m. Eastern Time on July 14, 2006.

Submissions using the regular U.S. Postal Service must be addressed to: Department of Health and Human Services, Administration on Aging, Grants Management Division, Washington, DC 20201, Attention: Stephen Daniels.

Submissions by courier, overnight delivery, delivered in person, etc. should be addressed to: Department of Health and Human Services, Administration on Aging, Grants Management Division, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, Attention: Stephen Daniels.

1. Submission Dates and Times

To receive consideration, applications must be received by the deadline listed in the ''Dates'' section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria:

• Purpose and Need for Assistance—Weight: 20 points.

• Approach/Method—Work Plan and Activities—Weight: 30 points.

• Outcomes/Evaluation/Dissemination—Weight: 30 points.

• Level of Effort (Organization and Management; Budget and Resources)—Weight: 20 points.

VII. Agency Contacts

Direct inquiries regarding programmatic issues to the U.S. Department of Health and Human Services, Administration on Aging, Center for Wellness and Community-Based Care, Washington, DC 20201, telephone: (202) 357–3464.

Dated: May 30, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–8623 Filed 6–1–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0187]

Agency Information Collection Activities: Proposed Collection; Comment Request; Survey of Health Care Professionals on the Food Safety and Nutrition Information That They Provide to Pregnant Women

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary survey of health care professional on the food safety and nutrition information that they provide to pregnant women.

DATES: Submit written or electronic comments on the collection of information by August 1, 2006.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey of Health Care Professionals on the Food Safety and Nutrition Information that they Provide to Pregnant Women

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. FDA is planning to conduct a survey of health care professionals to determine what information, advice, and recommendations they are offering to pregnant women about the following topics: (1) Methyl mercury and seafood consumption; (2) Listeriosis prevention; (3) weight control and nutrition; (4) dietary supplement usage; (5) food allergies; (6) Toxoplasmosis prevention; and (7) infant feeding practices. FDA is interested in obtaining this data since FDA has recently issued advice for pregnant women about food safety risks and diet risks such as mercury in seafood, Listeriosis, and Toxoplamosis. (''Food Safety for Moms-to-Be'', 2005 and ''What You Need to Know about Mercury in Fish and Shellfish'', 2004). Data from this survey will be used to evaluate whether health care professionals are aware of this advice and if they are educating their patients about information in the FDA advisories.

FDA will also use this survey to get a better understanding of what resources health care professionals use to stay abreast of current practices for caring for pregnant women. This will help FDA provide timely recommendations to health care professionals that will reach the largest audience.

A sample of 400 obstetrician/gynecologists, 200 nurse practitioners, 200 nurse midwives, 200 physician assistants, and 200 dietitians from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) will be included in this survey. The sample of nurse practitioners, nurse midwives, and physician assistants will be drawn from those specializing in obstetrics. The samples will be randomly selected from lists obtained from national associations. The survey will be conducted using a mailed questionnaire. Cognitive interviews and a pretest will be conducted prior to fielding the survey.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1,200 - Survey	1	1,200	.167	200.4
75 - Pretest	1	75	.167	12.5
16 - Cognitive Interview	1	16	.75	12
Total	1	1,291		224.9

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate is based on FDA's experience with previous surveys.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8566 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0426]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Notice of Participation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 16, 2006 (71 FR 13602), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0191. The approval expires on May 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8567 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0393]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Investigational New Drug Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management

Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 17, 2006 (71 FR 8590), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0014. The approval expires on May 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8568 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0081]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Marketing Act of 1987

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by July 3, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prescription Drug Marketing Act of 1987: Administrative Procedures, Policies, and Requirements—21 CFR Part 203—(OMB Control Number 0910–0435)—Extension

FDA is requesting OMB approval under the PRA (44 U.S.C. 3501–3520) for the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293). PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

TABLE 1.—REPORTING REQUIREMENTS

21 CFR Section	Reporting Requirements
21 CFR 203.11	Applications for reimportation to provide emergency medical care.
21 CFR 203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier).
21 CFR 203.30(a)(3), (a)(4), and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier).
21 CFR 203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier).
21 CFR 203.31(a)(3), (a)(4), and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier).
21 CFR 203.37(a)	Investigation of falsification of drug sample records.
21 CFR 203.37(b)	Investigation of a significant loss or known theft of drug samples.
21 CFR 203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
21 CFR 203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.
21 CFR 203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.

TABLE 2.—RECORDKEEPING REQUIREMENTS

21 CFR Section	Recordkeeping Requirements
21 CFR 203.23(a) and (b)	Credit memo for returned drugs.
21 CFR 203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs.

TABLE 2.—RECORDKEEPING REQUIREMENTS—Continued

21 CFR Section	Recordkeeping Requirements
21 CFR 203.30(a)(2) and 21 CFR 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized to prescribe the product.
21 CFR 203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives.
21 CFR 203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
21 CFR 203.31(e)	Lists of manufacturers' and distributors' representatives.
21 CFR 203.34	Written policies and procedures describing administrative systems.
21 CFR 203.37(a)	Report of investigation of falsification of drug sample records.
21 CFR 203.37(b)	Report of investigation of significant loss or known theft of drug samples.

TABLE 2.—RECORDKEEPING REQUIREMENTS—Continued

21 CFR Section	Recordkeeping Requirements
21 CFR 203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed. (The information collection in 21 CFR 203.38(b) is already approved under OMB Control Number 0910–0139).
21 CFR 203.39(d)	Records of drug samples destroyed or returned by a charitable institution.
21 CFR 203.39(e)	Record of drug samples donated to a charitable institution.
21 CFR 203.39(f)	Records of donation and distribution or other disposition of donated drug samples.
21 CFR 203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
21 CFR 203.50(a)	Drug origin statement.
21 CFR 203.50(b)	Retention of drug origin statement for 3 years.
21 CFR 203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals:

1. To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care;

2. To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample;

3. To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;

4. To require licensed or authorized practitioners to request prescription drug samples in writing;

5. To mandate storage, handling, and recordkeeping requirements for prescription drug samples;

6. To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization; and

7. To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.11	12	1	12	.5	6
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4), and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4), and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	25	1	25	6.00	150
203.37(b)	200	1	200	6.00	1,200
203.37(c)	50	1	50	1.00	50
203.37(d)	2,208	1	2,208	.08	177
203.39(g)	3,221	1	3,221	2.00	6,442
Total Reporting Burden Hours					2,293,004

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400
203.31(d)(1) and (d)(2)	2,208	1	2,208	40.00	88,320
203.31(d)(4)	442	1	442	24.00	10,608
203.31(e)	2,208	1	2,208	1.00	2,208
203.34	2,208	1	2,208	40.00	88,320
203.37(a)	25	1	25	18.00	450
203.37(b)	200	1	200	18.00	3,600
203.39(d)	65	1	65	1.00	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8.00	25,768
203.39(g)	3,221	1	3,221	8.00	25,768
203.50(a)	0	0	0	0	0
203.50(b)	0	0	0	0	0
203.50(d)	0	0	0	0	0
Total Recordkeeping Burden Hours					409,409

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of March 16, 2006 (71 FR 13599), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8569 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0215]

Agency Information Collection Activities; Proposed Collection; Comment Request; Applications for Food and Drug Administration Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Valid or Will Not Be Infringed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for submission and listing of patent information associated with a new drug application (NDA), an amendment, or a supplement.

DATES: Submit written or electronic comments on the collection of information by August 1, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal

agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated NDAs Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed (OMB Control Number 0910–0513)—Extension

FDA is requesting that OMB revise and extend approval under the PRA for the information collection contained in the final rule entitled ''Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed'' (68 FR 36676, June 18, 2003) (the June 2003 final rule).

Section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)(1)) requires all NDA applicants to file, as part of the NDA, ''the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture[,] use, or sale of the drug.'' Section 505(c)(2) of the act imposes a similar patent submission obligation on holders of approved NDAs when the NDA holder could not have submitted the patent information with its application. Under section 505(b)(1) of the act, we publish patent information after approval of an NDA application in the list entitled ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (the Orange Book). If patent information is submitted after NDA approval, section 505(c)(2) of the act directs us to publish the information upon its submission.

The June 2003 final rule clarified the types of patent information that must and must not be submitted to FDA as part of an NDA, an amendment, or a supplement. The June 2003 final rule also required persons submitting an NDA, an amendment, or a supplement, or submitting information on a patent after NDA approval, to make a detailed patent declaration using required forms (Form FDA 3542a and Form FDA 3542).

Certain sections of the June 2003 final rule regarding the application of 30-month stays on approval of certain abbreviated new drug applications (ANDAs) and certain other NDAs, known as 505(b)(2) applications, submitted under the act, were superseded by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, signed December 8, 2003. The affected sections of the regulations issued in the June 2003 final rule—under part 314 (21 CFR part 314), §§ 314.52(a)(3) and 314.95(a)(3)—were revoked by the technical amendment to the June 2003 final rule, published in the **Federal Register** of March 10, 2004 (69 FR 11309). Accordingly, FDA's request to extend approval under the PRA for the collection of information contained in the June 2003 final rule is revised to exclude the revoked sections of the regulations, §§ 314.52(a)(3) and 314.95(a)(3), and certain sections of the regulations, §§ 314.50(i)(1)(i) and 314.94(a)(12), which were included in the estimated annual reporting burden to describe an information collection burden associated with the revoked sections of the regulations.

The reporting burden for submitting an NDA, an amendment, or supplement in accordance with § 314.50(a) through (f), and (k) has been estimated by FDA and the collection of information has been approved by OMB under OMB control number 0910–0001, most recently until May 31, 2008 (70 FR 35099, June 16, 2005). In addition, the reporting burden associated with the previously-referenced §§ 314.50(i)(1)(i) and 314.94(a)(12), regarding patent certification requirements for 505(b)(2) applications and ANDAs also has been estimated and included within the collection of information approved by OMB under OMB control number 0910–0001. We are not re-estimating these approved burdens in this document. Only the reporting burdens associated with patent submission and listing in the final rule are estimated in this document.

The information collection reporting requirements are as follows:

Section 314.50(h) requires that an NDA, an amendment, or a supplement contain patent information described under § 314.53.

Section 314.53 requires that an applicant submitting an NDA, an amendment, or a supplement, except as provided in § 314.53(d)(2), submit on FDA Forms 3542 and 3542a, the required patent information described in the section.

Compliance with the information collection burdens under §§ 314.50(h) and 314.53 consists of submitting with an NDA, an amendment, or a supplement (collectively referred to as ''application'') the required patent declaration(s) on Form FDA 3542a for each ''patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product'' (§ 314.53(b)). Such patents claim the drug substance (active ingredient), drug product (formulation and composition), or method of use. If a patent is issued after the application is filed with FDA but before the application is approved, the applicant must submit the required patent information on Form FDA 3542a as an amendment to the application, within 30 days of the date of issuance of the patent.

Within 30 days after the date of approval of an application, the applicant must submit Form FDA 3542 for each patent that claims the drug substance (active ingredient), drug product (formulation and composition), or approved method of use for listing in

the Orange Book. In addition, for patents issued after the date of approval of an application, Form FDA 3542 must be submitted within 30 days of the date of issuance of the patent.

Following publication of the June 2003 final rule, the numbers of patents submitted to FDA for listing in the Orange Book in 2004 and 2005 were 244 and 295, respectively, for an annual average of 269.5 ((244 patents + 295 patents) / 2 years = 269.5 patents / year). Because many of these individual patents are included in multiple NDA submissions, there could be multiple declarations for a single patent. From our review of submissions, we believe that approximately 14 percent of the patents submitted are included in multiple NDA submissions, and thus require multiple patent declarations. Therefore, we estimate that 38 (269.5 patents x 14 percent) patent declarations will be multiple listings, and there will be 308 (269.5 declarations + 38 declarations = 307.5 declarations) total annual patent declarations on Form FDA 3542.

As we approved 113 and 78 NDAs in 2004 and 2005, respectively, we assume there will be 96 ((113 approvals + 78 approvals) / 2 years = 95.5 approvals / year) instances where an NDA holder would be affected by the patent declaration requirements, and that each of these NDA holders would, on average, submit 3.2 (308 declarations / 96 instances = 3.2 declarations per instance) declarations on Form FDA 3542.

As we received 112 and 115 NDAs in 2004 and 2005, respectively, we assume there will be 114 ((112 applications + 115 applications) / 2 years = 113.5 applications / year) instances where an NDA holder would be affected by the patent declaration requirements. We estimate, based on a proportional increase from the number of declarations for approved NDAs, that there will be an annual total of 365 (114 instances x 3.2 declarations per instance = 365 declarations) declarations on Form FDA 3542a submitted with these applications.

The previous burden hour estimate of 1,684 hours for § 314.50 covered paragraphs (a) through (f), (k), and (h) (citing § 314.53) and FDA Forms 3542 and 3542a (see June 2003 final rule), due to the difficulty in determining what proportion of the burden hour estimate for § 314.50(a) through (f), (h), and (k), was attributable to patent declarations. Based upon information provided by regulated entities and other information, we estimate that the information collection burden associated with § 314.50(h) (citing § 314.53) and FDA Forms 3542a and 3542 will be approximately 20 hours and 5 hours per response, respectively.

Thus, the information collection burden for § 314.50(h) (citing § 314.53) and FDA Forms 3542 and 3542a will decrease from the estimate we made in the June 2003 final rule for § 314.50(a) through (f), (h), and (k), and FDA Forms 3542 and 3542a of 498,464 hours to 8,840 hours ((365 annual responses x 20 hours per response = 7,300 hours) + (308 annual responses x 5 hours per response = 1,540 hours) = 8,840 total hours).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Form FDA 3542a	114	3.2	365	20	7,300
Form FDA 3542	96	3.2	308	5	1,540
Total					8,840

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8570 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0019]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry and Food and Drug Administration Staff on Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 3, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry and FDA Staff on Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle

Under the Safe Medical Devices Act of 1990 (Public Law 101–629, 104 Stat. 4511), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device. This draft guidance document serves as the special control to support the reclassification from class III to class II

of the automated blood cell separator device operating on a centrifugal separation principle intended for the routine collection of blood and blood components (see proposed rule of March 10, 2005, 70 FR 11887), and serves as the special control for the filtration-based device with the same intended use reclassified as class II in the **Federal Register** of February 28, 2003 (68 FR 9530). The final rule for the automated blood cell separator device operating on a centrifugal separation principle will be published in conjunction with the special controls guidance document.

For currently marketed products not approved under the premarket approval (PMA) process, the manufacturer should file with FDA for 3 consecutive years an annual report on the anniversary date of the device reclassification from class III to class II, or on the anniversary date of the 510(k) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated blood cell separator device intended for the routine collection of blood and blood components, should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated donor adverse device events that have occurred, such as those required under § 606.160(b)(1)(iii) (21 CFR 606.160(b)(1)(iii))[1] to be recorded and maintained by the facility using the device to collect blood and blood components, and that might not be reported by manufacturers under Medical Device Reporting (MDR). Also, equipment failures, including software, hardware, and disposable item failures' should be reported. The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation.

Reclassification of this device from class III to class II for the intended use of routine collection of blood and blood components will relieve manufacturers of the burden of complying with PMA requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance document recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this would be less burdensome than the current postapproval requirements under part 814, subpart E (21 CFR part 814, subpart E), including the submission of periodic reports under § 814.84.

Collecting or transfusing facilities and manufacturers have certain responsibilities under the CFR. Among others, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (§ 606.170), while the manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event under part 803 (21 CFR part 803), specifically in § 803.50(b)(2). In the draft guidance document, we recommend that manufacturers include in their three annual reports a summary of adverse reactions maintained by the collecting or transfusing facility or similar reports of adverse events collected in addition to those required under the MDR regulation.

In the **Federal Register** of March 10, 2005 (70 FR 11990), FDA published a 60-day notice requesting public comment on the information collection provisions. One public comment was received but it did not relate to the collection of information.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Respondent	Total Hours
Annual Report	4	1	4	5	20

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are an estimated four manufacturers of automated blood cell separator devices. We estimate that the manufacturers will spend approximately 5 hours preparing and submitting the annual report. The total annual burden of this collection of information is estimated at approximately 20 hours.

Other burden hours associated with proposed 21 CFR 864.9245 are already reported and approved under OMB control number 0910–0120 (premarket notification submission in accordance with section 510(k) of the act, and 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR). Currently, manufacturers of medical devices are required to submit to FDA individual adverse event reports of death, serious injury, and malfunctions (§§ 803.50 and 803.53). The manufacturer is responsible for conducting an investigation of each event and evaluating the cause of the event (§ 803.50(b)(2)).

The reporting recommended in the special control guidance document broadens the information to be reported by manufacturers to FDA. We are recommending that the manufacturer submit annually, for 3 consecutive years, a summary of all adverse events, including those reported under part 803. The MedWatch medical device reporting code instructions (*http://www.fda.gov/cdrh/mdr/373.html*), contains a comprehensive list of adverse events associated with device use, including most of those events that we recommend summarizing in the annual report.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8571 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

[1]Section 606.160(b)—''Records shall be maintained that include, but are not limited to, the following when applicable: * * * (1)(iii) Donor adverse reaction complaints and reports, including results of all investigations and followup.''

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0197]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the agency's regulations that require registration for domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

DATES: Submit written or electronic comments on the collection of information by August 1, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.230–1.235 (OMB Control Number 0910–0502)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 415 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350d), which requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA. Sections 1.230–1.235 of FDA's regulations (21 CFR 1.230–1.235) set forth the procedures for registration of food facilities. Information provided to FDA under these regulations will help the agency to notify quickly the facilities that might be affected by a deliberate or accidental contamination of the food supply.

Description of respondents: The respondents to this information collection include owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. Domestic facilities are required to register whether or not food from the facility enters interstate commerce. Foreign facilities that manufacture/process, pack, or hold food also are required to register unless food from that facility undergoes further processing (including packaging) by another foreign facility before the food is exported to the United States. However, if the subsequent foreign facility performs only a minimal activity, such as putting on a label, both facilities are required to register.

FDA's regulations require that each facility that manufactures, processes, packs, or holds food for human or animal consumption in the United States register with FDA using Form FDA 3537 (§ 1.231). The term ''Form FDA 3537'' refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov*. The agency strongly encourages electronic registration because it is faster and more convenient. The system the agency has developed can accept electronic registrations from anywhere in the world 24 hours a day, 7 days a week. A registering facility will receive confirmation of electronic registration and its registration number instantaneously once all the required fields on the registration screen are filled in. However, paper registrations will be accepted. Form FDA 3537 is available for download for registration by mail, fax, or CD-ROM. Registration by mail may take several weeks to several months, depending on the speed of the mail system and the number of paper registrations that FDA will have to enter manually.

Information FDA requires on the registration form includes the name and full address of the facility; emergency contact information; all trade names the facility uses; applicable food product categories identified in § 170.3 (21 CFR 170.3), unless ''most/all'' human food categories ''or none of the above mandatory categories'' is selected as a response; and a certification statement that includes the name of the individual authorized to submit the registration form. Additionally, facilities are encouraged to submit their preferred mailing address; type of activity conducted at the facility; food categories not included under § 170.3, but which are helpful to FDA for responding to an incident; type of storage, if the facility is primarily a holding facility; and approximate dates of operation if the facility's business is seasonal.

In addition to registering, a facility is required to submit timely updates within 60 days of a change to any required information on its registration

form, using Form FDA 3537 (§ 1.234), and to cancel its registration when the facility ceases to operate or is sold to new owners or ceases to manufacture/process, pack, or hold food for consumption in the United States, using Form FDA 3537a (§ 1.235).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for food facility registration as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form No.	Number of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
NEW FACILITIES						
Domestic						
1.230–1.233	FDA 3537[2]	13,650	1	13,650	2.5	34,125
Foreign						
1.230–1.233	FDA 3537	29,200	1	29,200	8.5	248,200
NEW FACILITY REGISTRATION SUBTOTAL						282,325
PREVIOUSLY REGISTERED FACILITIES-UPDATES (FORM 3537) ANDCANCELLATIONS (FORM 3537a)						
1.234	FDA 3537	92,850	1	92,850	1	92,850
1.235	FDA 3537a	1,300	1	1,300	1	1,300
UPDATES OR CANCELLATIONS TO EXISTING REGISTRATION SUBTOTAL						94,150
TOTAL HOURS ANNUALLY						376,475

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

[2]The term ''Form FDA 3537'' refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov*.

This estimate is based on FDA's experience and the average number of new facility registrations, updates and cancellations received in the past 3 years. FDA received 82,485 new domestic facility registrations during 2003; 32,099 during 2004; and 13,652 during 2005. Based on this experience, FDA estimates the annual number of new domestic facility registrations will be 13,650. FDA estimates that listing the information required by the Bioterrorism Act and presenting it in a format that will meet the agency's registration regulations will require a burden of approximately 2.5 hours per average domestic facility registration. The average domestic facility burden hour estimate of 2.5 hours takes into account that some respondents completing the registration may not have readily available Internet access. Thus, the total annual burden for new domestic facility registrations is estimated to be 34,125 hours (13,650 x 2.5 hours).

FDA received 89,990 new foreign facility registrations during 2003; 49,574 during 2004; and 29,193 during 2005. Based on this experience, FDA estimates the annual number of new foreign facility registrations will be 29,200. FDA estimates that listing the information required by the Bioterrorism Act and presenting it in a format that will meet the agency's registration regulations will require a burden of approximately 8.5 hours per average foreign facility registration. The average foreign facility burden hour estimate of 8.5 hours includes an estimate of the additional burden on a foreign facility to obtain a U.S. agent, and takes into account that for some foreign facilities the respondent completing the registration may not be fluent in English and/or not have readily available Internet access. Thus, the total annual burden for new foreign facility registrations is estimated to be 248,200 hours (29,200 x 8.5 hours).

FDA received 131,354 updates to facility registrations during 2003; 137,384 during 2004; and 92,835 during 2005. Based on this experience, FDA estimates that it will receive 92,850 updates annually. FDA also estimates that updating a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. Thus, the total annual burden for updating all registrations is estimated to be 92,850 hours.

FDA received 12,556 cancellations of facility registrations during 2003; 7,467 during 2004; and 1,280 during 2005. Based on this experience, FDA estimates the annual number of cancellations will be 1,300. FDA also estimates that cancelling a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. Thus, the total annual burden for cancelling registrations is estimated to be 1,300 hours.

In cases where a regulation implements a statutory information collection requirement, only the additional burden attributable to the regulation, if any, has been included in FDA's burden estimate.

Dated: May 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8574 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000D–1318]

Guidance for Industry on Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment.'' This document provides recommendations on developing products for the treatment of chronic cutaneous ulcer and burn wounds. It includes general guidance on clinical trial design as well as preclinical and manufacturing considerations. This guidance finalizes the draft guidance published on June 28, 2000.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Elektra Papadopoulos, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5189, Silver Spring, MD 20993–0002, 301–796–2110; or

Susan Leibenhaut, Center for Biologics Evaluation and Research (HFM–755), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6536; or

Charles N. Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment.'' On June 28, 2000 (65 FR 39912), FDA published for comment in the **Federal Register** a draft of this guidance. The guidance addresses the development of drugs, biological products, and medical devices for the treatment of burn wounds and chronic cutaneous ulcers, including venous stasis ulcers, diabetic foot ulcers, and pressure ulcers. Included are recommendations for trial design, labeling claims, outcome measures, and special considerations for preclinical development, as well as for manufacturing.

Comments received from industry, professional societies, and consumer groups on the draft guidance have been taken into consideration by FDA in finalizing this guidance and some of the changes are summarized here. The accelerated wound closure section has been modified and now indicates that if claims are sought for both increased incidence of wound closure and accelerated healing, then the study should be designed to detect both effects. The section on debridement outcomes has been clarified and indicates clinically relevant endpoints for debriding agents. Newly addressed are wound pain amelioration outcomes, outcomes for temporary dressings, and recommendations for choosing lesions for evaluation of efficacy outcomes (e.g., target lesion or complete healing of all lesions reported per patient).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on developing products for the treatment of chronic cutaneous ulcer and burn wounds. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 23, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8572 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0288]

International Conference on Harmonisation; Guidance on Q9 Quality Risk Management; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q9 Quality Risk Management.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides principles and examples of tools for quality risk management that can be applied to all aspects of pharmaceutical quality throughout the lifecycle of drug substances, drug products, and biological and biotechnological products. The guidance is intended to enable regulators and industry to make more effective and consistent risk-based decisions.

DATES: Submit written or electronic comments on agency guidance at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: H. Gregg Claycamp, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301–827–6505; Albinus D Sa, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–9044; Anna M. Flynn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6201; or Diana J. Kolaitis, Office of Regulatory Affairs (HFR–NE1), Food and Drug Administration, 158–15 Liberty Ave., Jamaica, NY 11433, 718–662–5612.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research; FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 8, 2005 (70 FR 45722), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q9 Quality Risk Management.'' The notice gave interested persons an opportunity to submit comments by October 7, 2005.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2005.

The guidance provides recommendations for a systematic approach to quality risk management. The guidance is intended to support other ICH quality documents, complement existing quality practices and standards, and enable regulators and industry to make more effective and consistent risk-based decisions.

The guidance includes principles and examples of tools for quality risk management that can be applied to different aspects of pharmaceutical quality throughout the lifecycle of drug substances, drug products, and biological and biotechnological products. These aspects include development, manufacturing, distribution, inspection, and submission/review processes (including the use of raw materials, solvents, excipients, packaging and labeling materials in drug products and biological and biotechnological products). The guidance is not intended to create any new expectations beyond current regulatory requirements.

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 this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: May 23, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8573 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders A, June 22,

2006, 8 a.m. to June 23, 2006, 6 p.m. The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037, which was published in the **Federal Register** on May 3, 2006, 71, FR: 06–4149.

This meeting was scheduled for June 22–23, 2006 and has been changed to a one day meeting on June 22, 2006; 8 a.m. to 6 p.m. The meeting is closed to the public.

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5061 Filed 6–1–06; 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 Disorders; 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes. The outcome of the evaluation will be a decision whether NIDDK should support the request and make available contract resources for development of the potential therapeutic to improve the treatment or prevent the development of type 1 diabetes and its complications. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Type 1 Diabetes—Rapid Access to Intervention Development Special Emphasis Panel, National Institute of Diabetes and Digestive and Kidney Diseases.

Date: June 22, 2006.

Time: 11:30 a.m. 2 p.m.

Agenda: To evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes and its complications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dr. Myrlene Staten, Senior Advisory, Diabetes Translation Research, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, NIH, 6707 Democracy Boulevard, Bethesda, MD 20892–5460. 301 402–7886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5068 Filed 6–1–06; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: June 15–16, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6898. *wallsc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Energy Dysregulation.

Date: June 15, 2006.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Youth Weight and Obesity: Gender and Racial Disparities.

Date: June 16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510. (301) 435–8382. *hindialm@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: June 19, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place; Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institutes of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6908. *ak41o@nih.gov..*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 19, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place; Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD, 20879.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institutes of Child Health, and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852. (301) 435–6889. *bhatnagg@mail.nih.gov.*

(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: May 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5069 Filed 6–1–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

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 notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 21, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838. *lewallla@od.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.

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcement'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing. NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS.)

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5060 Filed 6–1–06; 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 Hemostasis and Thrombosis Study Section, June 22, 2006, 8:30 a.m. to June 23, 2006, 6 p.m., Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on May 11, 2006, 71 FR 27505–27507.

The meeting will be held at the Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Register Committee Policy.

[FR Doc. 06–5062 Filed 6–1–06; 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 Biomaterials and Biointerfaces Study Section, June 22, 2006, 8 a.m. to June 23, 2006, 4:30 p.m., Double Tree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814, which was published in the **Federal Register** on May 11, 2006, 71 FR 27505–27507.

The meeting will be held at the Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5063 Filed 6–1–06; 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, June 26, 2006, 8 a.m. to June 27, 2006, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on May 16, 2006, 71 FR 28363–28365.

The meeting will be held one day only on June 26, 2006. The meeting time and location remain the same. The meeting is closed to the public.

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5064 Filed 6–1–06; 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 Urologic and Kidney Development and Genitourinary Diseases Study Section, June 26, 2006,

8 a.m. to June 27, 2006, 11 a.m., Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852, which was published in the **Federal Register** on May 16, 2006, 71 FR 28365–28367.

The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5065 Filed 6–1–06; 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 Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section, June 21, 2006, 6 p.m. to June 23, 2006, 5 p.m., Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015, which was published in the **Federal Register** on May 11, 2006, 71 FR 27505–27507.

The meeting will be held June 22, 2006, 8 a.m. to June 23, 2006, 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5066 Filed 6–1–06; 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, Oral Microbiology and Dental Material Sciences: A Member Conflict Panel.

Date: June 16, 2006.

Time: 12:30 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: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892. 301–451–1327. *tthyagar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neurosciences Member Conflicts.

Date: June 19–20, 2006.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert St., NW., (at Connecticut Ave.), Palladian Ballroom, Washington, DC 20037.

Contact Person: Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892. 301–435–1259. *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retinopathy studies.

Date: June 22–23, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. (301) 402–8228. *raym@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Cognition and Perception Study Section.

Date: June 22–23, 2006.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261. *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk, Prevention and Intervention for Addictions.

Date: June 22–23, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–D, MSC 7759, Bethesda, MD 20892. 301–451–9956. *gboyd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signaling in Cancer.

Date: June 27, 2006.

Time: 3 p.m. to 5 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: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892. (301) 435–1739. *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dissemination and Implementation Research in Health.

Date: June 28, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892. (301) 435–1712. *krosnics@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, In Vitro Drug Toxicity.

Date: June 28, 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: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892. 301–435–2270. *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Meiosis.

Date: June 28, 2006.

Time: 12 p.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: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130 MSC 7840, Bethesda, MD 20892. (301) 435–1023. *byrnesn@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Vaccines Against Microbial Diseases.

Date: June 29–30, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Wang, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892. (301) 435–2778. *wangjia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysical and Biochemical Sciences Fellowship Panel.

Date: June 29–30, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: James W. Mack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (301) 435–1747. *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict-Behavioral Pharmacology.

Date: June 29, 2006.

Time: 1 p.m. to 2:30 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: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892. (301) 594–3163. *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Technology Development.

Date: June 29–30, 2006.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillon, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892. (301) 435–1159. *ameros@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: May 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5067 Filed 6–1–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human Monoclonal Antibodies, Their Fragments and Derivatives as Biotherapeutics for the Treatment of HIV Infections

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive license to practice the inventions embodied in: U.S. Provisional Patent Application S/N 60/378,408, filed May 6, 2002 (E–144–2002/0–US–01), PCT Application, PCT/US03/14292, filed May 6, 2003, (E–144–2002/0–PCT–02), converted into 03736557.4 (E–144–2002/0–EP–04) filed in Europe on December 3, 2004, and 2003237187 (E–144–2002/0–AU–05) filed in Australia on November 3, 2004, 10/513,725 (E–144–2002/0–US–03) filed in USA on November 5, 2004, as well as 2,484,930 (E–144–2002/0–CA–06) filed in Canada on November 5, 2004, entitled ''Novel broadly cross-reactive HIV neutralizing human monoclonal antibodies selected from Fab phage display libraries using a novel strategy based on alternative antigen panning,'' Inventors: Dimiter S. Dimitrov (NCI) and Mei-Yun Zhang (SAIC), to Profectus Biosciences, Inc., having a place of business in Baltimore, Maryland. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before August 1, 2006 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *hus@od.nih.gov;* Telephone: (301) 435–5606; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The subject invention (E–144–2002/0) identifies four antibodies, designed 4B1–4, 4B1–10, 4H4, and 5H22 (M12, M14, M16, and M18). These four antibodies were isolated from a human Fab phage display library using alternating antigen panning (AAP). All four antibodies bind to recombinant HIV envelope glycoproteins (Env) $gp_{12089.6}$, $gp_{120JR-FL}$ and $gp_{120IIIB}$ with high affinity. Moreover, 4B1–10 binding to gp 120 or gp 140 is significantly enhanced in the presence of the receptor CD4.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of human monoclonal antibodies for use as a therapeutic or preventative in HIV infection either alone or in combination with other compounds.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 25, 2006.

David R. Sadowski,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–8628 Filed 6–1–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

First-Generation Guidelines for NCI-Supported Biorepositories

AGENCY: National Institutes of Health (NIH), National Cancer Institute (NCI), HHS.

ACTION: Notice.

SUMMARY: The public comment period for the First Generation Guidelines for NCI-Supported Biorepositories (**Federal Register**, Vol. 71, Number 82, Page 25814, April 28, 2006) will be extended an additional 30 days beyond publication of this notice.

DATES: *Effective Date:* July 3, 2006.

FOR FURTHER INFORMATION CONTACT: Implementation assistance and inquiries should be directed to senior staff of the

relevant NCI Extramural and Intramural Program offices.

ADDRESSES: Written comments should be sent to: First-Generation Guidelines, Office of Biorepositories and Biospecimen Research, Office of the Deputy Director for Advanced Technologies and Strategic Partnerships, National Cancer Institute, National Institutes of Health, 31 Center Drive, Room 10A03, Bethesda, MD 20892. Comments submitted via e-mail should use *biospecimen@mail.nih.gov* and enter ''First-Generation Guidelines Comment'' in the subject line.

SUPPLEMENTARY INFORMATION: In order to have adequate time to review and comment on these Guidelines, several individuals and organizations have requested an extension of the 30-day public comment period, scheduled to end May 30, 2006. The NCI agrees that, due to the amount of time that it will take for many organizations to review the Guidelines and draft through responses, an extension of the 30-day comment period is warranted. Therefore the public comment period will be extended an additional 30 days beyond the publication date of this notice. After the comment period has closed, any comments received will be considered in a timely manner by the NCI Office of Biorepositories and Biospecimen Research and appropriate changes will be made and the final guidelines will be published and voluntarily in effect. After the effective date of publication of the final guidelines, written comments will continue to be accepted for the first year of implementation and can be sent to: First-Generation Guidelines, Office of Biorepositories and Biospecimen Research, Office of the Deputy Director for Advanced Technologies and Strategic Partnerships, National Cancer Institute, National Institutes of Health, 31 Center Drive, Room 10A03, Bethesda, MD 20892. Comments submitted via e-mail should use *biospecimen@mail.nih.gov* and enter ''First-Generation Guidelines Comment'' in the subject line. During the first year of implementation, the NCI will review any additional comments and experience with the guidelines to evaluate a possible need for future guidelines modification.

Dated: May 25, 2006.

John Niederhuber,

Deputy Director, National Center Institute, Deputy Director for Translational & Clinical Sciences.

[FR Doc. 06–5059 Filed 6–1–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)
Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Scientific Testing Laboratories, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180, (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario), Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088
National Toxicology Laboratories, Inc. 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories 123 International Way, Springfield, OR 97477, 541–341–8092
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7897x7
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.)
Quest Diagnostics Incorporated, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories)
Quest Diagnostics Incorporated, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–606–6301/800–322–3361, (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.)
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register,** July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and

participate in the NLCP certification maintenance program.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. E6–8563 Filed 6–1–06; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–24047]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0046

AGENCY: Coast Guard, DHS.

ACTION: Reopening comment period.

SUMMARY: On March 7, 2006, the Coast Guard published a notice in the Federal Register requesting comments on our intent to submit an Information Collection Request (ICR) to OMB to seek their renewal of an approval of a collection of information under OMB control number 1625–0046, Financial Responsibility for Water Pollution (Vessels). In that notice we stated that the complete ICR would be available through both our online docket and at a Coast Guard facility in Washington, DC. Because the complete ICR was not made available online during the stated comment period we are reopening the comment period until July 3, 2006.

DATES: Please submit comments on or before July 3, 2006.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2006–24047] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building,400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Ms Barbara Davis), 2100 2nd Street SW, Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Davis, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on this document; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*; they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2006–24047], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8-1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

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

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

Previous Request for Comments

On March 7, 2006, the Coast Guard published a notice in the Federal Register (71 FR 11437) requesting comments on our intent to submit an Information Collection Request to OMB to seek their renewal of an approval of a collection of information under OMB control number 1625–0046, Financial Responsibility for Water Pollution (Vessels). We stated in that notice, the complete ICR would be made available both in our online docket and at a Coast Guard facility in Washington, DC The complete ICR, however, was not made available on-line during the stated comment period, so we are reopening the comment period until July 3, 2006.

Information Collection Request

Title: Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 1625–0046.

Summary: The Coast Guard will use the information collected under this information collection request to issue a Certificate of Financial Responsibility as required by the Oil Pollution Act (OPA), specifically under 33 U.S.C. 2716, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), specifically under 42 U.S.C. 9608.

Need: If the requested information is not collected, the Coast Guard will be unable to comply with the provisions of OPA and CERCLA to ensure that responsible parties can be held accountable for cleanup costs and damages when there is an oil spill or threat of a spill.

Respondents: Legally responsible operators of vessels subject to 33 U.S.C. 2716 and 42 U.S.C. 9608 or their designees, approved insurers, and financial guarantors.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 2,262 hours a year.

Dated: May 24, 2006.

C.S. Johnson, Jr.,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–8540 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): Periodic Monthly Statement Payment Process Available When Filing Entry for Split Shipments and Unassembled or Disassembled Entities Imported on Multiple Conveyances

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that importers may use the periodic monthly payment statement process to pay estimated duties and fees when filing either a single entry or incremental entries involving split shipments, or a single entry or certain incremental entries involving unassembled or disassembled entities. Importers may use the periodic monthly payment statement process as participants in a National Customs Automation Program (NCAP) test.

DATES: *Effective Dates*: Importers may pay estimated duties and fees for Split Shipments through the method set forth in the NCAP test starting on June 2, 2006.

Importers may pay estimated duties and fees for Unassembled or Disassembled Entities Imported on Multiple Conveyances through the method set forth in the NCAP test starting on July 3, 2006.

FOR FURTHER INFORMATION CONTACT: For questions concerning this Notice: Mr. Jeremy Baskin via email at *Jeremy.Baskin@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Importers choosing to file a single entry or incremental entries involving split shipments or unassembled or disassembled entities as a special permit for immediate delivery after the arrival of the first portion (Incremental Release) may now pay estimated duties and fees attributable to those entries through the method set forth in the National Customs Automation Program (NCAP) test describing the periodic monthly statement process.

Entry: Split Shipments

Under the current regulations on split shipments at 19 CFR 141.57(d)(1) and 141.57(d)(2), an importer is allowed to file either a single entry or incremental entries with regard to split shipments (19 U.S.C. 1484(j)(2)). Split shipments are defined as merchandise that is capable of being transported on a single conveyance, and that is delivered to and accepted by a carrier in the exporting country as one shipment under one bill of lading or waybill, and is thus intended by the importer to arrive as a single shipment. However, the shipment is thereafter divided by the carrier into different parts which arrive in the United States at different times, often days apart.

Pursuant to the provisions of the regulations, an importer of split shipment of merchandise may file an entry or a special permit for immediate delivery, provided that the merchandise is eligible for such permit, once all portions of the split shipment have arrived at the port of entry. The entry or special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment. See 19 CFR 141.57(d)(1). Alternatively, an importer of record may file a special permit for immediate delivery after the arrival of the first portion of a split shipment, but before the arrival of the entire shipment at such port, thus qualifying the split shipment for incremental release as each portion of the shipment arrives at the port of entry. The remaining portions may be released incrementally. See 19 CFR 141.57(d)(2) and 19 CFR 141.57(e).

Entry: Unassembled or Disassembled Entities

Pursuant to new regulations (see new 19 CFR 141.58) published in today's **Federal Register** as CBP Decision 06–11, importers may, effective 30 days after the date of publication in the **Federal Register**, file a single entry for merchandise the size or nature of which necessitates shipment in an unassembled or disassembled condition on more than one conveyance, or file incremental entries for each portion of the entity as it separately arrives.

An unassembled or disassembled entity consists of merchandise which is not capable of being transported on a single conveyance, but which is purchased and invoiced as a single classifiable entity. By necessity, due to its size or nature, the entity is placed on multiple conveyances that arrive at different times at the same port of entry in the United States. The subject arriving portions are consigned to the same person in the United States. The final regulations permit the acceptance of a single entry in the case of a qualifying unassembled or disassembled shipment; however, importers may continue to file a separate entry for each portion of an unassembled or disassembled shipment as it arrives, if they so choose.

An importer may file an entry once all portions of the entity have arrived at the same port of entry in the United States. Any portion that arrives at a different port must be transported in-bond to the destination port where entry will be made. In the alternative, the importer may file a special permit for immediate delivery after arrival of all portions of the entity provided that it is eligible for such a permit under 19 CFR 142.21(a)–(d), (f) and (i). See 19 CFR 141.58(d)(1).

An importer of record may file an application for a special permit for immediate delivery after the arrival of the first portion of the entity covered by 19 CFR 141.58(b), and its remaining portions may be released incrementally pursuant to the requirements set forth in 19 CFR 141.58(e). All portions of the shipment must arrive timely at the same port of entry in the United States. Any portion that arrives at a different port must be transported in-bond to the destination port where entry will be made. See 19 CFR 141.58(d)(2).

Payment of Estimated Duties and Fees Through Periodic Monthly Statement

The Bureau of Customs and Border Protection (CBP) has published a series of General Notices in the **Federal Register** announcing the National Customs Automation Program (NCAP) test for the Periodic Monthly Payment Statement Process. See 69 FR 5362, 69 FR 54302, 70 FR 5199, 70 FR 45736, 70 FR 55623, and 71 FR 3315. These prior notices are incorporated by reference and continue to apply unless changed by this notice.

The test, which is part of CBP's Automated Commercial Environment (ACE), benefits participants by giving them access to operational data through the ACE Secured Data Portal (''ACE Portal''), which provides them the capability to interact electronically with CBP, and by allowing them to deposit estimated duties and fees on a monthly basis based on a Periodic Monthly Statement issued by CBP.

Participants in the Periodic Monthly Statement test are required to schedule

entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been designated for monthly payment. The Periodic Monthly Statement can be created on a national basis by an ABI filer. If an importer chooses to file the Periodic Monthly Statement on a national basis, it must use its filer code and schedule and pay the monthly statements. The Periodic Monthly Statement will be routed under existing CBP procedures. Brokers will only view/receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI that lists information filed by another broker. See 69 FR 5362.

Periodic Monthly Statement Process Available for Filing Entries for Split Shipments and Unassembled or Disassembled Entities Imported on Multiple Conveyances

Through this notice, and beginning on the effective dates described earlier in the document, CBP announces that importers choosing to file a single entry involving split shipments consistent with the provisions of 19 CFR 141.57(d)(1) or unassembled or disassembled entities consistent with the provisions of 19 CFR 141.58(d)(1) may pay estimated duties and fees attributable to those entries through the method set forth in the National Customs Automation Program (NCAP) test describing the periodic monthly payment statement process. The date of filing of that entry identifies the month in which entry is filed and establishes the obligation to pay estimated duties and fees by the 15th working day of the month following the month in which entry is filed.

Importers choosing to file incremental entries involving split shipments consistent with the provisions of 19 CFR 141.57(d)(2) or unassembled or disassembled entities consistent with the provisions 19 CFR 141.58(d)(2) as a special permit for immediate delivery after the arrival of the first portion (Incremental Release) also may pay estimated duties and fees attributable to that entry through the method set forth in the National Customs Automation Program (NCAP) test describing the periodic monthly payment statement process. The date that the importer obtains release of the first portion of the entity as provided in sections 141.57(e) or 141.58(e) will identify the month that the entry is filed and establishes the obligation to pay estimated duties and fees by the 15th working day of the month following the month in which entry is filed.

Previous Notices and Suspension of Regulations

All requirements and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice. Examples of such requirements and aspects are the rules regarding misconduct under the test and the required evaluation of the test (both of which are detailed in the notice published at 67 FR 21800 and 69 FR 5362).

During the testing of the Periodic Monthly Statement Process, CBP is suspending provisions in Parts 24, 141, 142, and 143 of the CBP regulations (Title 19 of the Code of Federal Regulations) pertaining to financial, accounting, entry procedures, and deposit of estimated duties and fees. Absent any specified alternate procedure, the current regulations apply.

Dated: May 26, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–8499 Filed 6–1–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–2006–0001]

RIN 1660–ZA13

Privacy Act of 1974; The National Flood Insurance Program (NFIP) Claims Appeals System of Records

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security gives notice that the Federal Emergency Management Agency is establishing a new system of records entitled ''The National Flood Insurance Program Claims Appeals Process.'' This appeals process is mandated by section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004.

DATES: The new system of records will be effective July 3, 2006, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments, identified by DHS DOCKET NUMBER: FEMA–2006–0001 by one of the following methods:

Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

E-mail: *FEMA-RULES@dhs.gov*. Include Docket Number FEMA–2006–0001 in the subject line of the message.

Fax: (202) 646–4536.

Mail: Rules Docket Clerk, Federal Emergency Management Agency, Office of General Counsel, Room 406, 500 C Street SW., Washington, DC 20472; Maureen Cooney, Acting Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rena Y. Kim, Privacy Act Officer, Room 406, 500 C Street, SW., Washington, DC 20472; (telephone) (202) 646–3949; Maureen Cooney, Acting Chief Privacy Office, 601 S. 12th Street, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, the Department of Homeland Security (DHS) is establishing a new system of records to be maintained by the Federal Emergency Management Agency (FEMA). The new system of records is entitled the ''National Flood Insurance Program (NFIP) Claims Appeals Process.''

Congress created the NFIP (42 U.S.C. 4001) in 1968 to reduce future flood losses through flood hazard identification, floodplain management (i.e., land use controls and building codes), and insurance protection. NFIP coverage is available to all owners and occupants of insurable property in a participating community upon payment of a premium.

FEMA was designated by Congress to be the administrator of the NFIP. In 1983, FEMA partnered with the private insurance industry in its efforts to expand the NFIP policy base. This partnership between FEMA and the private sector property insurance companies is termed the Write Your Own (WYO) program. Under the WYO program, private insurers agree to issue flood policies in their own name and take responsibility for policy administration, claims processing, marketing, and sales. Private insurers handle all claims issued in their name, and adjust and settle flood loss claims consistent with their general claims practices. Over 95 percent of flood polices in force are maintained by WYO Companies.

Because the WYO Companies are responsible for all administrative activities associated with the flood insurance policies they write, they also maintain policyholder information for

the policies they write. FEMA, however, has access to these records as part of its oversight role. Once FEMA obtains the WYO Company's records of an individual policyholder, the records become a part of FEMA's system of records.

The remaining policies in force are written and maintained directly by FEMA via a contractor known as the NFIP Servicing Agent, and are considered part of FEMA's system of records. The NFIP Servicing Agent serves as a private insurance company and writes NFIP flood insurance policies on behalf of the Federal government.

FEMA also utilizes a contractor to support program management and oversight activities. This contractor is responsible for the administration of FEMA's system of records for the NFIP insurance policy information.

Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (FIRA), 42 U.S.C. 4011, requires that FEMA establish an appeal process for flood insurance policyholders who wish to dispute decisions made by any insurance agent or adjuster, insurance company, or by a FEMA employer or contractor with respect to:

- Claims (request for payment associated with losses from floods);
- Proofs of Loss (statement of the amount claimed, sworn, and signed by the policyholder); and
- Loss estimates relating to the flood insurance policy.

The NFIP Appeals Procedure provides the policyholder a voluntary option for resolving problems relating to flood insurance without proceeding to a lawsuit. Because this appeals process is completely voluntary, a policyholder still has the option of instituting a lawsuit without utilizing this process. In other words, the appeals process is not an administrative prerequisite to the policyholder's option of proceeding directly to litigation.

When a policyholder opts to appeal, FEMA will request information relevant to their appeal that includes the following personally identifying information:

- *Individual Policyholder Name:* The name of the person requesting an appeal.
- *Policyholder Address:* Policyholder address/place where the loss occurred, which may be a home address.
- *Policyholder Telephone Number:* Policyholder telephone, where the individual can be reached, which may be a home phone number.
- *Personal Property Claimed:* A list of personal property claimed as damaged and the subject of the appeal and relevant information.
- *Policyholder statement of facts:* The policyholder's statement of why he is contesting the claim's disposition and supporting proof or records to document the policyholder's position.
- *Appeal letter from the policyholder.* May include any of the ''individually identifying'' information already described above.
- *Appeal decision letter from FEMA*—This decision letter will include FEMA's appeal decision and inform the policyholder of further recourse with respect to the disposition of the claim.

The appeals process authorized by FIRA is intended to resolve claim issues and is not intended to grant coverage or limits that are not provided by the policy contract. Filing an appeal does not waive any of the policyholder's requirements for perfecting a claim, nor does it extend any of the time limitations established in the policy insurance contract. Participating in the appeals process is completely voluntary on the part of the individual policyholder. The appeal process is not an administrative prerequisite to litigation, but is an additional remedy available to policyholders. Therefore, only the information required to resolve the dispute will be requested.

This proposed new system of records developed for the NFIP Claims Appeals Process will be used for this appeals process only.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number such as property address, or mailing address symbol, assigned to the individual. The NFIP Claims Appeals Process System is such a system of records.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the NFIP Claims Appeals Process system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

DHS/FEMA/Mitigation/Mitigation–1

SYSTEM NAME:

NFIP Claims Appeals Process.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The database will be maintained at FEMA Headquarters at 500 C Street, SW., Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers the individual NFIP policyholders who are appealing decisions on their flood insurance claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected from individual NFIP policyholders, who have voluntarily opted to appeal the disposition of their flood insurance claim. In addition, FEMA collects individual policyholder information from the WYO Companies that service the policies which are the subject of appeals in order to make a determination on these appeals. The ''individually identifying information'' collected includes the policyholders name, address where the loss occurred, telephone number, a list of personal property that is claimed to be damaged and is the subject of the appeal, the policyholder's statement of facts about the claim, the policyholder's statement why the claim's disposition is being disputed and supporting proof or records to document the policyholder's position, correspondence pertaining to the appeal which may include the foregoing individually identifying information, and FEMA's appeal decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act (FIRA) of 2004, 42 U.S.C. 4011.

PURPOSE(S):

These records are collected for the purpose of FEMA's review and determination on NFIP flood insurance individual policyholder's claim appeals, so that FEMA may determine whether additional payment to the individual policyholder is warranted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Government Accountability Office (GAO), DHS Office of the Inspector General (OIG), or other organization for the purposes of performing authorized audits or oversight of the NFIP program.

B. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

C. To FEMA contractors as necessary to provide an appeal resolution.

D. To the Department of Justice (DOJ), the United States Attorney's Office, or a consumer-reporting agency for further collection action on any debt in relation to the appeals process, when circumstances warrant.

E. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil or regulatory—the relevant records may be referred to an appropriate Federal, State, territorial, tribal, local, international, or foreign agency law enforcement authority or other appropriate agency charged with investigating or prosecuting such a violation or enforcing or implementing such law.

F. To DOJ or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (1) FEMA, or (2) any employee of FEMA in his/her official capacity, or (3) any employee of FEMA in his/her individual capacity where DOJ or FEMA have agreed to represent the employee, or (4) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation and when the records are determined by FEMA to be arguably relevant to the proceeding.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The hard copy files and the electronically scanned document files will be maintained at FEMA Headquarters at 500 C Street, SW., Washington, DC 20472.

RETRIEVABILITY:

Hard copy files and the electronically scanned document files are retrieved by the individual flood insurance policyholder's name or property address.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

Each authorized individual working on the NFIP appeals procedure will have access only to information necessary to perform his or her official duties. Activity logs (audit trails) are maintained for all operating systems, applications, and middleware. A periodic review is conducted to monitor all user access. Incident response procedures are established to address reported security incidents as quickly as possible. Use of the access database will be carefully monitored and reviewed on a periodic basis by the system administrator.

RETENTION AND DISPOSAL:

The paper copy of the appeal letter and supporting documentation that are sent to FEMA by the individual with the appeal letter, and FEMA's response letter reflecting its appeal decision constitute the official copy of the records. Electronically scanned copies will be kept as back up. FEMA will retain both the paper and electronic copies for six years and three months. This retention schedule has been approved by the National Archives and Records Administration (NARA). The NARA authority is N1–311–86–1 2A12 (a)(2) FIA File 12–2.

SYSTEM MANAGER AND ADDRESS:

Director of Claims, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

NOTIFICATION PROCEDURE:

A request for access to records in this system may be made in writing to the System Manager identified above, or to the Privacy Act Officer, DHS/FEMA, Office of General Counsel (GL), Room 406, 500 C Street, SW., Washington, DC 20472, in conformance with 6 CFR part 5, subpart B and 44 CFR part 6, which provide the rules for requesting access to Privacy Act records.

RECORD ACCESS PROCEDURES:

See Notification procedure above. Request for access must comply with DHS and FEMA regulations for Privacy Act requests.

CONTESTING RECORD PROCEDURES:

Policyholders typically contest their records with their service provider (WYO or NFIP Servicing Agent). Virtually all of theses disputes are successfully handled through that mechanism. However, policyholders may also contest their records using the process outlined in the Notification procedures section above. State clearly and concisely the information being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The ''individually identifying'' information may come from the individual NFIP policyholder and/or the entity servicing the policy.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: May 25, 2006.

Maureen Cooney,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E6–8625 Filed 6–1–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; Application for Immediate Family Member of U–1 Recipient; and U Nonimmigrant Status Certification; Forms I–918; I–918 Supplement A; and I–918 Supplement B.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for

review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 5, 2005, at 70 FR 72460. The notice allowed for a 60-day public comment period. USCIS received 55 comments on this information collection. These comments and any changes to the form as a result of these comments have been addressed in the supporting statement submitted to OMB.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 3, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add Form No. I–918, in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Application for Immediate Family Member of U–1 Recipient; and U Nonimmigrant Status Certification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–918; I–918 Supplement A; and I–918 Supplement B; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, Federal Government. This application permits victims of certain qualifying criminal activity and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–918—12,000 responses at 5 hours per response; Supplement A—24,000 responses at 1.5 hour per response; Supplement B—12,000 responses at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 108,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: May 30, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–8579 Filed 6–1–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–29]

Multifamily Project Applications and Construction Prior to Initial Endorsement

AGENCY: Office of the Chief Information Officer, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information provided is the application for HUD/FHA multifamily mortgage insurance. The information from sponsors and general contractors, and submitted by a HUD-approved mortgagee, is needed to determine project feasibility, mortgagor/contractor acceptability, and construction cost. Documentation from operators/managers of health care facilities is also required as part of the application for firm commitment for mortgage insurance. Project owners/sponsors may apply for permission to commence construction prior to initial endorsement.

DATES: Comments Due Date: July 3, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0029) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Project Applications and Construction Prior to Initial Endorsement.

OMB Approval Number: 2502–0029

Form Numbers: HUD–92013, HUD–92013–NHCF, HUD–92013–SUPP, HUD–92013–E, HUD–92264, HUD–92264–A, HUD–92264–HCF, HUD–92264–T, HUD–92273, HUD–92274, HUD–92326,HUD–92329,HUD–92331, HUD–92415, HUD–92447, HUD–92452, HUD–92485, HUD–91708, HUD–92010 and FM–1006.

Description of the Need for the Information and Its Proposed Use: Information provided is the application for HUD/FHA multifamily mortgage insurance. The information from sponsors and general contractors, and submitted by a HUD-approved mortgagee, is needed to determine project feasibility, mortgagor/contractor acceptability, and construction cost. Documentation from operators/managers of health care facilities is also required as part of the application for firm commitment for mortgage insurance. Project owners/sponsors may apply for permission to commence construction prior to initial endorsement.

Frequency of Submission: On occasion, annually, other required with each project application.

	Number of responses	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,284	16.21		21.08		438,941

Total Estimated Burden Hours: 438,941.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 25, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–8535 Filed 6–1–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950-FA–10]

Announcement of Funding Awards for Fiscal Year 2005; Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2005 Community Outreach Partnerships Centers (COPC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to establish and operate Community Outreach Partnership Centers that will conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and facilitate partnerships and outreach activities between institutions of higher education, local communities and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: Research activities which have practical application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing. On March 21, 2005 (70 FR13743), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $6.64 million. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded 13 applications for New Grants and 7 applications for New Directions. New Grants, which cannot exceed $400,000, are for institutions of higher education just beginning a COPC project. New Directions Grants, which cannot exceed $200,000, are for institutions of higher education that are undertaking new activities or expanding into new neighborhoods. These grants, with their grant amounts are identified below.

The Catalog of Federal Domestic Assistance number for this program is 14.511.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2005 Community Outreach Partnership Center (COPC) Communities Program Funding Competition, by Institution, Address and Grant Amount

COPC New Grants

1. State Center Community College District, Mr. Charles Francis, State Center Community College District, 1101 E. University Avenue, Fresno, CA 93741 Grant: $399,965.

2. University of Maine System, Ms. Kathy Hunt, University of Maine System, 5717 Corbett Hall, Office of Research & Sponsored Programs, Orono, ME 04469 Grant: $396,281.

3. Board of Regents of the University of Oklahoma, Dr. Shawn Schaefer, Board of Regents of the University of Oklahoma, 731 Elm Avenue, Room 134, Norman, OK 73019 Grant: $386,051.

4. University of South Carolina Research Foundation, Ms. Danielle McElwain, University of South Carolina Research Foundation, 901 Sumter Street, Byrnes Center, 5th Floor, Columbia, SC 29208 Grant: $394,536.

5. Niagra University, Mrs. Adrienne Leibowitz, Niagra University, Office of the President, Alumni Hall 1st Floor, Niagra University, NY 14109. Grant: $399,891.

6. Research Foundation of SUNY/SUNY Fredonia, Mrs. Maggie Bryan-Peterson, Research Foundation of SUNY/SUNY Fredonia, Grants Administration/Research Services, E20 Thompson Hall, Fredonia, NY 14063. Grant: $399,868.

7. The Regents of the University of California, Ms. Joan Kaiser, The Regents of the University of California, 3333 California Street, Suite 315, Contracts and Grants, San Francisco, CA 94143. Grant: $307,692.

8. University of Arizona, Mr. Corky Poster, University of Arizona, P.O. Box 3308, Tucson, AZ 85722. Grant: $400,000.

9. Research Foundation of CUNY/Lehman College CUNY, Dr. Marzie Jafari, Research Foundation of CUNY/Lehman College CUNY, 250 Bedford Park Boulevard West (2501 Grand Concourse), Bronx, NY 10648. Grant: $354,109.

10. Research Foundation of SUNY, Mr. Jeffery Schieder, Research Foundation of SUNY, 520 Lee Entrance, The UB Commons, Suite 211, Amherst, NY 14228. Grant: $359,050.

11. Research Foundation of CUNY for Bronx Community College, Ms. Carin Savage, Research Foundation of CUNY for Bronx Community College, University Avenue and West 181 Street, Bronx, NY 10453. Grant: $400,000.

12. Massachusetts Institute of Technology, Ms. Priscilla Caissie, Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Grant: $399,999.

13. Adams State College, Ms. Mary Hoffman, Adams State College, 208 Edgemont Street, School of Business, Room 115, Alamosa, CO 81101. Grant: $400,000.

COPC New Directions

1. Northern Essex College, Mrs. Mayte Rivera, Northern Essex College, 79 Amesbury Street, Lawrence, MA 01830. Grant: $198,343.

2. University of Northern Iowa, Mr. R. Allen Hays, University of Northern Iowa, 122 Land Hall, Grants and Contract Administration, Cedar Falls, IA 50614. Grant: $199,943.

3. Louisiana State University and A&M College, Dr. Katrice Albert, Louisiana State University and A&M College, 330 Thomas Boyd, Baton Rouge, LA 70803. Grant: $198,923.

4. Research Foundation of the State University at Binghampton, Ms. Allison Alden, Research Foundation of the State University at Binghampton, P.O. Box 6000, Bingham, NY 13760. Grant: $199,999.

5. Curators of the University of Missouri at St. Louis, Ms. Kay Gasen, Curators of the University of Missouri at St. Louis, One University Boulevard, St. Louis, MO 63121. Grant: $199,893.

6. University of Denver (Colorado Seminary), Ms. Lynn Backstrom-Funk, University of Colorado (Colorado Seminary), 2199 South University Boulevard, Denver, CO 80208. Grant: $200,000.

7. Board of Regents for the University of Nebraska-Lincoln, Dr. Miguel Carranza, Board of Regents for the University of Nebraska-Lincoln, 312 N. 14th Street, Alexander Building West, Lincoln, NE 68508. Grant: $199,952.

Dated: May 26, 2006.

Darlene F. Williams,

Assistant Secretary.

[FR Doc. E6–8533 Filed 6–1–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–11]

Announcement of Funding Awards for Fiscal Year 2005 Hispanic-Serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2005 Hispanic-Serving Institutions Assisting Communities Program (HSIAC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of Title I of the Housing and Community Development Act of 1974 as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Hispanic-Serving Institutions Assisting Communities Program was approved by Congress under Section 107 of the Community Development Block Grant (CDBG) appropriations for the Fiscal Year 2005, and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.514.

On March 21, 2005 (70 FR 13711), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $6.64 million in Fiscal Year 2005 for the HSIAC Program. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below and, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards as follows (More information about the winners can be found at *http://www.oup.org.*):

List of Awardees for Grant Assistance Under the FY 2005 Hispanic-Serving Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Region VI

1. Sul Ross State University, Mr. Gregory Schwab, Sul Ross State University, 400 North Harrison, PO Box C–119, Alpine, TX 79832. Grant: $599,999.

2. University of Texas at Brownsville and Texas Southmost College, Mr. Jim Holt, University of Texas at Brownsville and Texas Southmost College, 80 Fort Brown, WTCE, Brownsville, TX 78520. Grant: $600,000.

Region IX

3. West Hills Community College Coalinga, Ms. Patty Scroggins, West Hills College Coalinga, 9900 Cody Avenue, Coalinga, CA 93210. Grant: $600,000.

4. California State University-Stanislaus, Dr. Steven Filing, California State University-Stanislaus, 801 West Monte Vista Avenue, Turlock, CA 95382. Grant: $596,399.

5. California State University-Fullerton Foundation, Dr. Donald Castro, California State University-Fullerton Foundation, 2600 E. Nutwood Avenue, Suite 275, Fullerton, CA 92831. Grant: $599,525.

6. Foundation of California State University-Monterey Bay, Dr. Seth Pollack, Foundation of California State University-Monterey Bay, 100 Campus Center, Seaside, CA 93933. Grant: $599,912.

7. Southwestern College, Ms. Cynthia Nagura, Southwestern College, 900 Otay Lakes Road, Chula Vista, CA 91910. Grant: $600,000.

8. Los Angeles Mission College, Dr. Adriana Barrera, Los Angeles Mission College, 13356 Eldridge Avenue, Sylmar, CA 91342. Grant: $595,080.

9. The National Hispanic University, Dr. David Johnson, The National Hispanic University, 14271 Story Road, San Jose, CA 95127. Grant: $599,650.

10. Pima County Community College District, Ms. Imelda Cuyugan, Pima County Community College District, 4905C East Broadway Boulevard, Tucson, AZ 85709. Grant: $577,561.

Region X

11. Heritage University, Dr. Mary Alice Muellerleile, Heritage University, 3240 Fort Road, Toppenish, WA 98948. Grant: $600,000.

Dated: May 26, 2006.

Darlene F. Williams,

Assistant Secretary.

[FR Doc. E6–8534 Filed 6–1–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4590–FA–7A]

Announcement of Funding Awards for Fiscal Year 2005; Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2005 Doctoral Dissertation Research Grant (DDRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral candidates complete dissertations on topics that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The DDRG Program was created as a means of expanding the number of researchers conducting research on subjects of interest to HUD. Doctoral candidates can receive grants of up to $25,000 to complete work on their dissertations. Grants are for a two-year period.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. This Office also administers PD&R's other grant programs for academics.

The Catalog of Federal Domestic Assistance number for this program is 14.516.

May 21, 2005, (70 FR 13763), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $400,000 in FY 2005 for the DDRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards as follows (More information about the winners can be found at *http://www.oup.org.*):

List of Awardees for Grant Assistance Under the FY 2005 Doctoral Dissertation Reseach Grant Program Funding Competition, by Institution, Address, Grant Amount and Name of Student Funded

1. The Trustee of Princeton University, Michelle Christy, The Trustee of Princeton University, PO Box 36, 4 New South Building, Princeton, NJ 08544. Grant: $12,308 to Nicole Esparza.

2. Temple University, Roseanne Wallin, Temple University, 1601 North Broad Street, 506 USB, 083–45, Philadelphia, PA 19122. Grant: $25,000 to Gretchen Suess.

3. Massachusetts Institute of Technology, Langley Keyes, Massachusetts Institute of Technology, 77 Massachusetts Avenue, Room 9–523, Cambridge, MA 02139. Grant: $25,000 to Gretchen Weismann.

4. Ohio State University Research Foundation, Laurie Rosenberg, Ohio State University Research Foundation, 1960 Kenny Road, Columbus, OH 43210. Grant: $22,340 to Griff Tester.

5. Rector and Visitors of the University of Virginia, Gerald Kane, Rector and Visitors of the University of Virginia, PO Box 400195, Charlottesville, VA 22904. Grant: $24,930 to Scott Davis.

6. University of Chicago, Glida Reyes, University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. Grant: $25,000 to Catherine Fennell.

7. President and Fellow of Harvard, Jenny Schuetz, President and Fellow of Harvard, 1350 Massachusetts Avenue, Holyoke Center, Suite 600, Cambridge, MA 02138. Grant: $22,400 to Jenny Schuetz.

8. The Regents of the University of California, Susan Hedley, The Regents of the University of California, 336 Sproul Hall, MC 5940, Berkeley, CA 94720. Grant: $25,000 to Matthew Marr.

9. The Regents of the University of California, Kenneth Castro-Oistad, The Regents of the University of California, 10920 Wilshire Boulevard, Suite 1200,

Berkeley, CA 90024. Grant: $25,000 to Jane Rongerude.

10. Arizona Board of Regents, Joseph Galaskiewicz, Arizona Board of Regents, PO Box 3308, Tucson, AZ 85722. Grant: $22,034 to George Hobor.

11. Kent State University, Karen Mossberger, Kent State University, Research and Graduate Studies, PO Box 5190, 134 Auditorium Bldg, Terrace Drive, Portage, OH 44242. Grant: $25,000 to Michele Gilbert.

12. Tufts University, Johanna Dwyer, Tufts University, Jaharis Building, 150 Harrison Avenue, Boston, MA 02111. Grant: $24,981 to Shirley Chao.

13. Massachusetts Institute of Technology, Priscilla Caissie, Massachusetts Institute of Technology, 77 Massachusetts Avenue, Room 9–523, Cambridge, MA 02139. Grant: $25, 000 to Ryan Allen.

14. North Carolina State University, Matt Ronning, North Carolina State University, 240 Administrative Services III, Campus Box 7514, Raleigh, NC 27695. Grant: $17,5000 to Jaren Pope.

15. Board of Regents, University of Nebraska-Omaha, Mary Farhnam, Board of Regents, University of Nebraska-Omaha, 6001 Dodge Street, EAB 203, Omaha, NE 68182. Grant: $25,0000 to Patrick McNamara.

16. New York University, Linda Reiss, New York University, 15 Washington, Place, 1H, New York, NY 10003. Grant: $24,600 to Keri-Nicole Dillman.

17. Ohio State University Research Foundation, Tom Gegorie, Ohio State University Research Foundation, 1960 Kenny Road, Columbus, OH 43210. Grant: $24,735 to Barbra Teater.

Dated: May 26, 2006.

Darlene F. Williams,

Assistant Secretary.

[FR Doc. E6–8530 Filed 6–1–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–07]

Announcement of Funding Awards for Fiscal Year 2005; Early Doctoral Student Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2005 Early Doctoral Student Research Grant (EDSRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral students cultivate their research skills through the preparation of research manuscripts that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8106, Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The EDSRG Program provides funds to eligible doctoral students to cultivate their research skills through preparation of research manuscripts that focus on housing and urban development issues. Students, who are in the early stages of their doctoral studies, have 12 months to complete a major research study. The maximum amount to be awarded to doctoral student is $15,000.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. This Office also administers PD&R's other grant programs for academics.

The Catalog of Federal Domestic Assistance number for this program is 14.517.

May 21, 2005, (70 FR 13763), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $150,000 in FY 2005 funds for the EDSRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below and, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards as follows (More information about the winners can be found at *http://www.oup.org*):

List of Awardees for Grant Assistance Under the FY 2005 Early Doctoral Student Research Grant Program Funding Competition, by Institution, Address, Grant Amount and Name of Student Funded

1. University of Southern California, Dr. Dowell Myers, University Park Campus, School of Policy, Planning & Development, Los Angeles, CA 90007. Grant: $15,000 to Cathy Yang Liu.

2. The Regents of the University of Minnesota, Ms. Marilyn Bruin, The Regents of the University of Minnesota, Office of Sponsored Projects, College of Human Ecology, 200 Oak Street, SE., Suite 450, Minneapolis, MN 55455. Grant: $15,000 to Kim Skobba.

3. Rutgers, The State University of New Jersey, Ms. Simona Turcu, Rutgers, The State University of New Jersey, Office of Research and Sponsored Programs, Edward J. Bloustein School, 3 Rutgers Plaza, New Brunswick, NJ 08901. Grant: $15,000 to Corianne Scally.

4. The Regents of the University of California, Ms. Eileen Lamb, The Regents of the University of California, Office of Research Administration, School of Social Ecology, 300 University Tower, Irvine, CA 92697. Grant: $15,000 to Lyndsay Boggess.

5. University of Southern California, Mr. Stuart Gabriel, University of Southern California, University Park Campus, School of Policy, Planning & Development, Los Angeles, CA 90089. Grant: $15,000 to Abhishek Mamgain.

6. Case Western Reserve University, Mr. Richard Cole, Case Western Reserve University, MSASS, 10900 Euclid Avenue, Cleveland, OH 44106. Grant: $15,000 to Leslie Strnisha.

7. Syracuse University, Mr. Edward Kiewra, Syracuse University, Center for Policy Research, Office of Sponsored Programs, 113 Bowne Hall, Syracuse, NY 13244. Grant: $15,000 to Michael Eriksen.

8. President and Fellows of Harvard College, Ms. Laura Tach, President and Fellows of Harvard College, John F. Kennedy School of Government, Office for Sponsored Programs, 1350 Massachusetts Avenue, Suite 600, Cambridge, MA 02138. Grant: $8,455 to Laura Tach.

9. The University of Akron, Ms. Lynn Clark, The University of Akron, Department of Sociology, 302 Buchtel Common, Akron, OH 44325. Grant: $15,000 to Lynn Clark.

10. Virginia Polytechnic Institute & State University, Ms. Elaine Broadstone, Virginia Polytechnic Institute & State University, Office of Sponsored Programs, 460 Turner Street, Suite 306,

Blacksburg, VA 24060. Grant: $15,000 to Kimberly Mitchell.

Dated: May 26, 2006.

Darlene F. Williams,

Assistant Secretary.

[FR Doc. E6–8531 Filed 6–1–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

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

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information lien at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 25, 2006.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

[FR Doc. 06–4991 Filed 6–1–06; 8:45am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4995–N–06]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2006; Additional Revision

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fair Market Rents (FMRs) for Fiscal Year 2006, Additional Revision.

SUMMARY: This notice updates the FMRs for the metropolitan areas of Aquadilla, Arecibo, Barranquitas, Caguas, Fajardo, Guayama, Ponce, and San Juan, PR.

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

FOR FURTHER INFORMATION: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, a table of 40th percentile recent mover rents for those areas currently at the 50th percentile FMRs will be provided on the same website noted above. Any questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

Update

In response to numerous public comments about Puerto Rico's FY2006 FMRs, HUD conducted a detailed analysis of the Random Digit Dialing rent surveys (RDDs) that were used in setting Puerto Rico's FY2006 FMRs. According to the RDD surveys, 57 percent of all Puerto Rico rental units lacked hot and cold piped water in the kitchen, which makes them substandard units that would be ineligible for inclusion in the voucher program. HUD also compared the housing characteristics of the RDD sample with detailed information from the 2000 Census to correct for sampling bias. The bias occurs because HUD can only survey land-line telephones and yet, in Puerto Rico, there is a greater percentage of households using cell-phones instead of land-line telephones compared to the United States. A detailed analysis of the RDD surveys and weighting corrections to compensate for these factors produces changes in the FY2006 FMR estimates that HUD is implementing with this notice.

FMRs for the affected areas are increased as follows:

2006 Fair market rent area	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Aguadilla-Isabela-San Sebastian, PR MSA	$300	$325	$361	$464	$519
Arecibo, PR HMFA	316	343	381	520	609
Barranquitas-Aibonito-Quebradillas, PR HMFA	311	336	374	476	547
Caquas, PR MSA	347	375	418	579	698
Fajardo, PR MSA	360	392	435	632	763
Guayama, PR MSA	316	341	380	539	668
Ponce, PR MSA	368	399	442	614	700
San Juan-Guaynabo, PR HMFA	385	419	465	607	723

Dated: May 24, 2006.

Darlene F. Williams,

Assistant Secretary for Policy, Development and Research.

[FR Doc. E6–8532 Filed 6–1–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of the Northern Distinct Population Segment of the Copperbelly Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The U.S. Fish and Wildlife Service (Service, we), announces a 5-year review of the northern distinct population segment (DPS) (*i.e.*, in Michigan, Ohio, and Indiana north of 40 degrees north latitude) of the copperbelly water snake (*Nerodia erythrogaster neglecta*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). We request any information on the snake that has become available since its original listing in 1997 (62 FR 4183) that has a bearing on its classification as threatened.

A 5-year review is a periodic process conducted to ensure that the classification of a listed species is appropriate. It is based on the best scientific and commercial data available at the time of the review. Based on the results of this 5-year review, we will make a finding of whether this species is properly classified under section 4(c)(2)(B) of the Act.

DATES: Information must be received no later than August 1, 2006.

ADDRESSES: Submit information to the U.S. Fish and Wildlife Service, Ecological Services Field Supervisor, 2651 Coolidge Road, Suite 101, East Lansing, Michigan 48823–6316, or electronic information to: *fw3copper bellywatersnake5year@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Tansy, East Lansing Ecological Services Field Office (see **ADDRESSES**); telephone (517) 351–6289; facsimile (517) 351–1443. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: Under the Act, the Service maintains a list of endangered and threatened wildlife and plant species (List) at 50 CFR 17.11 and 17.12. Amendments to the List through final rules are published in the **Federal Register**. The Lists of wildlife and plants are available on our Internet site at *http://www.fws.gov/endangered/wildlife/html#species*. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every five years. Section 4(c)(2)(B) requires that we determine (1) whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. Using the best scientific and commercial data available, a species will be considered for delisting if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This announces our active review of the northern DPS of the copperbelly water snake.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best scientific and commercial data available, we are soliciting new information from the public, concerned governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the northern DPS of the copperbelly water snake. A 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Requested information includes (A) species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to taxonomic or nomenclature changes, identification of erroneous information contained in the List, and improved analytical methods.

The copperbelly water snake was listed as a distinct population segment of a vertebrate taxon. The listed DPS occurs in Michigan, Ohio, and Indiana north of 40 degrees north latitude (approximately Indianapolis, Indiana). A distinct vertebrate population segment is defined in the February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). For a population to be listed under the Act as a DPS, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment endangered or threatened?). Distinct population segments of vertebrate species, as well as subspecies of all listed species, may be proposed for separate reclassification or for removal from the List. As required by the DPS policy, we will assess the validity of the current DPS designation during the 5-year review. The southern population (*i.e.*, in Illinois, Kentucky, and Indiana south of 40 degrees north latitude) is not listed as a threatened species at this time and is not part of this 5-year review.

Electronic Access and Filing

You must submit electronic information (see **ADDRESSES**) in MS Word, Rich Text format, or Plain Text format, and include ''Copperbelly Water Snake 5-Year Review Comments'' in the title line.

You may submit your comments and materials to the U.S. Fish and Wildlife Service, Ecological Services Field Supervisor (see **ADDRESSES**) no later than the close of the comment period (see **DATES**) to allow us adequate time to conduct this 5-year review. If you do not respond to this request for information but subsequently possess information on the status of this species, we are eager to receive new information regarding federally listed species at any time.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to

withhold your name or address, you must state this request prominently at the beginning of your comment. We will not, 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. Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES**).

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 19, 2006.

Wendi Weber,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. E6–8565 Filed 6–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for the Paiute Cutthroat Trout Restoration Project, Carson-Iceberg Wilderness, Humboldt-Toiyabe National Forest, Alpine County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent of public scoping.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), the Fish and Wildlife Service (Service) as the lead agency, advises the public that we intend to gather information necessary to prepare, in cooperation with the United States Department of Agriculture Forest Service (Forest Service), an Environmental Impact Statement (EIS) on the proposed Paiute Cutthroat Trout Restoration Project (Project). The Forest Service is a cooperating agency because activities within designated wilderness on National Forest System lands require Forest Service approval (36 CFR 261.9f, 293.6c).

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS; (3) announce the initiation of a 30-day public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS.

DATES: A public meeting will be held on: June 19, 2006 from 4 to 7 p.m. Written comments should be received on or before July 3, 2006.

ADDRESSES: The public meeting will be held at Turtle Rock Park Community Center 17300 State Route 89 Markleeville, California 96120. Information, written comments, or questions related to the preparation of the EIS and the NEPA process should be submitted to Robert D. Williams, Field Supervisor, Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502; or FAX (775) 861–6301. Comments may be submitted electronically to *fw8pctcomments@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Chad Mellison (See **ADDRESSES**) at (775) 861–6300.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Chad Mellison (See **ADDRESSES**) at (775) 861–6300 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Authority

This action is done in accordance with Recovery implementation section 4(f)(2) of the Endangered Species Act of 1973, as amended (ESA).

Background

At the time of its original listing as endangered under the Endangered Species Protection Act of 1966, non-native trout were considered a threat to the Paiute cutthroat trout (PCT; *Oncorhynchus clarki seleniris*). In 1975, PCT were reclassified as threatened under the Endangered Species Act of 1973, and a 4(d) rule was issued to facilitate management between California Department of Fish and Game and the Service. In order to recover the subspecies, non-native trout need to be removed from their historic habitat and PCT reintroduced as specified in the 2004 Revised PCT Recovery Plan. Without this project, PCT in the Silver King drainage will continue to be at risk from an illegal introduction of non-native trout and/or stochastic (one time) events such as a large fire or flood. Recovery of the species cannot be achieved without this project and the long-term survival of the species will be in doubt.

We propose to eradicate non-native trout with the piscicide rotenone from 14.7 kilometers (9.1 miles) of historic PCT habitat, in Silver King Creek, from Llewellyn Falls downstream to Silver King Canyon as well as the accessible reaches of three small named tributaries: Tamarack Creek, Tamarack Lake Creek, the lower reaches of Coyote Valley Creek downstream of barrier falls, and Tamarack Lake.

Environmental Impact Statement

The Service has selected Entrix to prepare the EIS. Entrix will prepare the EIS under the supervision of the Service, which will be responsible for the scope and content of the NEPA document.

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct and environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the Services' environmental review. Alternatives considered for analysis in an EIS may include: Variations in the scope of proposed activities; variations in the location, amount, and types of conservation; variations in activity duration; or, a combination of these elements. In addition, the EIS will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socio-economics, and other environmental issues that could occur with the implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

The EIS will consider the proposed action, no action, and a reasonable range of alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS. The alternatives to be considered for analysis in the EIS may include: Various fish removal methods; variations in timing; or, a combination of these elements.

Request for Comments

The primary purpose of the scoping process is for the public to assist the Services in developing the EIS by identifying important issues and

alternatives related to the proposed action. A public meeting will be held on June 19, 2006 as noted in the **DATES** section above.

Written comments from interested parties are welcome to ensure that the full range of issues related to the proposed action are identified.

All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the office listed in the **ADDRESSES** section of this notice.

The Service requests that comments be specific. In particular, we request information regarding: Direct, indirect, and cumulative impacts of implementation of the proposed action; other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; existing environmental conditions in the project area; other plans or projects that might be relevant to this proposed project; and minimization and mitigation efforts.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), Council on the Environmental Quality Regulations (40 CFR parts 1500–1518), other applicable Federal laws and regulations, and applicable policies and procedures of the Services. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

Dated: May 23, 2006.

John Engbring,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 06–4918 Filed 6–1–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID 111 1610 DP 049D DBG060003]

Notice of Availability of Draft Snake River Birds of Prey National Conservation Area Resource Management Plan and Environmental Impact Statement, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan/Environmental Impact Statement (Draft RMP/EIS) for the Snake River Birds of Prey National Conservation Area (NCA).

DATES: To assure that they will be considered, BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: The Draft RMP/EIS will be posted on the Internet at *http://www.id.blm.gov/planning* and will be mailed to those who have indicated that they want a hard copy or a compact disk.

You may submit comments by any of the following methods:

- E-mail: *srbp@contentanalysisgroup.com.*
- Fax: 801–397–2601.
- Mail: Snake River Birds of Prey NCA, C/O Content Analysis Group, P.O. Box 2000, Bountiful, UT 84011–2000.

FOR FURTHER INFORMATION CONTACT: John Sullivan, NCA Manager, Bureau of Land Management, Four Rivers Field Office, 3948 Development Ave., Boise, Idaho 83705, phone—208–384–3300.

SUPPLEMENTARY INFORMATION: The NCA encompasses approximately 484,000 acres of public land along 81 miles of the Snake River. The NCA was established on August 4, 1993 by Public Law 103–64 for the conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated with the area.

Issues identified through public scoping to be addressed in the planning process include the following:

- *Vegetation:* Substantial losses of native shrub and perennial grass communities have resulted in smaller and less stable small mammal raptor prey populations, which have secondarily impacted raptor populations.
- *Fuels Management:* The landscape-scale change from perennial to annual plant communities has altered the natural fire regime, resulting in more frequent fires, and greater potential for damage to private improvements in the wildland urban interface.
- *Recreation:* The burgeoning human population and associated development in the surrounding area have increased recreation-related impacts on soils and vegetation, predominately through off-road vehicle use. In addition, unregulated recreational shooting has caused safety conflicts with military training activities.
- *National Guard:* Military activities need to be conducted in a way that reduces impacts to soils and vegetation, especially shrub communities.

Four alternative strategies are described and analyzed, as follows:

Alternative A: (No-Action) Serves as a baseline for comparison with the other three alternatives, and proposes no major changes in resource management.

Alternative B: Emphasizes a moderate level of raptor and raptor prey habitat restoration and rehabilitation, while accommodating recreation, military, and commodity uses that are compatible with the purposes of the NCA.

Alternative C: Places a heavy emphasis on restoration and rehabilitation of all non-shrub areas outside the National Guard's Orchard Training Area (OTA) to improve raptor and raptor prey habitat. Livestock grazing preference would be eliminated, and recreation and military training would be substantially restricted to support habitat restoration projects.

Alternative D: (Preferred Alternative) Places a heavy emphasis on restoration of all non-shrub areas outside the OTA to improve raptor and raptor prey habitat, with moderate restrictions on recreation, military, and commodity uses.

Decision Process: Depending on the number and types of comments on the Draft RMP/EIS, the Proposed RMP/Final EIS is expected to be published in late 2006. A Notice of Availability of the Proposed RMP/Final EIS will be published in the **Federal Register** and through local news media. A notice of an approved Record of Decision will be published in the **Federal Register** following resolution of any protests or appeals on the Proposed RMP/Final EIS. The official responsible for the decision is the BLM Idaho State Director.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be

available for public inspection in their entirety. Copies of the Draft Snake River Birds of Prey National Conservation Area Resource Management Plan/EIS are available in the Boise District Office at the above address.

Dated: February 14, 2006.

John Sullivan,

National Conservation Area Manager.

[FR Doc. E6–8619 Filed 6–1–06; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Second Review)]

Gray Portland Cement and Cement Clinker From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on October 3, 2005 (70 FR 57617) and determined on January 6, 2006 that it would conduct an expedited review (71 FR 5069, January 31, 2006).

The Commission transmitted its determination in this review to the Secretary of Commerce on May 31, 2006. The views of the Commission are contained in USITC Publication 3856 (May 2006), entitled *Gray Portland Cement and Cement Clinker from Japan: Investigation No. 731–TA–461 (Second Review).*

Issued: May 26, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–8556 Filed 6–1–06; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–565]

In the Matter of Certain Ink Cartridges and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Amending 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'') of the presiding administrative law judge (''ALJ'') granting the motion of complainants to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of the public version 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–ON–LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Oregon, Epson America, Inc. of California, and Seiko Epson Corporation of Japan. 71 FR 14720 (2006).

The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of claim 7 of U.S. Patent No. 5,615,957; claims 18, 81, 93, 149, 164 and 165 of U.S. Patent No. 5,622,439; claims 83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34 and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1–3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31 and 34 of U.S. Patent No. 6,550,902; and claims 1, 10 and 14 of U.S. Patent No. 6,955,422. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 24 companies located in China, Germany, Hong Kong, Korea, and the United States. The ALJ set June 25, 2007, as the target date for completion of the investigation.

The ALJ issued the subject ID on May 3, 2006. The ID grants complainants' motion to add infringement of claim 1 of United States Patent No. 7,008,053 and claims 21, 45, 53 and 54 of United States Patent No. 7,011,397 to the complaint and notice of investigation, to submit supplemental information, and to include an additional accused device in the investigation. The ALJ found that there was ''good cause'' to permit the new allegations of infringement because the two patents had issued after the complaint was filed in this investigation and discovery was still in its early stages. The Commission investigative attorney supported complainants' motion. Three respondents opposed the motion. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: May 26, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–8557 Filed 5–31–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on May 4, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the

Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Siemens Energy & Automation, Alpharetta, GA has been added as a new associate member to this venture; and BHA Group, Inc. has been acquired by GE Energy, Kansas City, MO and is now listed as an associate member. Also, ABB Automation, Inc. has changed its name to ABB Incorporated, Norwalk, CT; Refratechnik GmbH has changed its name to Refratechnik North America Inc., St. Louis, MO; and W.R. Grace & Company has changed its name to Grace Construction Products, Cambridge, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on January 19, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 2, 2006 (71 FR 10705).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–5037 Filed 6–1–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Vehicle Infrastructure Integration Consortium

Notice is hereby given that, on May 1, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Vehicle Infrastructure Integration Consortium (''VIIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: BMW of North America, LLC, Woodcliff, NJ; DaimlerChrysler Corporation, Auburn Hills, MI; Ford Motor Company, Dearborn, MI; Honda R&D Americas, Inc., Southfield, MI; Nissan Technical Center North America, Inc., Farmington Hills, MI; and Volkswagen of America, Inc., Auburn Hills, MI. the general area of VIIC's planned activity is evaluation of the viability of development and deployment of a national infrastructure to enable data collection and exchange in real time between vehicles and between vehicles and the roadway.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–5036 Filed 6–1–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act; Public Announcement

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., Tuesday, June 6, 2006.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Chief of Staff, and Section Administrators.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: May 30, 2006.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 06–5081 Filed 5–31–06; 10:01 am]

BILLING CODE 4140–31–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. L–11258, et al.]

Proposed Exemptions; Retail Clerks Welfare Trust Health and Welfare Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____ , stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retail Clerks Welfare Trust Health and Welfare Plan (the Plan) Located in Seattle, Washington

[Application No. L–11258]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply, effective July 1, 2005, to the purchase by Plan participants and beneficiaries of prescription drugs from pharmacies established and maintained by contributing employers to the Plan, or their affiliates (the Custom Network), which are parties in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The terms of each transaction are at least as favorable to the Plan as those the Plan could obtain in a similar arm's-length transaction with an unrelated third party;

(b) All determinations regarding which party in interest pharmacies, if any, may participate in the Custom Network, will be made by the Plan's independent fiduciary based on objective standards developed by the independent fiduciary in reliance on information provided by NMHCrx, the Plan's Pharmacy Benefits Manager, an entity which is independent of any contributing employer to the Plan, and the Plan's independent actuarial consultants;

(c) At least 50% of the providers participating in the Custom Network are pharmacies of contributing employers other than the employer of any individual Plan participant;

(d) In the aggregate, on an on-going basis, the costs for each plan year for the Plan from participants using the Custom Network pharmacies will be at least one percentage point less than would be the costs through the use of NMHCrx's preferred provider network pharmacies (the PPN pharmacies);

(e) In the aggregate, on an on-going basis, the costs for each plan year for the Plan from participants using the PPN pharmacies will be significantly less than costs for the retail purchase of prescription drugs from non-participating pharmacies;

(f) The Plan's independent fiduciary will monitor the subject transactions to ensure that all conditions of the exemption, including conditions (d) and (e) regarding pricing, continue to be satisfied during each plan year; and

(g) All future updated summary plan descriptions, furnished to participants, will state that the purchase price of a particular prescription drug at Custom Network pharmacies may be less than the purchase price that is available either through the use of the PPN pharmacies or through retail non-participating pharmacies, and that the cost of prescription drugs in the aggregate over the course of a 12-month plan year will be: (i) Lower at Custom Network pharmacies than at the PPN pharmacies and (ii) Significantly lower at the Custom Network pharmacies than at non-participating retail pharmacies.

Effective Date: If the proposed exemption is granted, it will be effective July 1, 2005.

Summary of Facts and Representations

1. The Plan is a multi-employer welfare benefit plan, which has been in existence since June 18, 1957. The Plan was established to provide health and welfare benefits, including life, sickness, accident and other benefits for Plan participants and their beneficiaries. The Plan is directed by a twelve-person Board of Trustees (the Trustees). The six Trustees representing labor are appointed by the United Food and Commercial Workers Local Union 1105 (the Union). The six employer Trustees are appointed by Allied Employers, Inc., a trade association of which the Plan's contributing employers are members. The Plan currently has approximately 27,600 participants, and it covers approximately 30,700 beneficiaries as well, so that the total number of participants and related family members affected by the subject transactions is approximately 58,300.

2. The applicant represents that the Plan has a long established and on-going relationship with a third-party administrator, Zenith Administrators, Inc. (Zenith). Prior to October 1, 1999, Zenith processed all pharmacy benefit claims for the Plan. Participants paid the total prescription cost and then submitted claim forms to Zenith for reimbursement of the portion in excess of the required co-payment.

3. In 1999, the Plan's Board of Trustees asked the Plan's consultants, Mercer Human Resource Consulting (Mercer) and The Segal Company (together, the Consultants) [1] to conduct a search for a Pharmacy Benefits Manager (PBM) to take over as primary processor for pharmacy benefit claims. Pursuant to that search, Pharmaceutical Care Network (PCN) was selected as the entity most able to fill the needs of the Plan. Effective October 1, 1999, PCN became the PBM for the Plan. Effective September 1, 2003, National Medical Health Card Systems, Inc. (NMHCrx) became the PBM for the Plan, replacing PCN. NMHCrx is not affiliated with Zenith, the Plan or any contributing employer. The agreement with NMHCrx includes a 90-day termination clause which permits the Plan to terminate the contract, without cause, and without penalty, upon 90 days advance written notice.

4. NMHCrx, headquartered at Port Washington, New York, has been managing prescription drug programs since 1981 and has a nationwide network of over 53,000 pharmacies. It manages the prescription benefits of more than 1.5 million participants in governmental, single employer and multiemployer plans. NMHCrx is a public company with its shares trading on NASDAQ. NMHCrx is an independent organization not related to Zenith, the Plan or the employers

[1] In 2003, The Segal Corporation was replaced as one of the Consultants by Cheiron, a firm of financial consultants and actuaries with offices in Washington, DC, McLean, Virginia and Charlotte, North Carolina. Cheiron and Mercer continue to provide financial, acturial and general consulting to the Plan.

maintaining the Plan. The applicant represents that the transactions described herein are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

5. NMHCrx maintains an extensive system of participating pharmacies in its preferred provider network (*i.e.*, the PPN pharmacies). In addition, NMHCrx maintains a Custom Network consisting of pharmacies that are, or are owned by, the Plan's participating employers or their affiliates. Thus, some of the pharmacies in the Custom Network are part of corporations that are employers of employees covered by the Plan; the other pharmacies in the Custom Network are wholly-owned by corporations that have affiliates whose employees are covered by the Plan.

6. NMHCrx also receives rebates from the drug manufacturers and, pursuant to the agreement with the Plan, pays over a portion of such rebates to the Plan. The parties have also memorialized agreed-upon terms regarding rebates due to the Plan from NHMCrx. The pricing and rebates are disclosed by NMHCrx to the Plan as part of its mandatory periodic reporting to the Plan. The records are open to examination pursuant to the audit provisions of the contract. The Plan and NMHCrx have agreed to specific dispensing fees and drug pricing. These terms are stated in the contract. For purchases made at NMHCrx PPN pharmacies, the Plan will pay the lower of (i) an agreed discount from average wholesale price (brand) or maximum allowable cost (generic) and (ii) the ''usual and customary'' charge for the drug. NMHCrx is obligated to maintain records needed to establish the cost the Plan pays for each drug. These records, which are to be maintained for the year that the Plan pays for the drugs and the following seven years, will be available for inspection or audit by the Plan at the offices of NMHCrx on reasonable notice during regular business hours.[2]

7. Plan participants and beneficiaries may acquire their prescription drugs through the regular PPN or the Custom Network established by NMHCrx. This choice is described in the Plan's summary plan description and other communication materials. NMHCrx adjudicates prescription claims that have been submitted and performs claims-related processing functions, not limited to determining the validity and the accuracy of the claims submitted. NMHCrx receives a fee which is paid by the Plan.[3] The applicant represents that all Plan fiduciaries are aware of fees and compensation to be paid by the Plan. NMHCrx's performance and competitiveness are monitored by the Plan's third party administrator, Zenith, and the Consultants.

8. Plan participants who utilize the Custom Network of employer pharmacies pay a co-payment and the pharmacies then submit their charges, based on an agreed schedule, to NMHCrx. These charges are paid by NMHCrx. NMHCrx, in turn, receives reimbursement from the Plan. The payments and reimbursements are completed electronically. The applicant represents that the cost of the prescription drugs through the Custom Network is deeply discounted. The Consultants and NMHCrx have advised that the discounts are greater than those for the PPN pharmacies and also greater than for other pharmacy networks with which they are familiar. The applicant represents that the difference in savings, when comparing aggregate costs for the Plan from participants using the Custom Network pharmacies and the NMHCrx's PPN pharmacies have been and are expected to continue at approximately one percentage point. For instance, during the period from September 1, 2003 through May 30, 2005, pricing of claims through the PPN network pharmacies would have produced a discount of approximately 22% off retail prices, while pricing through the Custom Network pharmacies resulted in a discount of 23% off retail prices. Actual Plan costs through the Custom Network for this period were $45,348,737.97. The applicant further represents that the retail price for drugs dispensed for Plan participants during this period would have totaled $59,121,641.71 for 633,064 paid prescription claims. NMHCrx estimates that had these claims been adjudicated through its PPN, the Plan cost would have been approximately $45,722,245.73. Thus, the applicant represents that not only is the Custom Network more convenient for participants, and administratively more efficient for the Plan, but it also results in savings for the Plan and its participants when compared to the NMHCrx PPN. NMHCrx calculated cost savings using actual Plan prescription utilization and comparing retail prices with charges through NMHCrx's PPN network pharmacies and the Custom Network pharmacies. Pharmacies eligible to do so were presented with the opportunity to participate in both NMHCrx's PPN and the Custom Network.

9. The Department, following a routine investigation, raised concerns as to whether the employer pharmacy arrangements satisfy the requirements of section 406 of the Act. After discussions between Plan representatives and the Department, the Plan filed a request for the exemption proposed herein. Subsequently, the Department issued a closing letter, dated August 1, 2003, stating that no enforcement action would be taken with respect to the past transactions described herein.

10. To address concerns raised by the Department, the applicant represents that on July 1, 2005, the Plan retained as an independent fiduciary Nicholas Saakvitne, Esq. (the I/F), an employee benefits attorney and professional ERISA fiduciary in Marina del Rey, California. The I/F has 26 years of experience in benefits law, and most of his current practice consists of serving as trustee, plan administrator, or other plan fiduciary in plan terminations and in other special ERISA plan situations, to assist in managing plan assets and overseeing the operation of on-going plans. The cumulative total of plan assets for which the I/F has had fiduciary responsibility exceeds $500 million. The I/F represents that the gross income he will receive from the Plan for his fiduciary services for each calendar year will not exceed 5% of his expected annual gross income from all sources for such year. Mr. Saakvitne does not receive any payment in connection with his I/F duties from any contributing employer to the Plan, and further represents that he is independent from any employer pharmacy or affiliate thereof. The I/F will establish minimum standards and objective criteria for selection of employer pharmacies and, based on

[2] The Department is expressing no opinion herein as to whether the pricing and rebate arrangements between NMHCrx and the Plan, and the disclosures thereof, are in compliance with part 4 of title I of the Act.

[3] The provisions of services to a plan by a party in interest with respect to the plan is a separate prohibited transaction under section 406(a)(1)(C) of the Act. However, the provision of services to a plan by a party in interest, which are necessary for the operation of the plan, are statutorily exempt under section 408(b)(2) of the Act, if the conditions required therein are met. The regulation, which defines the scope of the statutory exemption contained in section 408(b)(2) of the Act, states that no relief is provided for any arrangement for services which would violate section 406(b) of the Act (see 29 CFR section 2550.408b–2).

Therefore, it should be noted that in this proposed exemption, the Department is providing no relief beyond that provided by section 408(b)(2) of the Act with respect to the provision of PBM services to the Plan by NMHCrx or some other entity. In addition, the Department is providing no opinion herein as to whether any service arrangements between NMHCrx or some other entity and the Plan would meet the conditions of section 408b(b)(2) of the Act and the regulations thereunder. However, interested persons should review DOL Adv. Op. 99–09A (May 21, 1999) for a discussion of issues relating to such service arrangements.

these standards and criteria, determine which pharmacies can participate in the Custom Network. The I/F will then have an on-going role for the Plan to periodically monitor the Custom Network pharmacies to confirm continued compliance with those minimum standards and objective criteria and the conditions of this proposed prohibited transaction exemption. The Plan's trustees would have no involvement or influence in the selection of pharmacies eligible to participate in the Custom Network. The I/F represents that he will receive and consider advice from the Plan's Consultants, as well as information from NMHCrx, the Plan's PBM.

11. The I/F represents that he confirms the findings of NMHCrx that the Plan fees in the aggregate (taking into account discounts) using the NMHCrx PPN are less than total Plan fees in the aggregate would be at standard retail prices. In addition, the Custom Network used by the Plan creates a better overall discount than the PPN alone, providing the Plan with improved cost management. In its December 2005 report to the Trustees, NMHCrx advised that actual experience under the Custom Network for the 12-month period ending August 31, 2005 (the most recent period for which data was then available) produced an approximate 29% overall discount for prescription drugs from ''usual and customary'' pricing—mail (20.99% for brand and 49.01% for generic) and retail (15.32% for brand and 57.15% for generic). The estimated retail price for the 320,877 prescriptions dispensed for Plan participants was $32,529,495.97. Actual Plan costs through the Custom Network pharmacies were $23,116,008.57. These findings are based on the average reimbursement rates achieved through the negotiated discounts with the represented pharmacies in these networks.

12. Minimum standards and objective criteria for the selection of the employer pharmacies in the Custom Network would be developed by the I/F, working with NMHCrx and the Plan's independent Consultants. The minimum standards and objective criteria would be set forth in writing, and would include: (a) The maximum average price of the prescription drugs (considering both brand and generic options) and cost comparisons with the PPN network pharmacies; (b) The quality and availability of the prescription drugs (*e.g.*, is there a choice between generic and brand name drugs); (c) Geographic proximity of the pharmacy (*e.g.*, pharmacies that are located closer to participants should be selected over pharmacies that are further away, all else being equal); and (d) Administrative efficiency (*e.g.*, the length of time and the cost for the Plan to process claims with the particular pharmacy).

13. There would be no restrictions, other than the minimum standards and objective criteria, on the pharmacies that could be selected for the Custom Network. Any such pharmacies would be, or would be owned by, the Plan's participating employers or their affiliates (*see rep. 5, above*). NMHCrx would screen applicant pharmacies for compliance with the established standards and criteria and send the qualifiers to the I/F. The I/F would not be required to select any of the pharmacies currently participating in the Custom Network, but could select the same participating employer pharmacies as long as they satisfy the minimum standards and objective criteria. Eligible employer pharmacies, as selected by the I/F, would negotiate Custom Network contracts with NMHCrx. While all pharmacies in the Custom Network have been asked to participate at specific rates and fees, some of these pharmacies have chosen at their own discretion to participate at rates and fees that are lower than the minimum pricing requirement.

14. Plan participants were provided a summary of material modifications which explained the Custom Network pharmacy arrangement at the time the benefit was introduced. The participants have also received information about how to purchase their prescriptions through both NMHCrx's PPN and the Custom Network pharmacies in various news and ''how to'' articles published in the Plan's newsletter, *Benefits Update.* The applicant represents that all future updated summary plan descriptions will inform participants that the purchase price of a particular prescription drug at Custom Network pharmacies may be less than the purchase price that is available either through the PPN network pharmacies or through retail non-participating pharmacies, and that the cost of prescription drugs in the aggregate over the course of a 12-month plan year will be lower at Custom Network pharmacies than at PPN pharmacies and significantly lower when compared to non-participating retail pharmacies.

15. The applicant represents that Plan participants benefit from the transactions described herein because: (a) Employees and their family members who participate in the Plan benefit from the discounts and convenience of the Custom Network through use of both their own employers' pharmacies and the pharmacies of all the other contributing employers with pharmacies in the network; and (b) Substantially more than 50% of the pharmacies in the Custom Network are pharmacies not affiliated with any particular participant's employer—that is, participants or beneficiaries have an ample choice to use a pharmacy unaffiliated with their employer to obtain the Custom Network benefits.

16. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions are at least as favorable to the Plan as those the Plan could obtain in similar arm's-length transactions with an unrelated party; (b) All determinations regarding which party in interest pharmacies, if any, may participate in the Custom Network, will be made, by the Plan's independent fiduciary based on objective standards developed by the independent fiduciary in reliance on information provided by the Plan's Pharmacy Benefits Manager, an entity which is independent of any contributing employer to the Plan, and the Plan's independent actuarial consultants; (c) At least 50% of the providers participating in the Custom Network are pharmacies of contributing employers other than the employer of any individual Plan participant, so that a participant is assured of having an ample choice of pharmacies without loss of Custom Network benefits; (d) In the aggregate, costs during each plan year for the Plan from participants using the Custom Network pharmacies will be at least one percent less than costs through the use of NMHCrx's PPN pharmacies, which will in turn in the aggregate be significantly less than costs for the retail purchase of such prescription drugs; (e) The Plan's independent fiduciary will monitor the subject transactions to determine that all conditions of the exemption, including conditions (d) and (e) regarding pricing, continue to be satisfied; and (f) All future updated summary plan descriptions furnished to participants will state that the purchase price of a particular prescription drug at Custom Network pharmacies may be less than the purchase price that is available either through the PPN network pharmacies or through retail non-participating pharmacies, and that the cost of prescription drugs in the aggregate over the course of a 12-month plan year will be lower at Custom Network pharmacies than at PPN pharmacies and significantly lower when compared to non-participating retail pharmacies.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D–11355]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 17, 2006, to (1) the acquisition of certain stock rights (Stock Right(s)) by the Plan in connection with a Stock Rights offering by Revlon, Inc. (Revlon), a holding company that wholly owns Revlon Consumer Products Corporation (RCPC), a party in interest with respect to the Plan; (2) the holding of the Stock Rights by the Plan during the subscription period of the Stock Rights offering; and (3) the disposition or exercise of the Stock Rights by the Plan, provided that the following conditions were met:

(a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms to all shareholders of common stock of Revlon;

(c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering;

(d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity, and all holders of the Stock Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The price received by the Plan for the Stock Rights was no less than the fair market value of the Stock Rights on the date of the Stock Rights offering.

Effective Date: This exemption, if granted, will be effective as of February 17, 2006.

Summary of Facts and Representations

RCPC is the sponsor of the Plan. The Plan is a tax-qualified, defined contribution profit sharing plan that incorporates a cash or deferred (*i.e.*, 401(k)) arrangement. The trustee of the trust established under the Plan is Fidelity Management Trust Company (the Trustee).[4]

Revlon is a world leader in cosmetics, skin care, fragrance and personal care. MacAndrews & Forbes Holdings Inc. (together with its affiliates, MacAndrews & Forbes), which is wholly owned by Ronald O. Perelman, beneficially owns 190,160,641 shares of the Class A Common Stock (including 32,599,374 shares of the Class A Common Stock beneficially owned by a family member, with respect to which shares MacAndrews & Forbes holds a voting proxy). Mr. Perelman, through MacAndrews & Forbes, also beneficially owns all of the outstanding 31,250,000 shares of the Class B Common Stock, which, together with the Class A Common Stock referenced above, represents approximately 60% of the total outstanding shares of Revlon's outstanding Common Stock. Based on the shares referenced above, Mr. Perelman, as of December 31, 2005, had approximately 77% of the combined voting power of the outstanding shares of the Class A and the Class B Common Stock.[5]

Class A common stock and Class B common stock are in all respects identical except that (i) each share of Class A common stock entitles the holder to one vote and each share of Class B common stock entitles the holder to ten votes on all matters being voted on by Revlon's stockholders, (ii) Class A common stock is publicly traded and held in the Plan whereas Class B common stock is not publicly traded and not held in the Plan, and (iii) certain transfer restrictions apply to Class B common stock that do not apply to Class A common stock. These restrictions provide that the Class B common stock (all of which is currently held by MacAndrews & Forbes) can only be transferred to affiliates of the current holder of Class B common stock.

The Plan provides for a variety of contributions in addition to 401(k) contributions, including after-tax employee contributions, company-matching contributions, rollover contributions and profit-sharing contributions. The Plan permits individual participants to direct the investment of their entire account balance under the Plan to the extent described below and is intended to satisfy the requirements of section 404(c) of ERISA with respect to all such participant investment directions.

One of the investments available under the Plan is Class A Common Stock (the Common Stock Fund).[6] Participants may allocate all contributions made on their behalf (and any earnings thereon) among the Common Stock Fund and all of the other investments available under the Plan.[7]

As of January 3, 2006, there were approximately 3,598 participants in the Plan. The Plan's assets totaled approximately $136,435,045.12. Approximately 1,560 Plan participants and beneficiaries held shares of Class A Common Stock. The Plan holds approximately 940,004 shares of Class A Common Stock, or approximately 0.28% of the then outstanding shares of Class A Common Stock, with a value of approximately $2,914,291.40 (based on the $3.10 opening price on the New York Stock Exchange of Class A Common Stock on January 3, 2006), or approximately 2.1% of Plan assets.

Because the Plan holds Class A Common Stock, Stock Rights will be allocated to Plan participants in proportion to their holdings of Class A Common Stock under the Plan, and Plan participants will be entitled to dispose of those Stock Rights on the terms and conditions described more fully below. Participants in the Plan will receive the same information regarding the Stock Rights offering as is provided to all stockholders. In addition, participants will be provided a special notice that describes some features of the Stock Rights offering in easily understood language, together with additional information that is peculiar to their status as holders of Class A Common Stock under the Plan (for example, special rules relating to the payment of the purchase price for shares under the Stock Rights offering).

If the Plan were denied participation in the Stock Rights offering, Plan

[4] Fidelity Management Trust Company became the trustee effective January 3, 2006, at which time it replaced Putnam Fiduciary Trust Company as trustee.

[5] The 221,410,641 shares of Revlon's combined Class A common stock and Class B common stock beneficially owned by Mr. Perelman represented approximately 60% of the total 371,720,324 shares of Revlon's combined Class A and Class B common stock that was issued and outstanding.

[6] No other ''employer security,'' within the meaning of section 407 of ERISA, is presently available as an investment under the Plan.

[7] Plan participants are effectively free to designate the extent to which their Plan accounts will be invested in Class A Common Stock.

participants would not receive the benefit of the Stock Rights which other stockholders will receive, including the ability to realize value by selling Stock Rights. Revlon is requesting this exemption so that Plan participants may be eligible to participate in the Stock Rights offering on the same basis as other stockholders.[8]

Revlon launched the Stock Rights offering on February 17, 2006. The Stock Rights will expire at 5 p.m., New York, New York local time on the date that is approximately 30 days later (on/or about March 20, 2006). The amount of the Stock Rights offering will be $110 million (the Maximum Amount). Each Stock Right entitles its holder to purchase a number of shares of Class A Common Stock such that the aggregate number of shares of Class A Common Stock to be offered in the Stock Rights offering, multiplied by the Subscription Price, will equal the Maximum Amount.[9]

Revlon will pay all of the fees and expenses attributable to the Stock Rights offering (other than any fees that may be charged by brokers or nominees). For any Stock Rights sold by the Plan, a commission of 2.9 cents per Stock Right is being charged to the Plan account from which the Stock Right was sold. The commission was disclosed to participants in the materials provided explaining the Stock Rights Offering. The commission was not paid to Revlon but to the broker-dealer, National Financial Services (NFS) of New York City, New York, for the sale transaction. NFS is an affiliate of the Trustee and is wholly owned by Fidelity Global Brokerage Group, Inc.

The Plan's investment committee established under the Plan (the Investment Committee) considered whether it was appropriate and in the best interests of the Plan to permit Fidelity to effect sales of Rights under the Plan through NFS. The Investment Committee took the following considerations into account, among others: (a) Brokerage services required to effect the sales transactions are necessary services for the operation of the Plan; (b) the reputation of NFS as a reputable broker; (c) the already established procedures between Fidelity and NFS for the prompt execution of sales transactions under the Plan; (d) the ability of NFS to accept the engagement upon very short notice (*i.e.*, the short notice provided by Revlon); (e) the reasonable price charged for the brokerage services when compared with other unrelated brokers; and (f) the short-term nature of the arrangement. Following discussion, the Investment Committee authorized the use of NFS as broker for effecting sales of Stock Rights under the Plan, subject to an attempt being made to negotiate a more favorable commission rate. Although Fidelity is affiliated with NFS, Fidelity did not use any discretion to select NFS as broker for the Rights. Plan participants paid commissions on the sale of their Stock Rights in the same manner as any other similarly situated shareholder paid commissions on the sale of their Rights.[10]

Each Stock Right carries with it a basic subscription privilege and an over-subscription privilege. The basic subscription privilege entitles a Stock Rights holder to subscribe for its *pro rata* share of Class A Common Stock offered in the Stock Rights offering. MacAndrews & Forbes has agreed, upon the consummation of the Stock Rights offering and at the Subscription Price, to acquire the number of shares of Class A Common Stock as equals the number of shares of Class A Common Stock that MacAndrews & Forbes would otherwise have been entitled to purchase in the Stock Rights offering pursuant to its basic subscription privilege. Except for MacAndrews & Forbes, all holders of Common Stock who elect to exercise their Stock Rights in full may also subscribe for the remaining shares at the same Subscription Price per share, to the extent that other shareholders do not exercise all of their Stock Rights in full. Although MacAndrews & Forbes, as a holder of Common Stock, would otherwise be entitled to such over-subscription privilege, MacAndrews & Forbes has agreed to subordinate such Stock Rights in order to enhance the over-subscription privilege of other stockholders.

If an insufficient number of shares is available to fully satisfy the over-subscription privilege requests, the available shares will be sold *pro rata* among Stock Rights holders who exercised their over-subscription privilege based on the number of shares each Stock Rights holder subscribed for under the basic subscription privilege. Any excess subscription payments will be returned without interest or deduction promptly after the expiration of the Stock Rights offering.

MacAndrews & Forbes has agreed to ''back-stop'' the Stock Rights offering by purchasing, on the same terms as the Stock Rights offering, such number of shares of Class A Common Stock as equals all of the shares that are not otherwise subscribed for by the other holders of Stock Rights under either their basic subscription privilege or their over-subscription privilege. This will ensure that Revlon will receive the Maximum Amount in the Stock Rights offering.

Any election to exercise a Stock Right (whether made with respect to Stock Rights held under the Plan or otherwise) will be irrevocable once made. Plan participants who want to exercise some or all of their Stock Rights will be required to notify the Trustee on or before the date that is approximately seven (7) calendar days before the expiration of the Stock Rights offering (the Plan Election Date).[11] Participants will also be entitled to direct the Trustee to sell the Stock Rights allocated to them on the open market (to the extent a trading market develops) by notifying the Trustee of such election on or before the Plan Election Date; any such election will be irrevocable once made and will be executed as soon as practicable after it is received. To the extent that a participant does not elect to either exercise or sell the Stock Rights credited to his or her account on or before the Plan Election Date, the Investment Committee will instruct the Trustee to sell such Stock Rights on the open market in the same manner as if the participant had directed such a sale. The Investment Committee will instruct the Trustee not to exercise Stock Rights where the Subscription Price exceeds the per share public trading price of

[8] The distribution of the Rights will be accomplished as a dividend under Delaware corporate law. Accordingly, Revlon will be required to distribute the Rights to all stockholders on a pro rata basis. In exercising their fiduciary duties to all stockholders, the Board of Directors of Revlon is required to treat all stockholders (including the Plan) the same and cannot pay a dividend to some, but not all, stockholders.

[9] Revlon is required under its credit agreement to use the proceeds of a $110 million equity issuance by Revlon, to be completed on or before March 31, 2006, to promptly reduce its indebtedness. Revlon has determined that a rights offering such as the Stock Rights offering is the most appropriate way for it to fulfill the capital commitment while providing an opportunity for all stock holders of Revlon, including the Plan participants, to retain their *pro rata* ownership in Revlon. Revlon will not be able to timely fulfill its credit agreement commitment if the Stock Rights offering is delayed until prospective exemptive relief is provided.

[10] The Department provides no opinion as to whether the selection of the broker dealer meets the conditions set forth under section 408(b)(2) of the Act.

[11] This date is before the expiration date of the Offering in order to enable the Trustee to review and implement participant directions (including the liquidation of individual account balances necessary to fund each participant's exercise price) and provide such aggregate instructions to the subscription agent under the Offering within the time constraints imposed generally with respect to the Offering. Because it is expected that the Offering will extend for at least thirty (30) calendar days, Revlon does not anticipate that this requirement will be unduly restrictive for Plan participants.

Class A Common Stock at the time for exercise (in which case an attempt will be made to sell the Stock Rights instead, although the Stock Rights likely will have no value in such a case and thus would expire without value).

Approximately three (3) calendar days before the expiration of the Stock Rights offering, the Trustee will liquidate an amount sufficient to pay a Plan participant's exercise price by selling a pro-rata portion of the amounts held in such participant's various investment funds (other than the Common Stock Fund) and transfer such funds to the subscription agent in order to participate in the Stock Rights offering on behalf of Plan participants who elect to exercise some or all of their Stock Rights. No Stock Rights under the Plan will be exercised before this date. The shares of Class A Common Stock purchased upon the consummation of the Stock Rights offering will be allocated to the accounts of Plan participants as soon as practicable thereafter.

8. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts; (b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms available to all shareholders of common stock of Revlon; (c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering; (d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity; and (e) The price received by the Plan for the Stock Rights was no less than the fair market value of the Stock Rights on the date of the Stock Rights offering.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

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 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2006–07; [Exemption Application No. D–11281] et al.]

Grant of Individual Exemptions; Harris Nesbitt Corporation (Harris Nesbitt)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Harris Nesbitt Corporation (Harris Nesbitt) and Its Affiliates (the Affiliates) Located in New York, NY

[Prohibited Transaction Exemption 2006–07; Exemption Application No. D–11281]

Exemption

Section I. Covered Transactions

A. Effective for transactions occurring on or after October 15, 2004, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan.

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective for transactions occurring on or after, October 15, 2004, the restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Security does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after October 15, 2004, the restrictions of sections 406(a), 406(b), and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code by reason of Code section 4975(c), shall not apply to the transactions in connection with the servicing, management and operation of an Issuer, including the use of the any eligible swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed designated transaction (the Designated Transaction), provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[3] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring after October 15, 2004, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary), with respect to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F),

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

(G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

Section II. General Conditions

A. The relief provided under Section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as such terms would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the Closing Date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders (the Securityholders) or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency, upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred on the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust, will enforce all the rights created in favor of Securityholders of the Issuer, including employee benefit plans subject to the Act.

(8) In order to ensure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent Swap or a Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Security:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan Securityholders will be notified in the immediately following Trustee's periodic report which is provided to Securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan Securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in Section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon the underwriter exemptions (the Underwriter Exemptions) only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer, nor any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under Section I., if the provision in subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation of each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III. Definitions

For purposes of this exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent; or

(2) A Certificate denominated as a debt instrument that represents an interest in either a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of the section 860D(a) or section 860L of the Code; and that is issued by and is an obligation of a Trust, with respect to Certificates defined in Section III.A. (1) and (2) above, for which the Underwriter is either (i) the sole Underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''Certificates representing an interest in a Trust'' include Certificates denominated as debt, which are issued by a Trust.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a REMIC or a FASIT within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consists solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential and commercial real property (including obligations secured by leasehold interest on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(1)(2) [4]; and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1); [5]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that (i) the rights and interests evidenced by Securities issued in such Designated Transactions (as defined in Section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Trust and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to Securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to Securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement, and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraph (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to Securityholders occurring after the end of the Pre-Funding Period.

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) Are either (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

Notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in paragraph (a)–(f) of subsection III.B.(1) which have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to the Underwriter Exemptions.

C. ''Underwriter'' means:

(1) Harris Nesbitt;

(2) Any U.S.-domiciled person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and

(3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means the entity that organizes as an Issuer by depositing obligations therein in exchange for Securities.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer, which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust, which issues Securities, and in the case of Securities which are denominated as debt instruments, also means the Trustee of an Indenture Trust. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Trust, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an Insurer solely because it holds Securities

[4] In ERISA Advisory Opinion 99–05A (February 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[5] It is the Department's view that the definition of ''Issuer'' contained in Section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemptions generally provide relief for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

representing an interest in an Issuer, which are of a class subordinated to Securities representing an interest in the same Issuer.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Trust. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer; or

(7) Each counterparty in an Eligible Swap Agreement;

(8) Any Affiliate of a person described in III.M.(1)–(7) above.

N. ''Affiliate'' of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

R. ''Forward Delivery Commitment'' means a contact for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By a Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as would be the case if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. In the case of Securities which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Fitch, Inc. or any successors thereto.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) Which is established to compensate Securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the pass-through rate payable under the Securities; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issue's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account:

(i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and

(ii) Which meets the requirements of clause (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered which is less than or equal to 25 percent.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or 90 days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the

assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this Section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Securities rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap.'' With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemptions, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemptions, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[6] as defined under Part V(a) of Prohibited Transaction Exemption (PTE) 84–14 (49 FR 9494, 9506, March 13, 1984, as amended by 70 FR 49305, August 23, 2005);

(2) An ''in-house asset manager'' (INHAM),[7] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to Securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to

[6] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[7] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

Effective Date: This exemption is effective October 15, 2004.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on February 13, 2006 in the **Federal Register** at 71 FR 7628.

Written Comments/Technical Correction to the Notice

The Department invited all interested persons to submit written comments and requests for a hearing with respect to the Notice within 45 days of the date of its publication in the **Federal Register** on February 13, 2006. Therefore, all comments and requests for a hearing were due by March 14, 2006.

During the comment period, the Department received no comments and no requests for a public hearing. However, upon careful review of the Notice, the Department observed that Footnote 11, which addresses the terms of leasehold interests on residential real property that is pledged to secure certain obligations in residential mortgage investment trusts, does not fully clarify the Department's position with respect to residential leasehold mortgages. In this regard, Footnote 11 states the following:

Trust assets may also include obligations that are secured by leasehold interests on residential real property. *But see* PTE 90–32 involving Prudential-Bache Securities, Inc., 55 FR 23147, 23150 (June 6, 1990). The Department received one comment from an affiliate of the applicant with respect to the notice of proposed exemption for PTE 90–32. The comment requested clarification that the definition of trust in section III.B. would include trusts containing certain obligations secured by leasehold interests on residential real property (Residential Leasehold Mortgages or RLMs). The comment noted that RLMs are originated in jurisdictions such as Hawaii in which they are a ''necessary alternative to mortgages secured by fee simple interests'' and that these RLMs are ''in essence, the same as, and provide substantially the same degree of security to investors as, mortgages secured by fee simple interests.

The comment represented that both the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) have purchase programs for these RLMs and that such RLMs included in pools underlying mortgage pass-through certificates would ''generally conform'' with either Freddie Mac or Fannie Mae leasehold guidelines. In this regard, the term of the leasehold underlying such RLMs would extend for at least five years beyond the term of the RLM. The comment noted that the affiliate of the applicant would ''comply with the requirement under the Freddie Mac and Fannie Mae leasehold guidelines that such mortgages constitute obligations secured by real property or an interest in real estate.

The Department notes that the proposed exemption underlying PTE 2000–58 (65 FR 67765, Nov. 13, 2000), which amended the Underwriter Exemptions (62 FR 39021, July 21, 1997), contained a limitation concerning leasehold mortgages. Specifically, the Department stated that ''[t]he terms of the ground leases pledged to secure leasehold mortgages [would] in all cases be at least ten years longer than the terms of such mortgages.'' (65 FR 51454, 51455, August 23, 2000). The final exemption did not discuss this limitation. Moreover, in later exemptions to amend the Underwriter Exemptions or to provide similar individual relief, the original PTE 2000–58 preamble language referring to residential and commercial mortgage investment trusts is repeated without change, except for the omission of the provision concerning RLMs.

The Department wishes to allay any public uncertainty regarding whether the RLM requirement continues to apply to the Underwriter Exemptions and to subsequent individual exemptions. Thus, the Harris Nesbitt exemption presents the first opportunity for the Department to affirm its position that with respect to RLMs, the terms of ground leases pledged to secure leasehold mortgages should be at least five years longer than the terms of such mortgages. The Department also wishes to clarify that the leasehold limitation mentioned in Footnote 11 applies to RLMs that are subject to Fannie Mae and Freddie Mac guidelines.

After giving full consideration to the entire record, the Department has decided to grant the exemption subject to the clarifications described above. For further information, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11281) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Fortunoff Fine Jewelry and Silverware, Inc. Cash Balance Pension Plan (the FFJS Cash Balance Plan), M. Fortunoff of Westbury Corp. Cash Balance Pension Plan (the MFW Cash Balance Plan), and Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the FFJS Profit Sharing Plan; Collectively, the Plans) Located in Westbury, NY

[Prohibited Transaction Exemption 2006–08; Exemption Application Nos. D–11307, D–11308 and D–11309, respectively]

Exemption

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code,[8] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply (1) effective November 26, 2003 until February 28, 2005, to the leasing of certain improved real property (the Property) by the Plans, directly and then through One MH Plaza Realty LLC (the Plans' LLC), a special purpose entity designed to hold the Plans' interests in the Property, to Fortunoff Fine Jewelry and Silverware, Inc. (FFJS), under the provisions of a written lease (the Interim Lease); and (2) effective March 1, 2005 through August 31, 2006, to the 18 month extension of the Interim Lease (the Interim Lease Extension) between the Plans,[9] through the Plans' LLC, and FFJS and its successors in interest, Fortunoff Fine Jewelry and Silverware, LLC (FFJS LLC) and M. Fortunoff of Westbury, LLC (MFW LLC).

This exemption is subject to the following conditions:

(a) Since November 26, 2003, the Plans have been and continue to be represented for all purposes under the Interim Lease, by Independent Fiduciary Services (IFS), a qualified, independent fiduciary, which also represents the interests of the Plans under the Interim Lease Extension.

(b) IFS has (1) reviewed and approved the continued adherence by the Plans and the Plans' LLC with the terms and conditions of the Interim Lease under the facts and circumstances in existence on and after November 26, 2003; (2) negotiated, reviewed, and expressly

[8] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[9] As of January 1, 2006, all references to the Plans shall mean the Fortunoff, the Source, Cash Balance Plan (the Merged Cash Balance Plan), which resulted from the merger of the FFJS Cash Balance Plan and the MFW Cash Balance Plan, and the FFJS Profit Sharing Plan.

approved the terms and conditions of the Interim Lease Extension on behalf of the Plans; and (3) determined that the leasing of the Property since November 26, 2003 pursuant to the Interim Lease and, since March 1, 2005, pursuant to the Interim Lease Extension, (i) complies with the relevant provisions of Prohibited Transaction Exemption (PTE) 93–8 (58 FR 7258, February 5, 1993), as amended by PTE 98–22 (63 FR 27329, May 18, 1998), (except as modified by this exemption); (ii) continues to be an appropriate investment for the Plans on and after November 26, 2003, consistent with each Plan's investment policies and liquidity needs; and (iii) is in the best interests of each Plan and its respective participants and beneficiaries on and after November 26, 2003.

(c) The rent paid to the Plans under the Interim Lease and the Interim Lease Extension is no less than the fair market rental value of the Property, as established by a qualified, independent appraiser. Effective March 1, 2006, the rent is adjusted to the greater of the current annualized rental of $656,400 or the then-current, fair market rental value, as determined by IFS on the basis of an appraisal conducted by the independent appraiser selected by IFS.

(d) The base rent has been adjusted or is adjusted annually by IFS based upon an independent appraisal of the Property.

(e) Under both the Interim Lease and the Interim Lease Extension, FFJS pays for property and liability insurance on the Property, property taxes, utility costs, other costs for maintaining the Property including environmental assessments, engineering inspection reports, as well as all other expenses that are incident to such agreements.

(f) IFS has monitored, and continues to monitor, compliance with the terms of the Interim Lease since November 26, 2003 and the terms of the Interim Lease Extension throughout the duration of these agreements.

(g) IFS is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of FFJS and its successors in interest, FFJS LLC and MFW LLC, under the terms of such agreements.

(h) IFS makes determinations, on behalf of the Plans, with respect to any sale or future leasing of the Property.

(i) IFS has determined that (1) the leasing of the Property pursuant to the Interim Lease on and after November 26, 2003 was no less favorable to the Plans than similar leasing arrangements between unrelated parties; (2) the then-prevailing rent received by the Plans under the interim lease was no less favorable to the Plans than the rent the Plans would have received under similar circumstances if the rent had been negotiated at arm's length with unrelated third parties; and (3) the terms and conditions of the Interim Lease Extension have been or are no less favorable to the Plans than those obtainable by the Plans under similar circumstances when negotiated at arm's length with unrelated third parties.

(j) With respect to the Interim Lease Extension, FFJS (1) has made a two-month security deposit pursuant to the agreement; and (2) is required to pay an additional four-month security deposit (Additional Deposit) after the expiration of the first 12 months of the Interim Lease Extension, calculated at the rental amount to be effective March 1, 2006.

(k) Over the last six months of the Interim Lease Extension, one-sixth of the Additional Deposit is applied to the rent each month, so long as there is no uncured default.

Effective Date: This exemption is effective from November 26, 2003 until February 28, 2005 with respect to the Interim Lease and from March 1, 2005 until August 31, 2006 with respect to the Interim Lease Extension.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 13, 2006 at 71 FR 7647.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

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 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E6–8529 Filed 6–1–06; 8:45 am]

BILLING CODE 4510–29–P

FEDERAL MINE SAFETY AND HEALTH REVEW COMMISSION

Notice of Meeting; Sunshine Act

May 26, 2006.

TIME AND DATE: 10 a.m., Thursday, June 8, 2006.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Jim Walter Resources, Inc.,* Docket No. SE 2003–160. (Issues include whether the judge correctly determined that the operator violated 30 CFR 75.360(b)(3), and that the violation was significant and substantial and attributable to the operator's unwarrantable failure; whether the judge correctly determined that the operator did not violate 30 CFR 75.1101–23(a); whether the judge correctly determined that the operator violated 30 CFR 75.1101–23(c), and that the violation was not significant and substantial; and whether the judge properly followed section 110(i) of the Mine Act in setting the penalty amounts for the violations found.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs, subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950 / (202) 708–9300

for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 06–5114 Filed 5–31–06; 2:03 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (06–038)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA employees and contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Method of Collection

The current, paper-based reporting system ensures the protection of a submitters anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of review: Extension of currently approved collection.

Affected Public: Federal Government; Business or other for-profit.

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Hours Per Request: 15 min.

Annual Burden Hours: 19.

Frequency of Report: As needed.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: May 25, 2006.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E6–8521 Filed 6–1–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 531, Request for Taxpayer Identification Number.

2. *Current OMB approval number:* OMB No. 3150–0188.

3. *How often the collection is required:* One time from each applicant or individual to enable the Department of the Treasury to process electronic payments or collect debts owed to the Government.

4. *Who is required or asked to report:* All individuals doing business with the U.S. Nuclear Regulatory Commission, including contractors and recipients of credit, licenses, permits, and benefits.

5. *The number of annual respondents:* 300.

6. *The number of hours needed annually to complete the requirement or request:* 25 hours (5 minutes per respondent).

7. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipients of credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

Submit, by August 1, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by

telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of May 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E6–8583 Filed 6–1–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation Corp.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation Corp. (FENOC) to withdraw its May 22, 2005, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station (DBNPS), Unit 1, located in Ottawa County.

The proposed amendment would have revised the technical specifications pertaining to a qualified alternate repair criteria for axial tube end cracking indications in the DBNPS once through steam generator tubes. Specifically, the proposed amendment would revise the TS surveillance requirements for the steam generator inservice inspection to include tube end cracking alternate repair criteria.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 5, 2005 (70 FR 38720). However, by letter dated February 16, 2006, in response to Generic Letter 2006–01, ''Steam Generator Tube Integrity and Associated Technical Specifications,'' FENOC committed to submit a license amendment application by May 31, 2006, proposing to amend the DBNPS TS to be consistent with TS Task Force (TSTF)–449, ''Steam Generator Tube Integrity,'' Revision 4. Since this new license application will be incompatible with the changes proposed in the earlier license amendment application, by letter dated April 20, 2006, FENOC withdrew the May 22, 2005, amendment request. FENOC plans to resubmit the license amendment application at a later date.

For further details with respect to this action, see the application for amendment dated May 22, 2005, and the licensees' letter dated April 20, 2006, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of May 2006.

For the Nuclear Regulatory Commission.

Stephen J. Campbell,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–8581 Filed 6–1–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455]

Exelon Generation Company, LLC; Byron Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) section 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K, for Facility Operating Licenses Nos. NPF–37 and NPF–66, issued to Exelon Generation Company, LLC (Exelon, the licensee), for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to place four lead test assemblies containing a limited number of AXIOM™ fuel rods into the Byron Station, Unit 1, core during the fall 2006 refueling outage. The four lead test assemblies will be placed in non-limiting core locations. For subsequent cycles, two of the lead test assemblies will be placed into Byron Station, Unit 2, and two lead test assemblies will remain in Byron Station, Unit 1.

The proposed action is in accordance with the licensee's application dated September 23, 2005.

The Need for the Proposed Action

Pursuant to 10 CFR 50.12, ''Specific exemptions,'' Exelon has requested exemptions from 10 CFR 50.44, ''Combustible gas control for nuclear power reactors,'' 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems [EECS] for light-water nuclear power reactors,'' and Appendix K to 10 CFR part 50, ''ECCS Evaluation Models.'' The regulation at 10 CFR 50.44 specifies requirements for the control of hydrogen gas generated after a postulated loss-of-coolant accident (LOCA) for reactors fueled with zirconium-clad fuel. Section 50.46 contains acceptance criteria for ECCS for reactors fueled with zircaloy or ZIRLO™ clad fuel. In addition, Appendix K to 10 CFR part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction.

The exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR part 50 is needed to irradiate lead test assemblies employing AXIOM™ developmental clad alloys at Byron Station, Units 1 and 2.

The proposed action will use the irradiation of the lead test assemblies incorporating the developmental cladding to provide data on fuel and material performances to support future licensing activities.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that specific application of the limitations on fuel cladding material in 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50 Appendix K to the lead test assemblies is not necessary for the licensee to achieve their underlying purposes. In addition, the NRC staff has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health and safety, and is

consistent with the common defense and security.

The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Byron Station, Units 1 and 2, NUREG–0848, dated April 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on April 7, 2006, the NRC staff consulted with the Illinois State official, Mr. Frank Niziolek of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 23, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of May 2006.

For the Nuclear Regulatory Commission.

Robert F. Kuntz,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–8580 Filed 6–1–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Week of May 29, 2006.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL MATTERS TO BE CONSIDERED:

Week of May 29, 2006

Friday, June 2, 2006

3:30 p.m.—Affirmation Session (Public Meeting) (Tentative) a. Louisiana Energy Services, L.P. (National Enrichment Facility) Intervenors' Petition for Review of LBP–06–08 and LPT–06–09. (Tentative)

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

Additional Information

By a vote of 5–0 on May 30, 2006, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Affirmation of ''Louisiana Energy Services, L.P. (National Enrichment Facility) Intervenors' Petition for Review LBP–06–08 and LBP–06–09'' be held June 2, 2006, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large, print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301)–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dwk@nrc.gov.*

Dated: May 30, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–5083 Filed 5–31–06; 10:25 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity to Comment on Model Safety Evaluation on Technical Specification Improvement to Modify Requirements Regarding the Addition of LCO 3.0.9 on the Unavailability of Barriers Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) and model

application relating to the modification of requirements regarding the impact of unavailable hazard barriers, not explicitly addressed in technical specifications, but required for operability of supported systems in technical specifications (TS). The NRC staff has also prepared a model no-significant-hazards-consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to add an LCO 3.0.9 that provides a delay time for entering a supported system TS when the inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comment on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires July 3, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail. Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, Maryland. Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: T.R. Tjader, Mail Stop: O–12H4, Division of Inspection and Regulation Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1187.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on a proposed change to the STS after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. This notice solicits comments on a proposed change that allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the addition of LCO 3.0.9 to the TS which provides a delay time for entering a supported system TS when the inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed. This change was proposed for incorporation into the standard technical specifications by the owners groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–427, Revision 1 (Rev 1). TSTF–427, Rev 1, can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html*.

Applicability

This proposal to modify technical specification requirements by the addition of LCO 3.0.9, as proposed in TSTF–427, Rev 1, is applicable to all licensees.

To efficiently process the incoming license amendment applications, the staff requests that each licensee applying for the changes proposed in TSTF–427, Rev 1, to use the CLIIP. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested Bases and Bases control program. Variations from the approach recommended in this notice may require additional review by the NRC staff, and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–427, Rev 1.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or the proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application the staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no significant hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to an operating license to announce the modification of requirements related to systems in TS, due to unavailable non-technical specification barriers, for each plant that receives the requested change.

Dated at Rockville, Maryland, this 26th day of May 2006.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

Office of Nuclear Reactor Regulation

Technical Specification Task Force (TSTF) Change TSTF–427

1.0 Introduction

On February 6, 2006, the Nuclear Energy Institute (NEI) Risk Informed Technical Specifications Task Force (RITSTF) submitted a proposed change, TSTF–427, Revision 1, to the standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry (TSTF–427, Revision 0 was a prior draft iteration). TSTF–427, Revision 1, is a proposal to add an STS Limiting Condition for Operation (LCO) 3.0.9, allowing a delay time for entering a

supported system technical specification (TS), when the inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurence, and the overall TS system safety function would still be available for the majority of anticipated challenges.

This proposal is one of the industry's initiatives being developed under the risk-informed TS program. These initiatives are intended to maintain or improve safety through the incorporation of risk assessment and management techniques in TS, while reducing unnecessary burden and making TS requirements consistent with the Commission's other risk-informed regulatory requirements.

The proposed change adds a new limiting condition of operation, LCO 3.0.9, to the TS. LCO 3.0.9 allows licensees to delay declaring an LCO not met for equipment supported by barriers unable to perform their associated support function, when risk is assessed and managed. This new LCO 3.0.9 states:

''When one or more required barriers are unable to perform their related support function(s), any affected supported system LCO(s) are not required to be declared not met solely for this reason for up to 30 days provided that at least one train or subsystem of the supported system is OPERABLE and supported by barriers capable of providing their related support function(s), and risk is assessed and managed. This specification may be concurrently applied to more than one train or subsystem of a multiple train or subsystem supported system provided at least one train or subsystem of the supported system is OPERABLE and the barriers supporting each of these trains or subsystems provide their related support function(s) for different categories of initiating events. [*BWR only:* For the purposes of this specification, the [High Pressure Coolant Injection/High Pressure Core Spray] system, the [Reactor Core Isolation Cooling] system, and the [Automatic Depressurization System] are considered independent subsystems of a single system.]

If the required OPERABLE train or subsystem becomes inoperable while this specification is in use, it must be restored to OPERABLE status within 24 hours or the provisions of this specification cannot be applied to the trains or subsystems supported by the barriers that cannot perform their related support function(s). At the end of the specified period, the required barriers must be able to perform their related support function(s), or the affected supported system LCO(s) shall be declared not met.''

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TX. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The rule does not specify the particular requirements to be included in a plant's TS. As stated in 10 CFR 50.36(c)(2)(I), the ''Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specification * * *.'' TS Section 3.0, on ''LCO and SR Applicability,'' provides details or ground rules for complying with the LCOs.

Barriers are doors, walls, floor plugs, curbs, hatches, mechanical devices, or other devices, not explicitly described in TS, that support the performance of the functions of systems described in the TS. For purposes of this TS, the term ''barrier'' refers to one or more devices which protect one train of a safety system from a given initiating event. A ''degraded barrier'' refers to a barrier that has been found to be degraded and must be repaired, or to a barrier that is purposefully removed or reconfigured to facilitate maintenance activities. As stated on NEI 04–08, LCO 3.0.9 specifically does not apply to fire barriers, snubbers, barriers which support ventilation systems or non-TS systems, or barriers which support TS systems where the unavailability of the barrier does not render the supported system inoperable.

Some TS required systems may require one or more functional barriers in order to perform their intended function(s) for certain initiating events for which the barriers provide some protective support function. For example, there are barriers to protect systems from the effects of internal flooding, such as floor plugs and retaining walls, and barriers are used to protect equipment from steam impingement in case of high energy line breaks. Barriers are also used to protect systems against missiles, either internally generated, or generated by external events.

Barriers are not explicitly described in the TS, but are required to be capable of performing their required support function by the definition of OPERABILITY for the supported system which is described in the TS. Therefore, under the current STS, the supported system must be declared inoperable when the related barrier(s) are unavailable. However, the magnitude of plant risk associated with the barrier which cannot perform its related support function is much less than the risk associated with direct unavailability of the supported system, since barriers are only required for specific, low frequency initiating events.

Some potential undesirable consequences of the current TS requirements include:

1. When maintenance activities on the supported TS system require removal and restoration of barriers, the time available to complete maintenance and perform system restoration and testing is reduced by the time spent maneuvering the barriers within the time constraints of the supported system LCO;

2. Restoration of barriers following maintenance may be given a high priority due to time restraints of the existing supported system LCO, when other activities may have a greater risk impact and should therefore be given priority; and

3. Unnecessary plant shutdowns may occur due to discovery of degraded barriers which require more time than provided by the existing supported system LCO to complete repairs and restoration of the barrier.

To improve the treatment of unavailable barriers and enhance safety, the TSTF proposed a risk-informed TS change that introduces a delay time before entering the actions for the supported equipment, when one or more barriers are found to be degraded, or are removed or reconfigured to support maintenance activities, if risk is assessed and managed. Such a delay time will provide needed flexibility in the performance of maintenance and at the same time will enhance overall plant safety by:

1. Performing system maintenance and restoration activities, including post-maintenance testing, within the existing TS LCO time, and allowing barrier removal and restoration to be performed outside of the TS LCO, providing more time for the safe conduct of maintenance and testing activities on the supported TS system;

2. Requiring barrier removal and restoration activities to be assessed and prioritized based on actual plant risk impacts; and

3. Avoiding unnecessary unscheduled plant shutdowns and thus minimizing plant transition and realignment risks.

3.0 Technical Evaluation

The industry submitted TSTF–427, Revision 1 (Reference 1), ''Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY'' in support of the proposed TS change. This submittal documents a risk-informed analysis of the proposed TS change. Probabilistic risk assessment (PRA) methods are used, in combination with deterministic and defense-in-depth arguments, to identify and justify delay times for entering the actions for the supported equipment associated with unavailable barriers at nuclear power plants. The industry also submitted implementation guidance NEI 04–08, November 2005 (Reference 2). This submittal provides detailed guidance on assessing and managing risk associated with unavailable barriers. This is in accordance with guidance provided in Regulatory Guides (RGs) 1.174 (Reference 3) and 1.177 (Reference 4).

The risk impact associated with the proposed delay times for entering the TS actions for the supported equipment can be assessed during the same approach as for allowed completion time (CT) extensions. Therefore, the risk assessment was performed following the three-tiered approach recommended in RG 1.177 for evaluating proposed extensions in currently allowed CTs:

1. The first tier involves the assessment of the change in plant risk due to the proposed TS change. Such risk change is expressed (1) by the change in the average yearly core damage frequency (Δ CDF) and the average yearly large early release frequency (Δ LERF) and (2) by the incremental conditional core damage probability (ICCDP) and the incremental conditional large early release probability (ICLERP). The assessed Δ CDF and Δ LERF values are compared to acceptance guidelines, consistent with the Commission's Safety Goal Policy Statement as documented in RG 1.174, so that the plant's average baseline risk is maintained within a minimal range. The assessed ICCDP and ICLERP values are compared to acceptance guidelines provided in RG 1.177, which aim at ensuring that the plant risk does not increase unacceptably during the period the equipment is taken out of service.

2. The second tier involves the identification of potentially high-risk configurations that could exist if equipment in addition to that associated with the change were to be taken out of service simultaneously, or other risk-significant operational factors such as concurrent equipment testing were also involved. The objective to ensure that appropriate restrictions are in place to avoid any potential high-risk configurations.

3. The third tier involves the establishment of an overall configuration risk management program (CRMP) to ensure that potentially risk-significant configurations resulting from maintenance and other operational activities are identified. The objective of the CRMP is to manage configuration-specific risk by appropriate scheduling of plant activities and/or appropriate compensatory measures.

A simplified risk assessment was performed to justify the proposed addition of LCO 3.0.9 to the TS. This approach was necessitated by (1) the general nature of the proposed TS change (i.e., it applies to all plants and is associated with an undetermined number of barriers that are n not able to perform their function), and (2) the lack of detailed modeling in most plant-specific PRAs which do not include passive structures as barriers.

The simplified risk assessment considers three different parameters:

1. The length of time the affected barrier is unavailable,

2. The initiating event frequency for which the affected barrier is designed to mitigate, and

3. The importance to CDF (or LERF) of the TS equipment (train, subsystem, or component) for which the affected barrier is designed to protect, measured by the risk achievement worth of the equipment.

$$\mathrm{ICCDP} = \left[\frac{T_C}{8766} \times \frac{IE_i}{IE_T}\right] \times \left[\left(RAW_j \times CDF_{base}\right) - CDF_{base}\right]$$

Where:

—T_c is the time the barrier is unavailable (hours)

—$T_c/8766$ is therefore the fraction of the year during which the barrier is unavailable,

—IE_i/IE_T is the ratio of the initiating event frequency for which the affected barrier is designed to mitigate, IE_i, and the total initiating event frequency, IE_T,

—RAW_j is the risk achievement worth of the component(s) for which the barrier provides protection, and

—CDF_{base} is the baseline core damage frequency (per year).

ICLERP also may be similarly determined, using baseline LERF and RAW values with respect to LERF. It is assumed that the magnitude of the LERF risk resulting from the barrier unable to perform its related support function would be generally at least one order of magnitude less than the corresponding CDF risk. Containment bypass scenarios, which are typically the significant contributors to LERF, would not be uniquely affected by application of LCO 3.0.9, and initiating events which would be significant LERF contributors, such as steam generator tube rupture and interfacing systems LOCA, are not typically associated with barriers within the scope of LCO 3.0.9. Therefore, the assumption regarding LERF risk is reasonable and acceptable for the generic risk evaluation, provided that LERF risk impacts are considered on a plant-specific basis for unavailable barriers, as described in section 3.3.

The relevant initiating events (i.e., events for which barriers subject to LCO 3.0.9 provide protection) are:

—Internal and external floods

—High energy line breaks

—Feedwater line breaks

—Loss of coolant accident (small, medium, and large)

—Tornados and high winds

—Turbine missiles.

Generic frequencies for most of these initiating events were obtained from NUREG/CR–5750 (Reference 5). For external floods, turbine missiles, and tornados, other industry source documents were referenced. The most limiting (highest frequency) initiating event was obtained for a high energy line break from NUREG/CR–5750, with a frequency of 9.1E–3 per year. The risk assessment is therefore based on this limiting frequency, and the proposed methodology to apply LCO 3.0.9 is similarly restricted to barriers protecting against initiating events whose total frequency is no more than 9.1E–3 per year.

3.1 Risk Assessment Results and Insights

The results and insights from the implementation of the three-tiered approach of RG 1.177 to support the

proposed addition of LCO 3.0.9 to the TS are summarized and evaluated in the following Sections 3.1.1 to 3.1.3.

3.1.1 Risk Impact

The bounding risk assessment approach, described in Section 3.0, was developed for a range of plant baseline CDF values and for a range of protected component RAW values. The maximum allowable 30-day outage time was used. The results are summarized in Table 1.

TABLE 1.—RISK ASSESSMENT RESULTS FOR A POSTULATED 30-DAY BARRIER OUTAGE

RAW	ICCDP	ICLERP
Baseline CDF = 1E–6 Per Year		
2	7.5E–10	7.5E–11
10	6.7E–09	6.7E–10
50	3.7E–08	3.7E–09
100	7.4E–08	7.4E–09
Baseline CDF = 1E–5 Per Year		
2	7.5E–09	7.5E–10
10	6.7E–08	6.7E–09
50	3.7E–07	3.7E–08
100	7.4E–07	7.4E–08
Baseline CDF = 1E–4 Per Year		
2	7.5E–08	7.5E–09
10	6.7E–07	6.7E–08
50	3.7E–06	3.7E–07
100	7.4E–06	7.4E–07

The above results represent a sensitivity analysis covering the expected range of plant baseline CDF values and component RAW values. The most limiting configurations involving very high risk components (RAW > 10) would not be anticipated to occur for most planned maintenance activities.

The calculations conservatively assume the most limiting (highest frequency) initiating event and the longest allowable outage time (30 days). Occurrence of the initiating event during unavailability of the barrier is conservatively assumed to directly fail the protected equipment; no credit is taken for event-specific circumstances which may result in the equipment remaining functional even with the barrier unavailable. (For example, a barrier required to protect equipment from steam impingement for high energy line breaks may only be required for breaks occurring in specific locations and orientations relative to the protected equipment, and only for large size breaks.) No credit is taken for avoided risk identified in Section 2.

The risk assessment results of Table 1 were compared to guidance provided in the revised Section 11 of NUMARC 93–01, Revision 2 (Reference 6), endorsed by RG 1.182 (Reference 7), for implementing the requirements of paragraph (a)(4) of the Maintenance Rule, 10 CFR 50.65. Such guidance is summarized in Table 2. Guidance regarding the acceptability of conditional risk increase in terms of CDF for a planned configuration is provided. This guidance states that a specific configuration that is associated with a CDF higher than 1E–3 per year should not be entered voluntarily. The staff notes that the higher risk configurations documented in Table 1 would exceed this guidance, and would therefore not be permitted to be entered voluntarily. For example, with a baseline CDF of 1E–4 per year, a component with a RAW greater than 10 would exceed the 1E–3 per year criteria. Therefore, the sensitivity analyses presented in Table 1 are understood to include higher risk configurations which would not be permitted under the guidance of Reference 6.

TABLE 2.—GUIDANCE FOR IMPLEMENTING 10 CFR 50.65(A)(4)

ΔR_{CDF}	Guidance.
Greater than 1E–3/year	Configuration should not normally be entered voluntarily.

ICCDP	Guidance	ICLERP
Greater than 1E–5	Configuration should not normally be entered voluntarily	Greater than 1E–6.
1E–6 to 1E–5	Assess non-quantifiable factors Establish risk management actions	1E–7 to 1E–6.
Less than 1E–6	Normal work controls	Less than 1E–7.

Guidance regarding the acceptability of ICCDP and ICLERP values for a specific planned configuration and the establishment of risk management actions is also provided in NUMARC 93–01. This guidance, as shown in Table 2, states that a specific plant configuration that is associated with ICCDP and ICLERP values below 1E–6 and 1E–7, respectively, is considered to require ''normal work controls.'' Table 1 shows that for the majority of barrier outage configurations the conservatively assessed ICCDP and ICLERP values are within the limits for what is recommended as the threshold for the ''normal work controls'' region.

As stated in the implementation guidance for LCO 3.0.9 (Reference 2), plants are required to commit to the guidance of NUMARC 93–01 Section 11, and therefore the above limits would be applicable. Plant configurations including out of service barriers may therefore be entered voluntarily if supported by the results of the risk assessment required by 10 CFR 50.65(a)(4), and by LCO 3.0.9.

RG 1.177 (Ref. 4) provides guidance of 5E–7 ICDP and 5E–8 ILERP as the limit for a TS allowed outage time. As shown in Table 1, the guidance is met for the typically anticipated configurations, unless either the baseline CDF for the plant approaches 1E–4 per year or the RAW of the protected components is well above 10. Such configurations may exceed the criteria described in Ref. 6 (Table 2) and would not be voluntarily entered. Such configurations are not expected to be frequently encountered, and may be addressed on a case-by-case plant-specific basis by limiting the allowed outage time and by implementing plant-specific risk management actions, as per the implementing guidance (Reference 2).

RG 1.174 (Ref. 3) provides guidance of 1E–5 per year ΔCDF and 1E–6 per year ΔLERF. The ICCDP calculations demonstrated that each individual 30–day barrier outage is anticiapted to be low risk. Although there is no explicit limit on the number of times per year that LCO 3.0.9 may be applied, even assuming barrier outages occurred continuously over the entire year, the risk incurred would still be anticipated to be below the limits of the guidance.

The staff finds that the risk assessment results support the proposed addition of LCO 3.0.9 to the TS. The risk increases associated with this TS change will be insignificant based on guidance

provided in RGs 1.174 and 1.177 and within the range of risks associated with normal maintenance activities.

3.1.2 Identification of High-Risk Configurations

The second tier of the three-tiered approach recommended in RG 1.177 involves the identification of potentially high-risk configurations that could exist if equipment, in addition to that associated with the TS change, were to be taken out of service simultaneously. Insights from the risk assessments, in conjunction with important assumptions made in the analysis and defense-in-depth considerations, were used to identify such configurations. To avoid these potentially high-risk configurations, specific restrictions to the implementation of the proposed TS changes were identified.

When LCO 3.0.9 is applied, at least one train or subsystem is required to be operable with required barriers in place, such that this train or subsystem would be available to provide mitigation of the initiating event. LCO 3.0.9 may be applied to multiple trains of the same system only for barriers which provide protection for different initiating events, such that at least one train or subsystem is available to provide mitigation of the initiating event. The use of LCO 3.0.9 for barriers which protect all trains or subsystems from a particular initiating event is not permitted. Therefore, potentially high-risk configurations involving a loss of function required for mitigation of a particular initiating event are avoided by the restrictions imposed on applicability of LCO 3.0.9.

LCO 3.0.9 also addresses potential emergent conditions where unplanned failures or discovered conditions may result in the unavailability of at least one train or subsystem for a particular initiating event. Such conditions may result during application of LCO 3.0.9 from equipment failure on the operable train, or discovery of degraded barriers. In such cases, a 24-hour allowed time is provided to restore the conditions to permit continued operation with unavailable barriers, after which the applicability of LCO 3.0.9 ends, and the supported system LCO becomes effective. This allowed time is provided so that emergent conditions with low risk consequences may be effectively managed, rather than requiring immediate exit of LCO 3.0.9 and the potential for an unplanned plant shutdown.

A limit of 30 days is applied to the LCO 3.0.9 allowed outage time for each barrier, after which the barrier must be restored to an available status, or the supported system TS must be applied. This 30-day backstop applies regardless of the risk level calculated, and provides assurance that installed plant barriers will be maintained available over long periods of time, and that the application of LCO 3.0.9 will not result in long term degradation of plant barriers.

The staff finds that the restrictions on the applicability of LCO 3.0.9 assuring that one safety train remains available to mitigate the initiating event, along with the 30-day limit applicable to each barrier, assure that potentially high-risk configurations are avoided in accordance with the guidance provided in RGs 1.174 and 1.177.

3.1.3 Configuration Risk Management

The third tier of the three-tiered approach recommended in RG 1.177 involves the establishment of an overall configuration risk management program (CRMP) to ensure that potentially risk-significant configurations resulting from maintenance and other operational activities are identified. The objective of the CRMP is to manage configuration-specific risk by appropriate scheduling of plant activities and/or appropriate compensatory measures. This objective is met by licensee programs to comply with the requirements of paragraph (a)(4) of the Maintenance Rule (10 CFR 50.65) to assess and manage risk resulting from maintenance activities, and by LCO 3.0.9 requiring risk assessments and management using (a)(4) processes if no maintenance is in progress. These programs can support licensee decision making regarding the appropriate actions to manage risk whenever a risk-informed TS is entered.

The implementation guidance for LCO 3.0.9 (Reference 2) requires that the risk determination for an unavailable barrier be performed per the ICCDP calculation as described in Section 3.1 using the plant-specific configuration as the basis for determining the protected component RAW value. Further, the calculations are to be updated whenever emergent conditions occur. These requirements assure that the configuration-specific risk associated with unavailable barriers is assessed and managed prior to entry into LCO 3.0.9 and during its applicability as conditions change.

These evaluations for the unavailable barrier are performed as part of the assessment of plant risk required by 10 CFR 50.65(a)(4). The numerical guidance identified in Table 2 are applicable to implementation of LCO 3.0.9, using the results of the configuration-specific risk assessment which addresses the risk impact of the unavailable barrier along with all other out of service components and plant alignments.

Risk management actions are required to be considered when the calculated risk exceeds specific thresholds per NUMARC 93–01 Section 11, as identified in Table 2. Additional guidance on risk management actions are provided in the implementation guidance for LCO 3.0.9.

The allowed outage time for a barrier is calculated based on an ICCDP limit of 1E–6. This is the NUMARC 93–01 Section 11 guidance for applicability of normal work controls, and is conservatively lower than the guidance of 1E–5 for voluntary maintenance activities. The use of 1E–6 will result in conservatively short allowed outage times for barriers compared to allowed times for other maintenance activities.

If the scope of the PRA model used to support the plant-specific CRMP does not include the initiating event for which a barrier provides protection, then LCO 3.0.9 applicability is limited to one barrier on a single train. Multiple barriers for such initiating events may not be unavailable under LCO 3.0.9, and in such situations the LCO(s) associated with the protected components would be applicable. Applicability of LCO 3.0.9 to the single barrier for an initiating event that is not modeled in the plant PRA is acceptable based on the generic risk analysis provided by TSTF–427, as described in Section 3.1.

Assessment of the LERF risk impact on an unavailable barrier is required to be performed in accordance with NUMARC 93–01 Section 11. If an unavailable barrier provides protection to equipment which is relevant to the containment function, or which protects equipment from the effects of an initiating event which is a contributor to LERF, then the methodology requires a calculation for ICLERP similar to the calculations performed for ICCDP, described in Section 3.1, or the applicability of LCO 3.0.9 must be limited to that one barrier.

The staff finds that the risk evaluations required to support the applicability of LCO 3.0.9 appropriately consider the risk from unavailable barriers in an integrated manner based on the overall plant configuration. Therefore potentially high-risk configurations can be identified and managed in accordance with the guidance provided in RGs 1.174 and 1.177.

3.2 Summary and Conclusions

The unavailability of barriers which protect TS required components from the effects of specific initiating events is typically a low risk configuration which

should not require that the protected components be immediately declared inoperable. The current TS require that when such barriers are unavailable, the protected component LCO is immediately entered. Some potential undesirable consequences of the current TS requirements include:

1. When maintenance activities on the supported TS system requires removal and restoration of barriers, the time available to complete maintenance and perform system restoration and testing is reduced by the time spent maneuvering the barriers within the time constraints of the supported system LCO;

2. Restoration of barriers following maintenance must be given a high priority due to time restraints of the existing supported system LCO, when other more risk important activities may have a greater risk impact and should therefore be given priority; and

3. Unnecessary plant shutdowns due to discovery of degraded barriers which may require more than the existing supported system LCO time to complete repairs and restoration.

To remove the overly restrictive requirements in the treatment of barriers, licensees are proposing a risk-informed TS change which introduces a delay time before entering the actions for the supported equipment when one or more barriers are found degraded or removed to facilitate planned maintenance activities. Such a delay time will provide needed flexibility in the performance of maintenance during power operation and at the same time will enhance overall plant safety by (1) performing system maintenance and restoration activities, including post-maintenance testing, within the existing TS LCO time, and allowing barrier removal and restoration to be performed outside of the TS LCO, providing more time for the safe conduct of maintenance and testing activities on the supported system; (2) requiring barrier removal and restoration activities to be assessed and prioritized based on actual plant risk impacts; and (3) avoiding unnecessary unscheduled plant shutdowns, thus minimizing plant transition and realignment risks.

The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A simplified bounding risk assessment was performed to justify the proposed TS changes. This bounding assessment was selected due to the lack of detailed plant-specific risk models for most plants which do not include failure modes of passive structures such as barriers. The impact from the addition of the proposed LCO 3.0.9 to the TS on defense-in-depth was also evaluated in conjunction with the risk assessment results.

Based on this integrated evaluation, the staff concludes that the proposed addition of LCO 3.0.9 to the TS would lead to insignificant risk increases. Indeed, this conclusion is true without taking any credit for the removal of potential undesirable consequences associated with the current conservative treatment of barriers.

Consistent with the staff's approval and inherent in the implementation of TSTF–427, licensees interested in implementing LCO 3.0.9 must, as applicable, operate in accordance with the following stipulations:

1. The licensee must commit to the guidance of NUMARC 93–01, Section 11 (Reference 6) and to NEI 04–08 (Reference 2).

2. Licensee procedures must be revised to ensure that the risk assessment and management process described in NEI 04–08 is used whenever a barrier is considered unavailable and the requirements of LCO 3.0.9 are to be applied. This must be done in accordance with an overall CRMP to ensure that potentially risk-significant configurations resulting from maintenance and other operational activities are identified and avoided.

4.0 State Consultation

In accordance with the Commission's regulations, the [] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no-significant-hazards considerations, and there has been no public comment on the finding [FR]. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. TSTF–427, Revision 1, ''Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY,'' February 3, 2006.

2. NEI 04–08, ''Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY (TSTF–427) Industry Implementation Guidance'', March 2006.

3. Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' USNRC, August 1998.

4. Regulatory Guide 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' USNRC, August 1998.

5. ''Rates of Initiating Events at U.S. Nuclear Power Plants,'' NUREG/CR–5750, Idaho National Engineering and Environmental Laboratory, February 1999.

6. Nuclear Energy Institute, ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants'', NUMARC 93–01, Revision 2, Section 11.

7. ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants'', Regulatory Guide 1.182.

Proposed No-Significant-Hazards-Consideration Determination

Description of Amendment Request: A change is proposed to the standard technical specifications (STS)(NUREGs 1430 through 1434) and plant specific technical specifications (TS), to allow a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). LCO 3.0.9 will be added to individual TS providing this allowance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability of Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable hazard barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a no-significant-hazards consideration. Dated at Rockville, Maryland, this 26 day of May 2006.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Branch Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

For Inclusion on the Technical Specifications Web Page

The following example of an application was prepared by the NRC staff to facilitate use of the consolidated line item improvement process (CLIIP). The model provides the expected level of detail and content for an application to revise technical specifications regarding the addition of LCO 3.0.9 on the unavailability of barriers using CLIIP. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as nuclear regulatory commission regulations.

U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555

SUBJECT: PLANT NAME
DOCKET NO. 50—APPLICATION FOR TECHNICAL SPECIFICATION CHANGE TO ADD LCO 3.0.9 ON THE UNAVAILABILITY OF BARRIERS USING THE CONSOLIDATED LINE ITEM IMPROVEMENT PROCESS

Gentlemen:

In accordance with the provisions of Title 10 of the Code of Federal Regulations (CFR) 50.90, [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements for unavailable barriers by adding LCO 3.0.9.

Enclosure 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Enclosure 2 provides the existing TS pages marked up to show the proposed change. Enclosure 3 provides revised (clean) TS pages. Enclosure 4 provides a summary of the regulatory commitments made in this submittal.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,

[Name, Title]

Enclosures:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Regulatory Commitments
5. Proposed Technical Specification Bases Changes.

cc: NRC Project Manager
NRC Regional Office
NRC Resident Inspector
State Contact

Enclosure 1—Description and Assessment

1.0 Description

The proposed amendment would modify technical specifications (TS) requirements for unavailable barriers by adding LCO 3.0.9.

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF–427 Revision 1. The availability of this TS improvement was published in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIIP. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF–427. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for

the incorporation of the changes to the [PLANT] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the TSTF–427 Revision 1 or the NRC staff's model safety evaluation dated [DATE].

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, plant-specific verifications were performed as follows:

1. [LICENSEE] commits to the guidance of NUMARC 93–01 Section 11, which provides guidance and details on the assessment and management of risk during maintenance.

2. [LICENSEE] will revise procedures to ensure that the risk assessment and management process described in NEI 04–08 is used whenever a barrier is considered unavailable and the requirement of LCO 3.0.9 are to be applied, in accordance with an overall CRMP to ensure that potentially risk-significant configurations resulting from maintenance and other operational activities are identified and avoided.

4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Enclosure 2—Proposed Technical Specification Changes (Mark-Up)

Enclosure 3—Proposed Technical Specification Pages

Enclosure 4—List of Regulatory Commitments

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

Regulatory commitments	Due date/event
[LICENSEE] commits to the guidance of NUMARC 93–01, Revision 2, Section 11, which provides guidance and details on the assessment and management of risk during maintenance.	[Ongoing or implement with amendment].
[LICENSEE] commits to the guidance of NEI 04–08, ''Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITY (TSTF–427) Industry Implementation Guidance,'' March 2006.	[Implement with amendment, when barrier(s) are unavailable].

Enclosure 5—Proposed Changes to Technical Specification Bases Pages

[FR Doc. 06–5044 Filed 6–1–06; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27384]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 26, 2006.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 2006. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 2006, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Hyperion 2005 Investment Grade Opportunity Term Trust, Inc. [File No. 811–7386]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 5, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. American Stock Transfer & Trust Company is holding funds for shareholders who have not yet been located. Applicant incurred $415,495 in expenses in connection with the reorganization.

Filing Date: The application was filed on April 25, 2006.

Applicant's Address: Three World Financial Center, 200 Vesey St., 10th Floor, New York, NY 10281–1010.

Oppenheimer Principal Protected Trust IV [File No. 811–21562]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 13, 2006, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $2,500 incurred in connection with the liquidation were paid by Oppenheimer Funds, Inc., applicant's investment adviser.

Filing Date: The application was filed on April 21, 2006.

Applicant's Address: 6803 Tucson Way, Centennial, CO 80112.

Grand Prix Funds, Inc. [File No. 811–8461]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 17, 2006, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred

$41,188 in expenses in connection with the liquidation. Target Investors, Inc., applicant's investment adviser, will pay any additional expenses incurred in connection with the liquidation.

Filing Date: The application was filed on May 1, 2006.

Applicant's Address: Wilton Executive Campus, 15 River Road, Suite 220, Wilton, CT 06897.

UM Investment Trust II [File No. 811–21679]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 7, 2006, and amended on May 18, 2006.

Applicant's Address: 522 Fifth Ave., New York, NY 10036.

Weldon Capital Funds Inc. [File No. 811–21509]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 28, 2006, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $20,529 incurred in connection with the liquidation were paid by applicant's investment adviser, Weldon Capital Management, Ltd.

Filing Dates: The application was filed on April 11, 2006, and amended on May 8, 2006.

Applicant's Address: 4747 W. 135th St., Suite 100, Leawood, KS 66224.

JPMorgan Securities Lending Collateral Investment Trust [File No. 811–21581]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By August 25, 2005, all of applicant's shareholders had redeemed their shares at net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on February 13, 2006, and amended on April 28, 2006.

Applicant's Address: 522 Fifth Ave., New York, NY 10036.

Van Kampen California Municipal Trust [File No. 811–5662]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 5, 2005, applicant transferred its assets to Van Kampen California Value Municipal Income Trust, based on net asset value. Applicant's preferred shares had liquidation preference of $50,000 per share and the preferred shares of the acquiring fund have a liquidation preference of $25,000 per share, so the preferred shares of applicant were converted into preferred shares of the acquiring fund on a one-for-two basis. Expenses of $217,083 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on March 20, 2006, and amended on May 15, 2006.

Applicant's Address: 1221 Avenue of the Americas, New York, NY 10020.

Van Kampen California Quality Municipal Trust [File No. 811–6361] Van Kampen Trust for Investment Grade California Municipals [File No. 811–6535]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 29, 2005, each applicant transferred its assets to Van Kampen California Value Municipal Income Trust, based on net asset value. Each applicant's preferred shares were converted into preferred shares of the acquiring fund on a one-for-one basis. Expenses of $76,413 and $227,503, respectively, incurred in connection with the reorganizations were paid by the applicants and the acquiring fund.

Filing Dates: The applications were filed on March 20, 2006, and amended on May 15, 2006.

Applicants' Address: 1221 Avenue of the Americas, New York, NY 10020.

Wayne Hummer Investment Trust [File No. 811–3880]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 24, 2006, applicant transferred its assets to Federated Kaufmann Fund, a series of Federated Equity Funds, based on net asset value. Expenses of $276,593 incurred in connection with the reorganization were paid by Wayne Hummer Asset Management Company, applicant's investment adviser, and Federated Investors, Inc., an affiliate of the acquiring fund's investment adviser.

Filing Dates: The application was filed on March 29, 2006, and amended on May 18, 2006.

Applicant's Address: 300 South Wacker Dr., Suite 1500, Chicago, IL 60606.

BAT Subsidiary Inc. [File No. 811–8951]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 29, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on May 15, 2006.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

TD Waterhouse Plus Funds, Inc. [File No. 811–7871]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 24, 2006, applicant transferred its assets to TDAM Money Market Portfolio Premium Class, a series of TD Asset Management USA Funds Inc., based on net asset value. Expenses of $66,291 incurred in connection with the reorganization were paid by TD Asset Management USA Inc., applicant's investment adviser, or one of its affiliates.

Filing Date: The application was filed on May 10, 2006.

Applicant's Address: c/o TD Asset Management USA Inc., 31 West 52nd St., 21st Floor, New York, NY 10019.

Partners Balanced Trust [File No. 811–21270]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 18, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $18,500 incurred in connection with the liquidation were paid by BlackRock Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on May 15, 2006.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

True Funds [File No. 811–21588]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on March 30, 2006, and amended on May 4, 2006.

Applicant's Address: 5455 Corporate Dr., Suite 204, Troy, MI 48098.

Lord Abbett Delta Fund [File No. 811–10177]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on March 27, 2006, and amended on May 18, 2006.

Applicant's Address: 90 Hudson St., Jersey City, NJ 07302.

North American Separate Account VAI [File No. 811–21426]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant is not now engaged, or intending to engage, in any business activities, other than those necessary for winding up its affairs.

Filing Date: The application was filed on April 20, 2006.

Applicant's Address: North American Company for Life & Health Insurance of New York, 990 Stewart Avenue, Garden City, New York 11530.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8548 Filed 6–1–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53873; File No. SR–Amex–2006–52]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Numerical Designations of Paragraphs in Amex Rule 935—ANTE

May 25, 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 May 19, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Amex. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

Amex seeks to correct the numerical designations of paragraphs in Amex Rule 935—ANTE. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's Office of the Secretary, 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, Amex 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

On March 14, 2006, the Exchange submitted a proposal to amend Amex Rule 935—ANTE to revise the manner in which executed contracts are allocated when more than one market participant is either quoting, or has orders, at the Amex best bid or offer at the time the execution occurs. However, by the time this filing was approved on May 12, 2006,[5] other changes to Rule 935—ANTE were approved[6] and the numerical designations of the new paragraphs to this rule were no longer in order. This filing merely seeks to correct this formatting error to keep published rules organized.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 53798 (May 12, 2006), 71 FR 29193 (May 19, 2006).

[6] *See* Exchange Act Release Nos. 53635 (April 12, 2006), 71 FR 20144 (April 12, 2006) and 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

Under Rule 19b–4(f)(6) of the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the five-day pre-filing requirement [12] and the 30-day operative delay to allow for the expeditious and accurate publication of Amex rules. The Commission believes that the Amex's proposal raises no new issues or regulatory concerns as it is simply a proposal to reformat rule text changes that have already been approved by the Commission. Therefore, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing requirement and the 30-day operative date so that the proposal may take effect upon filing.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–52 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–Amex–2006–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2006–52 and should be submitted on or before June 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8538 Filed 6–1–06; 8:45 am]

BILLING CODE 8010–01–P

[11] *Id.*

[12] Amex provided the Commission with written notice of its intent to file the proposed rule change one day prior to the filing date.

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34–53872; File No. SR–CBOE–2006–45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Its Board Review Authority

May 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to clarify the authority of its Board of Directors (''Board'') with respect to actions or inactions of committees of CBOE and CBOE staff. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Chapter II Organization and Administration (Rules 2.1–2.40)

Part A—Committees (Rule 2.1)

Rule 2.1. Committees of the Exchange

(a)–(c) No change.

(d) General Duties and Powers of Committees. Each committee shall administer the provisions of the Constitution and the rules of the Exchange pertaining to matters within its jurisdiction. *In addition to any powers and duties specifically granted in the Constitution or Rules,* e[E]ach committee shall have *only* such other powers and duties as may be delegated to it by the Board of Directors. Each committee is subject to the control and supervision of the Board of Directors.

Part B—Board Review (Rule 2.2)

Rule 2.2. Power of the Board to Review Exchange Decisions

In connection with any delegation to a committee or committees pursuant to Article EIGHTH of the Certificate of Incorporation, the Board retains the power and authority to review, affirm, modify, suspend or overrule any and all actions or inactions of committees and of all officers, representatives or designees of the Exchange; provided, however, that such power and authority shall not apply to (a) actions taken (or inactions) pursuant to Chapters XVII, XVIII and XIX of the Rules, unless specifically provided for in those Rules, or (b) actions taken by (or inactions of) the Nominating Committee or Executive Committee pursuant to Article IV of the Constitution.

Part [B]*C*—Departments (Rule 2.15)

No change.

Part [C]*D*—Dues, Fees and Other Charges (Rules 2.20–2.40)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE's Certificate of Incorporation provides that the Board shall manage the business and affairs of the Exchange except to the extent that the authority, powers, and duties of such management shall be delegated to a committee or committees of the Exchange that are established pursuant to the Exchange's Constitution. The Certificate of Incorporation and Constitution of CBOE also provide that the Board may establish one or more committees, each of which shall have the authority, power, and duties as may be prescribed in the Exchange's Constitution or Rules, or by resolution of the Board.[3]

Over time the Board has established various committees, several of which have specific authorities described in the Exchange's Constitution or Rules. Though CBOE Rule 2.1, *Committees of the Exchange*, currently provides that each committee ''is subject to the control and supervision of the Board,'' this supervisory power alone does not make explicit the power of the Board to directly modify or overrule the action (or inaction) of a committee when the decisionmaking authority with respect to the action has been delegated to the committee in the Exchange's Rules. The proposed rule change will address this by explicitly reserving the Board's review authority over all actions taken by (or inactions of) committees of CBOE, as well as CBOE staff. Specifically, this proposed rule change seeks to adopt CBOE Rule 2.2, *Power of the Board to Review Exchange Decisions*, which clarifies that the Board retains the power and authority to review, affirm, modify, suspend, or overrule any and all actions or inactions of committees of CBOE and of CBOE officers, representatives, or designees. Proposed CBOE Rule 2.2 would not apply to actions taken (or inactions) pursuant to Chapters XVII (*Discipline*), XVIII (*Arbitration*), and XIX (*Hearings and Review*) of the Exchange's Rules, unless specifically provided for in those Rules, or to actions taken by (or inactions of) the Nominating Committee or Executive Committee relating to the nominating process pursuant to Article IV of the Exchange's Constitution. The proposed rule change also seeks to amend CBOE Rule 2.1 to make clear that committees will only have such powers and duties as are specifically granted in the Exchange's Constitution or Rules and only such other powers and duties as may be delegated to them by the Board.

2. Statutory Basis

The Exchange believes that, because it clarifies the Board's authority, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[4] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with the requirements of Section 6(b)(1) of the Act,[5] which requires that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)[6] or 19(g)(2)[7] of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–CBOE–2006–45 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–CBOE–2006–45. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All

[3] *See* Article EIGHTH of the CBOE Certificate of Incorporation and Section 7.6 of the CBOE Constitution.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(1).

[6] 15 U.S.C. 78q(d).

[7] 15 U.S.C. 78s(g)(2).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–45 and should be submitted on or before June 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8552 Filed 6–1–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53876; File No. SR–NYSE–2006–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Relating to the Listing and Trading of Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the Dow Jones—AIG Commodity Index Total Return

May 25, 2006.

I. Introduction

On March 6, 2006, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change to list and trade Index-Linked Securities of Barclays Bank PLC (''Barclays'') linked to the performance of the Dow Jones—AIG Commodity Index Total Return (the ''Index''). On March 27, 2006, NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on April 21, 2006 for a 15-day comment period.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE proposes to list and trade the Index-Linked Securities (''Notes'') that will track the performance of the Index pursuant to Section 703.19 (''Other Securities'') of the NYSE Listed Company Manual (the ''Manual''). Barclays intends to issue the Notes under the name ''iPath℠ Exchange-Traded Notes.'' The Exchange believes that the Notes will conform to the initial listing standards for equity securities under Section 703.19 of the Manual because Barclays is an affiliate of Barclays PLC,[4] an Exchange-listed company in good standing. Under Section 703.19 of the Manual, the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading.[5] The Notes will have a minimum life of one year, the minimum public market value of the Notes at the time of issuance will exceed $4 million, there will be at least one million Notes outstanding, and there will be at least 400 holders at the time of issuance.

The Notes are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the Index. The principal amount of each Note is $50. The Notes will trade on the Exchange's equity trading floor, and the Exchange's existing equity trading rules will apply to trading the Notes. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the Index must increase for the investor to receive at least the $50 principal amount per Note at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee (described below), the investor will receive less, and possibly significantly less, than the $50 principal amount per Note. In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes will have a term of 30 years. The Notes are not callable.[6]

Holders who have not previously redeemed their Notes will receive a cash payment at maturity equal to the principal amount of their Notes times the index factor on the Final Valuation Date (as defined below) minus the investor fee on the Final Valuation Date. The ''index factor'' on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The ''initial index level'' is the closing value of the Index on the date of issuance of the Notes (the ''Trade Date''), and the ''final index level'' is the closing value of the Index on the Final Valuation Date. The investor fee is equal to 0.75% per year times the principal amount of a holder's Notes times the index factor, calculated on a daily basis in the following manner: The investor fee on the Trade Date will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Notes times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Notes.

Prior to maturity, holders may redeem their Notes on any Redemption Date (defined below) during the term of the Notes, provided that they present at least 50,000 Notes for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Notes for redemption with other investors' Notes. If a holder chooses to redeem his Notes, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of his Notes times the index factor on the applicable Valuation Date (defined below) minus the investor fee on the applicable Valuation Date. A ''Redemption Date'' is the third business day following a Valuation Date (other than the Final Valuation Date (defined below)). A ''Valuation Date'' is each Thursday from the first Thursday after issuance of the Notes until the last Thursday before maturity of the Notes

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53639 (April 12, 2006), 71 FR 20741 (the ''Notice'').

[4] The issuer of the Notes, Barclays, is an affiliate of an Exchange-listed company (Barclays PLC) and not an Exchange-listed company itself. However, Barclays, though an affiliate of Barclays PLC, would exceed the Exchange's earnings and minimum tangible net worth requirements in Section 102 of the Manual. Additionally, the Exchange states that the Notes, when combined with the original issue price of all other Note offerings of the issuer that are listed on a national securities exchange (or association), does not exceed 25% of the issuer's net worth. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and John Carey, Assistant General Counsel, Exchange, on April 11, 2006 (''April 11 Telephone Conference'').

[5] *See* Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990).

[6] April 11 Telephone Conference.

(the ''Final Valuation Date'') inclusive (or, if such date is not a trading day, the next succeeding trading day), unless the calculation agent determines that a market disruption event, as described below, occurs or is continuing on that day.[7] In that event, the Valuation Date for the maturity date or corresponding Redemption Date, as the case may be, will be the first following trading day on which the calculation agent determines that a market disruption event does not occur and is not continuing. In no event, however, will a Valuation Date be postponed by more than five trading days.[8]

To redeem their Notes, holders must instruct their broker or other person through whom they hold their Notes to take the following steps:

- Deliver a notice of redemption to Barclays via e-mail by no later than 11 a.m. Eastern time (''ET'') on the business day prior to the applicable Valuation Date. If Barclays receives such notice by the time specified in the preceding sentence, it will respond by sending the holder a confirmation of redemption;
- Deliver the signed confirmation of redemption to Barclays via facsimile in the specified form by 4 p.m. ET on the same day; Barclays must acknowledge receipt in order for the confirmation to be effective; and
- Transfer such holder's book-entry interest in its Notes to the trustee, The Bank of New York, on Barclays' behalf at or prior to 10 a.m. ET[9] on the applicable Redemption Date (the third business day following the Valuation Date).

If holders elect to redeem their Notes, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Notes for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Notes if Barclays Capital Inc. fails to purchase the Notes. Any Notes purchased by Barclays Capital Inc. may remain outstanding for trading on the Exchange.

If an event of default occurs and the maturity of the Notes is accelerated, Barclays will pay the default amount in respect of the principal of the Notes at maturity.

III. Indicative Value

An intraday ''Indicative Value'' meant to approximate the intrinsic economic value of the Notes will be calculated and published via the facilities of the Consolidated Tape Association (''CTA'') every 15 seconds throughout the NYSE trading day on each day on which the Notes are traded on the Exchange. Additionally, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at *http://www.ipathetn.com.* In connection with the Notes, the term ''Indicative Value'' refers to the value at a given time based on the following equation:

Indicative Value = Principal Amount per Unit × (Current Index Level/ Initial Index Level) − Current Investor Fee

Where:

- Principal Amount per Unit = $50
- Current Index Level = The most recent published level of the Index as reported by Dow Jones and AIG-Financial Products Corp. (''AIG–FP'').[10]
- Initial Index Level = The Index level on the trade date for the Notes.
- Current Investor Fee = The most recent daily calculation of the investor fee with respect to the Notes, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading of the Notes on the NYSE at 4 p.m. ET.[11] The value of the Notes may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

While the market for futures trading for each of the Index commodities is open, the Indicative Value can be expected to closely approximate the redemption value of the Notes. However, during the NYSE trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Notes and their redemption value. The Exchange states that the Indicative Value disseminated during the NYSE trading hours should not be viewed as a real time update of the redemption value.

IV. Description of the Index

The investment objective of the Notes is to track the Index, which is described below and in more detail in the Notice.[12] The Index is designed to be a diversified benchmark for commodities as an asset class and reflects the returns that are potentially available through an unleveraged investment in the futures contracts on physical commodities comprising the Index plus the rate of interest that could be earned on cash collateral invested in specified Treasury Bills.[13] The Index currently is composed of the prices of 19 exchange-traded futures contracts on physical commodities.[14] Futures contracts on the Index are currently listed for trading on the Chicago Board of Trade (''CBOT''). The Index is a proprietary index that AIGI International Inc. (''AIGI'') developed, that each year is determined by AIG–FP, subject to the oversight and approval of the Oversight Committee (defined below), and that Dow Jones calculates.[15] The methodology for

[7] Barclays will serve as the initial calculation agent for the Notes.

[8] If a ''market disruption event'' is of more than a temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b–4 seeking Commission approval to continue to trade the Notes. (17 CFR 240.19b–4.) Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* ''Continued Listing Criteria,'' *infra.* Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Mike Cavalier, Assistant General Counsel, Exchange, on April 10, 2006 (''April 10 Telephone Conference'').

[9] The Exchange authorized the Commission staff to clarify time zone references here and elsewhere in the proposal. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Mike Cavalier, Assistant General Counsel, Exchange, on March 29, 2006 (''March 29 Telephone Conference'').

[10] AIG–FP is a wholly-owned and guaranteed subsidiary of American International Group, Inc.

[11] April 11 Telephone Conference (confirming Notes will trade until 4:00 p.m. ET). The Notice includes a chart of the trading hours for each of the futures contract components in the Index. *See* Notice, *supra,* note 3.

[12] The methodology for determining the composition and weighting of the Index and calculating its value is described in more detail in the Notice. *See supra,* note 3.

[13] These returns are calculated by using the 91-day U.S. Treasury Bill auction rate, designated as ''High Rate'' as published in the ''Treasury Security Auction Results'' report, published by the Bureau of the Public Debt currently available on its Web site (*http://wwws.publicdebt.treas.gov/AI/AIGateway*), which is generally published once per week on Monday.

[14] On March 3, 2006, the Oversight Committee of the Dow Jones—AIG Commodity Index announced that the Reformulated Gasoline Blendstock for Oxygen Blending (''RB'') futures contract traded on the New York Mercantile Exchange (''NYMEX'') will replace the New York Harbor Unleaded Gasoline (''HU'') futures contract also traded on NYMEX. Telephone conference between Brian Trackman, Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on March 30, 2006.

[15] AIG–FP is not a broker-dealer or futures commission merchant; however, AIG–FP may have such affiliates. Therefore, AIG–FP (i) implemented and agrees to maintain procedures reasonably

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determining the composition and weighting of the Index and for calculating its value is subject to modification by Dow Jones and AIG–FP (''Index Sponsors'') at any time.[16] Dow Jones disseminates the Index value at least every 15 seconds [17] (assuming the Index value has changed within such 15 second interval) from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET on each DJ–AIG Business Day (as defined below) on Reuters page AIGCII.[18] The Index value can still be retrieved after 3 p.m. ET until the end of the Exchange trading day, but its value is generally static after 3 p.m. ET, although it may change if settlement values for Index components become available after that time. A DJ–AIG Business Day (''DJ–AIG Business Day'') is a day on which the sum of the Commodity Index Percentages (as defined below) for the Index commodities that are available to trade is greater than 50%. For example, based on the weighting of the Index commodities for 2006, if the CBOT and the NYMEX are closed for trading on the same day, a DJ–AIG Business Day will not exist.[19]

Dow Jones and AIGI have established the Dow Jones—AIG Commodity Index Oversight Committee (the ''Oversight Committee'') to assist them in connection with the operation of the Index. The Oversight Committee may also meet at such other times as may be necessary.

As described in more detail in the Notice, the Index is re-weighted and rebalanced each year in January on a price-percentage basis. The annual weightings for the Index are determined each year in June or July by AIG-FP under the supervision of the Oversight Committee, announced after approval by the Oversight Committee, and implemented the following January. The composition of the Index for 2006 was approved following a meeting in July 2005. The Index reweighting and rebalancing took place in January 2006.[20]

The Exchange states that a number of commodities have been selected that are believed to be sufficiently significant to the world economy to merit consideration for inclusion in the Index and which are the subject of a qualifying related futures contract. With the exception of several metals contracts (aluminum, lead, tin, nickel and zinc) that trade on the LME, each of the potential commodities is the subject of a futures contract that trades on a U.S. exchange. The 23 potential commodities currently considered for inclusion in the Index and the 19 Index commodities selected for 2006 are set out in the Notice.[21]

A futures contract known as a Designated Contract is selected for each commodity. With the exception of several LME contracts, where the Oversight Committee believes that there exists more than one futures contract with sufficient liquidity to be chosen as a Designated Contract for a commodity, the Oversight Committee selects the futures contract that is traded in North America and denominated in dollars. If more than one such contract exists, the Oversight Committee selects the most actively traded contract.[22] For the purposes of applying the diversification rules, the commodities considered for inclusion in the Index are assigned to ''Commodity Groups.'' [23]

The relative weightings of the component commodities included in the Index are determined annually according to both liquidity and dollar adjusted production data in 2/3 and 1/3 shares, respectively. Each June, for each commodity designated for potential inclusion in the Index, liquidity is measured by the Commodity Liquidity Percentage (''CLP'') and production by the Commodity Production Percentage (''CPP''). The CLP for each commodity is determined by taking a five-year average of the product of trading volume and the historical dollar value of the Designated Contract for that commodity, and dividing the result by the sum of such products for all commodities which were designated for potential inclusion in the Index. The CPP is determined for each commodity by taking a five-year average of annual world production figures, adjusted by the historical dollar value of the Designated Contract, and dividing the result by the sum of such production figures for all the commodities, which were designated for potential inclusion in the Index. The CLP and the CPP are then combined (using a ratio of 2:1) to establish the Commodity Index Percentage (''CIP'') for each commodity. This CIP is then adjusted in accordance with certain diversification rules in order to determine the commodities, which will be included in the Index and their respective percentage weights.

The Index is designed to provide diversified exposure to commodities as an asset class. To ensure that no single commodity or commodity sector dominates the Index, the following diversification rules are applied to the annual re-weighting and rebalancing of the Index as of January of the applicable year:

- No related group of commodities designated as a ''Commodity Group'' (*e.g.*, energy, precious metals, livestock, or grains) may constitute more than 33% of the Index.
- No single commodity may constitute more than 15% of the Index.
- No single commodity, together with its derivatives (*e.g.*, crude oil, together with heating oil and unleaded gasoline), may constitute more than 25% of the Index.
- No single commodity that is in the Index may constitute less than 2% of the Index.

Following the annual re-weighting and rebalancing of the Index in January, the percentage of any single commodity or group of commodities at any time prior to the next re-weighting or rebalancing will fluctuate and may exceed or be less than the percentages set forth above.

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designed to prevent the use and dissemination by relevant employees of AIG–FP, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index and (ii) agrees to periodically check the application of such procedures as they relate to personnel of AIG–FP responsible for such changes. Barclays has informed the Exchange that Dow Jones does not have any affiliates engaged in the securities or commodities trading businesses and, as such, does not believe that such firewall procedures are necessary in its case. In addition, the Oversight Committee is subject to written policies that acknowledge their obligations with respect to material non-public information. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission and John Carey, Assistant General Counsel, Exchange, on May 11, 2006.

[16] In such case, the Commission would expect the Exchange to file a proposed rule change pursuant to Rule 19b–4 (17 CFR 240.19b–4), seeking Commission approval to continue trading the Notes. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* ''Continued Listing Critera,'' *infra.* April 10 Telephone Conference.

[17] April 11 Telephone Conference.

[18] The Oversight Committee (defined below) may exclude any otherwise eligible contract from the Index if it determines that it has an inadequate trading window. The Index currently includes contracts traded on the London Metal Exchange (''LME''), which is located in London. During the hours where the LME is closed, Dow Jones uses the last price and uses the settlement price once it is available in order to publish the Index value through the end of the trading day. The Index value does not reflect any after-hours or overnight trading in contracts traded on the LME.

[19] The Index value will be disseminated at least every 15 seconds and the daily Index value to be calculated and disseminated during the time the Notes trade on the Exchange; otherwise, the Exchange will halt trading in the Notes. April 11 Telephone Conference.

[20] *See* Notice, *supra* note 3, for a chart of the composition percentages for the Index for 2006.

[21] *See* Notice, *supra* note 3.

[22] The Designated Contracts for the commodities included in the Index for 2005 are set out in the Notice. *See supra* note 3.

[23] The Commodity Groups and their effective target rounded weightings for 2006 are set out in the Notice. *See supra* note 3.

Following application of the diversification rules discussed above, CIPs are incorporated into the Index by calculating the new unit weights for each Index commodity. Near the beginning of each new calendar year (the ''CIM Determination Date''), the CIPs, along with the settlement prices on that date for Designated Contracts included in the Index, are used to determine a Commodity Index Multiplier (''CIM'') for each Index commodity. This CIM is used to achieve the percentage weightings of the Index commodities, in dollar terms, indicated by their respective CIPs. After the CIMs are calculated, they remain fixed throughout the year. As a result, the observed price percentage of each Index commodity will float throughout the year, until the CIMs are reset the following year based on new CIPs.

In order to avoid delivering the underlying physical commodities and to maintain exposure to the underlying physical commodities, periodically futures contracts on physical commodities specifying delivery on a nearby date must be sold and futures contracts on physical commodities that have not yet reached the delivery period must be purchased. The rollover for each contract occurs over a period of five DJ-AIG Business Days each month according to a pre-determined schedule. This process is known as ''rolling'' a futures position. The Index is a ''rolling index.''

The Index is calculated by Dow Jones by applying the impact of the changes to the futures prices of commodities included in the Index (based on the commodities' relative weightings). Once the CIMs are determined as discussed above, the calculation of the Index is a mathematical process whereby the CIMs for the Index commodities are multiplied by the daily settlement prices in U.S. dollars for the applicable Designated Contracts. These products are then summed. During the rollover period, the sum includes both nearby and deferred contracts weighted according to the specified roll percentage. The percentage change in this sum from the prior day is then applied to the prior Index value. Finally, the value of one day's interest is added, calculated using the most recent (lagged by one day) 91-Day U.S. Treasury Bill Auction High Rate to arrive at the current Index value.

Dow Jones disseminates the Index value at least every 15 seconds (assuming the Index value has changed within such fifteen-second interval) from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET on each DJ-AIG Business Day on its Web site at *http://www.djindexes.com.*[24] This information is also transmitted via one or more major market data vendors. Real time information about the trading of the component futures contracts and their daily settlement prices is available from one or more major market data vendors, and in some cases, the underlying futures exchanges.[25]

Additionally, in the event of a disruption, adjustment, discontinuance, or substitution of the Index, the calculation agent has discretion as to the computation methodology and adjustments. However, in such case, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings.[26]

V. Continued Listing Criteria

The Exchange has represented that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[27]

The Exchange will delist the Notes:

- If, following the initial twelve month period from the date of commencement of trading of the Notes: (i) The Notes have more than 60 days remaining until maturity and there are fewer than 50 beneficial holders of the Notes for 30 or more consecutive trading days; (ii) if fewer than 50,000 Notes remain issued and outstanding; or (iii) if the market value of all outstanding Notes is less than $1,000,000;
- If the Index value ceases to be calculated or available during the time the Notes trade on the Exchange on at least a 15 second basis through one or more major market data vendors; [28]
- If, during the time the Notes trade on the Exchange, the Indicative Value ceases to be available on a 15 second delayed basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Additionally, the Exchange has represented it will file a proposed rule change pursuant to Rule 19b–4 under the Act,[29] seeking approval to continue trading the Notes and unless approved, the Exchange will commence delisting the Notes if:

- Dow Jones and AIG–FP substantially change either the Index component selection methodology or the weighting methodology;
- If a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement;[30] or
- If a successor or substitute index is used in connection with the Notes. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

VI. Trading Rules

The Exchange's existing equity trading rules will apply to trading of the Notes. The Notes will trade between the hours of 9:30 a.m. and 4 p.m. ET [31] and will be subject to the equity margin rules of the Exchange.[32]

A. Trading Halts

The Exchange has agreed it will cease trading the Notes if there is a halt or disruption in the dissemination of the Index value or the Indicative Value.[33] The Exchange has also represented it will cease trading the Notes if a ''market disruption event'' occurs that is of more than a temporary nature.[34] In the event that the Exchange is open for business on a day that is not a DJ–AIG Business Day, the Exchange will not permit trading of the Notes on that day.

[24] The Index value is static from 3 p.m. to 4 p.m. ET other than modifications to reflect settlement prices becoming available. April 11 Telephone Conference.

[25] Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on May 23, 2006.

[26] *See* ''Continued Listing Criteria,'' *infra.* April 10 Telephone Conference.

[27] 17 CFR 240.10A–3.

[28] The Exchange confirmed that the Index value will be disseminated at least every 15 seconds by one or more major market data vendors during the time the Notes trade on the Exchange. The Exchange also confirmed that the index and its components have daily settlement values that are widely disclosed. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on May 23, 2006.

[29] 17 CFR 240.19b–4.

[30] Therefore, only 10% of the weight of all of the Index (and thus the Index components) could not be subject to comprehensive surveillance sharing arrangements with the Exchange. April 10 Telephone Conference.

[31] March 29 Telephone Conference.

[32] *See* NYSE Rule 431.

[33] In the event the Index value or Indicative Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

[34] In the event a ''market disruption event'' occurs that is of more than a temporary nature, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

B. Specialist Trading Obligations

The Exchange has proposed Supplementary Material .10 to proposed NYSE Rule 1301B [35] in order to apply the provisions of NYSE Rule 1300B(b) and NYSE Rule 1301B to certain Notes listed on the Exchange pursuant to Section 703.19 (''Other Notes'') of the Manual. Specifically, NYSE Rules 1300B(b) and 1301B will apply to Notes listed under Section 703.19 where the price of such Notes is based in whole or part on the price of (a) a commodity or commodities, (b) any futures contracts or other derivatives based on a commodity or commodities; or (c) any index based on either (a) or (b) above.

As a result of application of NYSE Rule 1300B(b), the specialist in the Notes, the specialist's member organization and other specified persons will be prohibited under paragraph (m) of NYSE Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, ''derivative instruments'') based on the Index or based on any Index component or any physical commodity underlying an Index component. If the member organization acting as specialist in the Notes is entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines, then that member organization could act in a market making capacity in the Index components, the commodities underlying the Index components, or derivative instruments based on the Index or based on any Index component or commodity underlying an Index component, other than as a specialist in the Notes themselves, in another market center.

Under NYSE Rule 1301B(a), the member organization acting as specialist in the Notes (1) will be obligated to conduct all trading in the Notes in its specialist account, (subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange), (2) will be required to file with the Exchange and keep current a list identifying all accounts for trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, which the member organization acting as specialist may have or over which it may exercise investment discretion, and (3) will be prohibited from trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by NYSE Rule 1301B.

Under NYSE Rule 1301B(b), the member organization acting as specialist in the Notes will be required to make available to the Exchange such books, records or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under NYSE Rule 1301B(c), in connection with trading the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components.

C. Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes and the Index components. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Notes. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Notes and to detect violations of Exchange rules, consequently deterring manipulation. In this regard, the Exchange has the authority under NYSE Rules 476 and 1301B to request the Exchange specialist in the Notes to provide NYSE Regulation with information that the specialist uses in connection with pricing the Notes on the Exchange, including specialist, proprietary or other information regarding Notes, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists and ''upstairs'' firms—to fulfill its regulatory obligations.

With regard to the Index components, the Exchange can obtain market surveillance information with respect to transactions occurring on the LME and NYMEX (and COMEX), including customer identity information, pursuant to comprehensive surveillance sharing arrangements with each of these exchanges. All of the other trading venues on which current Index components are traded, namely CBOT, the Coffee, Sugar and Cocoa Exchange of the New York Board of Trade, and the Chicago Mercantile Exchange Inc., are members of the Intermarket Surveillance Group (''ISG''), and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. All these surveillance arrangements constitute comprehensive surveillance sharing arrangements.

VII. Suitability

Pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[36] With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

[35] *See* Amendment No. 1 to SR–NYSE–2006–17, filed with the Commission on March 24, 2006.

[36] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

VIII. Information Memorandum [37]

The Exchange will, prior to trading the Notes, distribute a memorandum to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes. The memorandum will note to members language in the prospectus used by Barclays in connection with the sale of the Notes regarding prospectus delivery requirements for the Notes. Specifically, in the initial distribution of the Notes,[38] and during any subsequent distribution of the Notes, NYSE members will deliver a prospectus to investors purchasing from such distributors.[39]

The memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the memorandum, among other things, will discuss what the Notes are, how the Notes are redeemed, applicable Exchange rules, dissemination of information regarding the Index value and the Indicative Value, trading information, and applicable suitability rules.

The memorandum will also notify members and member organizations about the procedures for redemptions of Notes and that Notes are not individually redeemable but are redeemable only in aggregations of at least 50,000 Notes.

The memorandum will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the SEC has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the Notes is based, and that the Commodity Futures Trading Commission has no regulatory jurisdiction over the trading of certain foreign based futures contracts. The memorandum will also discuss other exemptive or no-action relief under the Act provided by the Commission staff.[40]

IX. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[41] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[42] which requires, among other things, that the Exchange's rules 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 a national market system and, in general, to protect investors and the public interest.

A. Surveillance

Information sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing arrangements with LME, NYMEX (and COMEX), pursuant to which the Exchange can obtain market surveillance information, including customer identity information, along with the Exchange's participation in the ISG, create the basis for the Exchange to monitor for fraudulent and manipulative practices in the trading of the Notes. In addition, the Exchange represents that it will delist the Notes if a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement.

Moreover, NYSE Rules 476 and 1301B give NYSE the authority to request the Exchange specialist in the Notes to provide NYSE Regulation with pricing information, among other things. Furthermore, the Exchange believes that it also has the authority to request any other information from its members—including floor brokers, specialists and ''upstairs'' firms—to fulfill its regulatory obligations. The Commission believes that these rules provide the NYSE with the tools necessary to adequately surveil trading in the Notes.

B. Dissemination of Information

The Commission believes that sufficient venues for obtaining reliable price information exist so that investors in the Notes can monitor the underlying Index relative to the Indicative Value of the Notes. There is a considerable amount of information about the Index and its components available through public Web sites and professional subscription services, including Reuters and Bloomberg. During the time that the Notes will trade on the Exchange, Dow Jones disseminates via one or more major market data vendors the Index value at least every 15 seconds [43] from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET on Reuters. Real time information about the trading of the component futures contracts and their daily settlement prices is available from one or more major market data vendors, and in some cases, the underlying futures exchanges.

While the Indicative Value will not reflect price changes of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4 p.m. New York time, the Exchange will disseminate the Indicative Value of the Notes via the facilities of the CTA every 15 seconds throughout the NYSE trading day on each day on which the Notes are traded on the Exchange. Additionally, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at *http://www.ipathetn.com.*

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Notes are consistent with the Act. Notes will trade as equity securities under Section 703.19 and will be subject to NYSE rules applicable to equity trading including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Notes should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Notes. The Exchange represents that it would file a proposed rule change, pursuant to Rule 19b–4,[44] if the Index Sponsors materially change the composition of the Index, the methodology of calculating the value of the Index, or any other policies relevant to the Index. Finally, the Commission notes that the Information Memorandum the Exchange

[37] The Exchange initially referred to the distributed document in its filing as an ''Information Circular.'' The Exchange requested that the Commission change the reference to an ''Information Memorandum'' in the Commission's Notice. *See supra,* note 3. Telephone conference between Kristie Diemer, Attorney, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on April 10, 2006.

[38] The Registration Statement reserves the right to do subsequent distributions of these Notes.

[39] April 10 Telephone Conference.

[40] March 29 Telephone Conference.

[41] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[42] 15 U.S.C. 78f(b)(5).

[43] April 11 Telephone Conference.

[44] 17 CFR 240.19b–4.

will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Notes, including their prospectus delivery obligations.

X. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–NYSE–2006–16), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8549 Filed 6–1–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53875; File No. SR–NYSEArca–2006–11]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of the United States Oil Fund, LP Pursuant to Unlisted Trading Privileges

May 25, 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 26, 2006, NYSE Arca, Inc. (the ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposes to amend its rules governing NYSE Arca, L.L.C. (also referred to as the ''NYSE Arca Marketplace''), the equities trading facility of NYSE Arca Equities. The Exchange proposes new NYSE Arca Equities Rule 8.300 in order to permit trading, either by listing or pursuant to unlisted trading privileges (''UTP''), units in a partnership that is a commodity pool under the Commodity Exchange Act (''CEA'') that is designed to track a specified commodity or index of commodities by holding any combination of investments (i) comprised of or based on futures contracts, options on futures contracts, forward contracts, swaps, and over-the-counter (''OTC'') contracts for commodities or based on price changes in commodities, and (ii) in securities that may be required to satisfy margin or collateral requirements associated with investments in the financial instruments listed in item (i) above (such units are referred to generally herein as ''Partnership Units''). Pursuant to these proposed rules, the Exchange initially proposes to trade, pursuant to UTP, units (''Units'') of the United States Oil Fund, LP (''USOF'' or the ''Partnership'').

The text of the proposed rule change appears below. Additions are *underlined.*

* * * * *

Rules of NYSE Arca Equities, Inc.

Rule 8.300

Partnership Units

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Partnership Units that meet the criteria of this Rule.

(b) Definitions. The following terms as used in the Rule shall, unless the context otherwise requires, have the meanings herein specified:

(1) Commodity. The term ''commodity'' is defined in Section 1(a)(4) of the Commodity Exchange Act.

(2) Partnership Units. The term ''Partnership Units'' for purposes of this Rule means a security (a) that is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities; and (b) that is issued and redeemed daily in specified aggregate amounts at net asset value.

(c) Designation. The Corporation may list and trade Partnership Units based on an underlying asset, commodity or security. Each issue of a Partnership Unit shall be designated as a separate series and shall be identified by a unique symbol.

(d) Initial and Continued Listing. Partnership Units will be listed and/or traded on the Corporation subject to application of the following criteria:

(1) Initial Listing—The Corporation will establish a minimum number of Partnership Units required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Listing—The Corporation will consider removing from listing Partnership Units under any of the following circumstances:

(i) if following the initial twelve month period following the commencement of trading of Partnership Units, (A) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Partnership Units for 30 or more consecutive trading days; (B) if the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (C) if the market value of all Partnership Units issued and outstanding is less than $1,000,000;

(ii) if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or the Corporation stops providing a hyperlink on its Web site to any such investment, commodity, or asset value;

(iii) if the Indicative Partnership Value is no longer made available on at least a 15-second delayed basis; or

(iv) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a partnership, the Corporation requires that Partnership Units issued in connection with such partnership be removed from Corporation listing. A partnership will terminate in accordance with the provisions of the partnership prospectus.

(3) Term—The stated term of the partnership shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Partnership prospectus.

(4) General Partner—The following requirements apply:

(i) The general partner of a partnership must be an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner.

(ii) No change is to be made in the general partner of a listed issue without prior notice to and approval of the Corporation.

(5) Voting—Voting rights shall be as set forth in the applicable partnership prospectus.

(e) Market Maker Accounts.

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[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(1) An ETP Holder acting as a registered Market Maker in Partnership Units is obligated to comply with Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Partnership Units, Other Business Activities shall include acting as a Market Maker or functioning in any capacity involving market-making responsibilities in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. However, an approved person of an ETP Holder acting as a registered Market Maker in Partnership Units that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a Market Maker in the Partnership Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

(2) The ETP Holder acting as a registered Market Maker in Partnership Units must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Partnership Units shall trade in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Corporation as required by this Rule.

(3) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Partnership Units shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(4) In connection with trading the underlying asset or commodity, related futures or options on futures or any other related derivative (including Partnership Units), the ETP Holder acting as a registered Market Maker in Partnership Units shall not use any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the physical asset or commodity, futures or options on futures, or any other related derivatives.

(f) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the partnership in connection with issuance of Partnership Units; net asset value; or other information relating to the purchase, redemption or trading of Partnership Units, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying asset or commodity.

The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets.

Commentary

.01 The Exchange requires that Equity Trading Permit holders provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

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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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new NYSE Arca Equities Rule 8.300 in order to permit trading, either by listing or pursuant to UTP, units in a partnership that holds commodity-based or linked investments. Pursuant to this proposed rule, the Exchange initially proposes to trade pursuant to UTP the Units, which represent ownership of a fractional undivided interest in the net assets of USOF.[3] The Commission previously approved the original listing and trading of the Units by the American Stock Exchange LLC (''Amex'').[4]

The investment objective of the USOF is for its net asset value (''NAV'')[5] to reflect the performance of the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma (the ''WTI light, sweet crude oil''),[6] as represented by the performance of the price of the ''Benchmark Oil Futures Contract,'' less the expense of operation of USOF. The ''Benchmark Oil Futures Contract'' is the near-month (*i.e.*, spot month) future contract for delivery of WTI light, sweet crude oil traded on the New York Mercantile Exchange (''NYMEX'').[7]

[3] USOF, a Delaware limited partnership, is a commodity pool. The Exchange states that USOF is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940. The offering of the Units of the Partnership is registered with the Commission under the Securities Act of 1933.

[4] *See* Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (order granting approval to SR-Amex-2005–127) (''Amex Order''); 53324 (February 16, 2006), 71 FR 9614 (February 24, 2006) (''USOF Notice'').

[5] NAV is the total assets, less total liabilities of USOF, determined on the basis of generally accepted accounting principles. NAV per Unit is the NAV of USOF divided by the number of outstanding Units.

[6] The types of crude oil are typically described by a combination of their physical attributes and their place of origin. A few of these types of crude oil are widely traded and their prices serve as benchmarks in determining the spot and forward prices of the other types of crude oil. The three most important types of crude oil that are used as benchmarks are the light, sweet crude oil from the United States known as ''West Texas Intermediate,'' a light, sweet crude oil from Europe's North Sea known as ''Brent Crude,'' and a medium crude oil from the Middle East known as ''Dubai Crude.'' These three types of crude oil are the ones used most frequently in the trading of listed futures contracts, listed options, and non-exchange listed derivative contracts based on crude oil.

[7] The Exchange will file a Form 19b–4 to obtain Commission approval for the continued trading of

Continued

The assets of USOF will consist of futures contracts for light, sweet crude oil and other petroleum based fuels that are traded on the NYMEX or other U.S. and foreign exchanges [8] (collectively, ''Oil Futures Contracts''). USOF will also purchase other oil interests, such as cash-settled options on Oil Futures Contracts, forward contracts for oil, and OTC transactions that are based on the price of oil, other petroleum-based fuels, and indices based on the foregoing (collectively, ''Other Oil Interests''). (Oil Futures Contracts and Other Oil Interests are collectively referred to as ''Oil Interests.'') The Oil Interests for light, sweet crude oil and other petroleum based fuels in which USOF will invest are based on domestic oil, (WTI light, sweet crude oil), international oil (Brent Crude Oil), heating oil, natural gas, and gasoline. A description of these commodities and the primary trading market for futures contracts based on such commodities is set forth in the USOF Notice.[9]

USOF will also invest in short term obligations of the United States Government (''Treasuries'') to be used to satisfy its current or future margin and collateral requirements and to otherwise satisfy its obligations with respect to its investments in Oil Interests.

(a) *The Units.* In January 2005, the Commission approved an Exchange rule (NYSE Arca Equities Rule 8.201) for the listing and trading of Commodity-Based Trust Shares.[10] Commodity-Based Trust Shares are trust issued receipts (''TIRs'') based on the value of an underlying commodity or index of commodities held by a trust. Because of USOF's structure as a partnership and the nature of its investments, the current Commodity-Based Trust Shares rule (NYSE Arca Equities Rule 8.201) does not specifically permit the Exchange to trade this product. This proposal seeks to expand the ability of the Exchange to list and/or trade securities based on a portfolio of underlying investments that may not be ''securities'' in circumstances where the issuer is a partnership, organized as a commodities pool under the CEA.

Under proposed NYSE Arca Equities Rule 8.300, the Exchange would be able to trade pursuant to UTP the Units issued by USOF. For units issued by other commodity-based partnerships or other types of units issued by USOF, if any, the Exchange would submit a filing pursuant to Section 19(b) of the Act, subject to the review and approval of the Commission.

A description of the liquidity, depth, and pricing mechanisms of the international oil market, the regulation of futures, operation of the USOF, and a description of the Units is set forth in the Amex Order and the USOF Notice.[11] To summarize, issuances of Units will be made only in baskets of 100,000 Units or multiples thereof (a ''Basket''). The Partnership will issue and redeem Baskets of the Units on a continuous basis by or through participants who have entered into authorized purchaser agreements (each, an ''Authorized Purchaser'')[12] with the General Partner,[13] at the net asset value (''NAV'') per Unit next determined after an order to purchase the Units in a Basket is received in proper form. Baskets may be issued and redeemed on any Business day (defined as any day other than a day on which the Amex, the NYMEX, or the New York Stock Exchange is closed for regular trading) through ALPS Distributors, Inc. (the ''Marketing Agent'') in exchange for cash and/or Treasuries, which Brown Brothers Harriman & Co. (the ''Custodian'' and the ''Administrator'') receives from Authorized Purchasers or transfers to Authorized Purchasers, in each case on behalf of USOF. Baskets are then separable upon issuance into identical Units that will be traded on the NYSE Arca Marketplace as equity securities.[14]

Baskets will be issued in exchange for Treasuries and/or cash in an amount equal to the NAV per Unit times 100,000 Units (the ''Basket Amount''). Authorized Purchasers that wish to purchase a Basket must transfer the Basket Amount to the Administrator (the ''Deposit Amount''). Authorized Purchasers that wish to redeem a Basket will receive an amount of Treasuries and cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the ''Redemption Amount'').

On each business day, the Administrator will make available, prior to 9:30 a.m. Eastern Time (''ET''), the estimated Basket Amount for the creation of a Basket based on the prior day's NAV.[15] According to the Amex Order, the Amex will disseminate at least every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape Association (''CTA''), an amount representing, on a per Unit basis, the current indicative value of the Basket Amount (*See* ''Indicative Partnership Value'' below). Shortly after 4 p.m. ET, the Administrator will determine the NAV for USOF as described below. At or about 4 p.m. ET on each business day, the Administrator will determine the Actual Basket Amount (''Actual Basket Amount'') for orders placed by Authorized Purchasers received before 12 p.m. ET that day. Thus, although Authorized Purchasers place orders to purchase Units during the trading day until 12 p.m. ET, the Actual Basket Amount is determined as of 4 p.m. ET.

Shortly after 4 p.m. ET on each business day, the Administrator, Amex, and the General Partner will disseminate the NAV for the Units and the Actual Basket Amount (for orders placed during the day). The Basket Amount and the NAV are communicated by the Administrator to all Authorized Purchasers via facsimile or electronic mail message. According to the Amex Order, the Amex will also disclose the NAV and the Actual Basket Amount on its Web site at *http://*

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the Units should the General Partner change the Benchmark Oil Futures Contract from this NYMEX WTI light, sweet crude oil futures contract.

[8] USOF will primarily purchase WTI light, sweet crude Oil Futures Contracts traded on the NYMEX, but may also purchase Oil Futures Contracts on other exchanges, including the Intercontinental Exchange, formerly known as the International Petroleum Exchange, which operates its futures business through ICE Futures (''ICE Futures'') and the Singapore Oil Exchange.

[9] *See* USOF Notice, *supra* note 4.

[10] *See* Securities Exchange Act Release Nos. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (approving general standards for the listing and trading of Commodity-Based Trust Shares and trading pursuant to UTP of shares of the iShares(r) COMEX Gold Trust); 51245 (February 23, 2005), 70 FR 10731–01 (March 4, 2005) (approving the trading pursuant to UTP of shares of the streetTRACKS® Gold Trust); 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (approving the trading pursuant to UTP of shares of the iShares Silver Trust). *See also* Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (proposal to trade pursuant to UTP shares of the DB Commodity Index Tracking Fund).

[11] *See supra* note 4.

[12] An ''Authorized Purchaser'' is a person, who at the time of submitting to the General Partner an order to create or redeem one or more Baskets, (i) is a registered broker-dealer or other market participant, such as a bank or other financial institution that is exempt from broker-dealer registration, (ii) is a Depository Trust Company Participant, and (iii) has in effect a valid Authorized Purchaser Agreement.

[13] The General Partner is Victoria Bay Asset Management, LLC, a single member Delaware limited liability company wholly owned by Wainwright Holdings, Inc. The General Partner, which was formed for the specific purpose of managing and controlling USOF, has registered as a Commodity Pool Operator (''CPO'') with the Commodity Futures Trading Commission (''CFTC'') and has become a member of the National Futures Association (''NFA'').

[14] The Exchange expects that the number of outstanding Units will increase and decrease as a result of creations and redemptions of Baskets.

[15] The Administrator will make available an ''estimated'' Basket Amount prior to the opening of trading on the Exchange, rather than the Actual Basket Amount, which will not be available until shortly after 4 p.m. ET each business day, as described below. All such information (NAV, Actual Basket Amount, Estimated Basket Amount, and daily disclosure of portfolio holdings) will be available to all market participants at the same time to avoid any informational disadvantage.

www.amex.com.[16] On each day that the Amex is open for regular trading, the Administrator will adjust the Deposit Amount as appropriate to reflect the prior day's Partnership NAV and accrued expenses. The Administrator will then determine the Deposit Amount for a given business day.

The Administrator will calculate NAV as follows: (1) Determine the current value of USOF assets and (2) subtract the liabilities of USOF. The NAV will be calculated at 4 p.m. ET using the settlement value [17] of Oil Futures Contracts traded on the NYMEX as of the close of open-outcry trading on the NYMEX at 2:30 p.m. ET, and for the value of other Oil Futures Interests and Treasuries, the value of such investments as of the earlier of 4 p.m. ET or the close of trading on the New York Stock Exchange. The NAV is calculated by including any unrealized profit or loss on Oil Futures Contracts and other Oil Interests and any other credit or debit accruing to USOF but unpaid or not received by USOF. The NAV is then used to compute all fees (including the management and administrative fees) that are calculated from the value of Partnership assets. The Administrator will calculate the NAV per unit by dividing the NAV by the number of Units outstanding. The calculation methodology for the NAV is described in more detail in the Amex Order.

The Units will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Units to constitute a Basket (*i.e.*, 100,000 Units). Authorized Participants that wish to redeem a Basket will receive the Redemption Amount in exchange for each Basket surrendered.[18] The operation of the Partnership and creation and redemption process is described in more detail in the Amex Order.

(b) Dissemination and Availability of Information.

(i) Oil Futures Contracts

The daily settlement prices for the NYMEX traded Oil Futures Contracts held by USOF are publicly available on the NYMEX Web site at *http://www.nymex.com.* The Exchange's Web site at *http://www.nysearca.com* will also include a hyperlink to the NYMEX Web site for the purpose of disclosing futures contract pricing. In addition, various market data vendors and news publications publish futures prices and related data. The Exchange represents that quote and last sale information for the Oil Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. According to the Amex Order, last sale information for the Benchmark Oil Futures Contract will be updated and disseminated at least every 15 seconds by one or more major market data vendors during the time the Units trade. However, from 2:30 p.m. ET to the opening of NYMEX ACCESS at 3:15 p.m. ET, the pricing for the Benchmark Oil Futures Contract will not be updated. The Exchange further represents that real-time futures data is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the Oil Futures Contracts are also available on the NYMEX Web site and the ICE Futures Web site at *https://www.theice.com.*

(ii) USOF Units

The Web site for USOF, which will be publicly accessible at no charge and to which the Exchange will provide a hyperlink on its Web site (*http://www.nysearca.com*), will include the following information: (1) The prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price [19] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (3) calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the Commission or required by the CFTC; and (6) other applicable quantitative information. In addition, information on USOF's daily portfolio holdings will be available on its Web site at *http://www.unitedstatesoilfund.com* and will be equally accessible to investors and Authorized Purchasers.

As described above, the NAV for USOF will be calculated and disseminated daily. According to the Amex Order, the Amex also intends to disseminate for USOF on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Partnership Value (as discussed below), recent NAV, Units outstanding, the estimated Basket Amount and the Deposit Amount (*e.g.*, the Actual Basket Amount). The Exchange will make available on its Web site daily trading volume, closing prices and the NAV. The closing price and settlement prices of the Oil Futures Contracts held by USOF are also readily available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.nysearca.com* to USOF's Web site.

(iii) Indicative Partnership Value

According to the Amex Order, the Amex will disseminate through the facilities of the CTA an updated Indicative Partnership Value (the ''Indicative Partnership Value'') per Unit basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The Indicative Partnership Value will be calculated based on the Treasuries and cash required for creations and redemptions (*i.e.*, NAV per limit x 100,000) adjusted to reflect the price changes of the current Benchmark Oil Futures Contract.

The Indicative Partnership Value will not reflect price changes to the price of the current Benchmark Oil Futures Contract between the close of open-outcry trading of these oil futures contract on the NYMEX at 2:30 p.m. ET and the open of trading on the NYMEX ACCESS market at 3:15 p.m. ET.[20] The Indicative Partnership Value after 3:15 p.m. ET will reflect changes to the current Benchmark Oil Futures Contract as provided for through NYMEX ACCESS. The value of a Unit may accordingly be influenced by the non-concurrent trading hours of the Amex and NYMEX. While the Units will trade on the Amex from 9:30 a.m. to 4:15 p.m. ET, the current Benchmark Oil Futures Contract will trade, in open-outcry, on the NYMEX from 10 a.m. ET to 2:30 p.m. ET and NYMEX ACCESS from 3:15 p.m. ET through the following morning 9:50 a.m. ET.

[16] *See supra* note 15.

[17] *See* NYMEX Rule 6.52.

[18] Authorized Purchasers are required to pay a transaction fee of $1,000 for each order to create or redeem one or more Baskets.

[19] The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[20] NYMEX ACCESS®, an electronic trading system, is open for price discovery on the NYMEX light, sweet crude oil futures contract each Monday through Thursday at 3:15 p.m. ET through the following morning at 9:50 a.m. ET, from 3:15–5 p.m. Friday, and from 7 p.m. Sunday night until Monday morning 9:50 a.m. ET. Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Angela Muehr, Attorney, Division of Market Regulation (''Division''), Commission, on May 25, 2006.

While the NYMEX (open outcry) is open for trading, the Indicative Partnership Value can be expected to closely approximate the value per unit of the Basket Amount.[21] However, during Exchange trading hours when the Oil Futures Contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Units and the NAV of the Units. The Exchange believes that dissemination of the Indicative Partnership Value based on the cash amount required for a Basket provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Units trading on NYSE Arca Marketplace or the creation or redemption of the Units.

(c) *Continued Listing and UTP Trading Criteria.* While the Exchange immediately seeks to trade the Units pursuant to UTP, the Exchange is also adopting general initial and continued listing standards applicable to all Partnership Units in the event the Exchange were to list such Partnership Units. In such an event, the Exchange would still file a Form 19b–4 to list such Partnership Units. Nevertheless, such continued listing standards are included below.

When the Exchange is the listing market for Partnership Units, the Partnership will be subject to the continued listing and trading criteria under proposed new NYSE Arca Equities Rule 8.300. In particular, the proposed continued listing criteria provides that the Exchange will consider removal from listing of such Partnership Units under any of the following circumstances:

- If, following the initial twelve month period from the date of commencement of trading of the Partnership Units, (i) the Partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Partnership Units for 30 or more consecutive trading days; (ii) the Partnership has fewer than 50,000 Partnership Units issued and outstanding; or (iii) the market value of all Partnership Units issued and outstanding is less than $1,000,000;
- If the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or the Exchange stops providing a hyperlink on its Web site to any such investment, commodity or asset value;
- If the Indicative Partnership Value is no longer made available on at least a 15-second delayed basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove Partnership Units from listing and trading upon termination of the Partnership.

If the Exchange is trading Partnership Units pursuant to UTP, such as the Units, then the Exchange will cease trading in the Units if (i) the listing market stops trading the Units because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the Indicative Partnership Value or the value of the underlying spot commodity or Oil Futures Contract is no longer available; or (ii) the listing market delists the Units. Additionally, the Exchange may cease trading the Units if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Exchange Act.[22]

(d) *Trading Rules.* The Exchange deems the Units to be equity securities, thus rendering trading in the Partnership subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a), except that the Units will not be eligible to trade during the Opening Session (4 a.m. to 9:30 a.m. ET) or the Late Trading Session (4:15 p.m. to 8 p.m. ET) unless the Indicative Partnership Value is disseminated during that time.[23] The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. The minimum trading increment for Units on the Exchange will be $0.01.

Further, the Exchange has proposed new NYSE Arca Equities Rule 8.300(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Units to facilitate surveillance. NYSE Arca Equities Rule 8.300(e)(2)-(3) will require that the ETP Holder acting as a registered Market Maker in the Units provide the Exchange with necessary information relating to its trading in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.300(e)(4) will prohibit the ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying asset or commodity, related futures or options on futures or any other related derivative (including the Units). In addition, NYSE Arca Equities Rule 8.300(e)(1) will prohibit the ETP Holder acting as a registered Market Maker in the Units from being affiliated with a market maker in the underlying asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which includes any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include (i) the extent to which trading is not occurring in the current Benchmark Oil Futures Contract, or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market

[21] Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Angela Muehr, Attorney, Division, Commission, on May 25, 2006.

[22] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

[23] If the Indicative Partnership Value is disseminated during the Opening and/or Late Trading Sessions, NYSE Arca will file a proposal under Section 19(b) of the Act before permitting trading during those Sessions.

volatility pursuant to the Exchange's ''circuit breaker'' rule [24] or by the halt or suspension of the trading of the current Benchmark Oil Futures Contract.

If the Exchange is the listing market for Partnership Units, the Exchange will halt trading in the Partnership Units if: (i) The value of the underlying benchmark investment, commodity or asset updated at least every 15 seconds from a source not affiliated with the sponsor, partnership, or the Exchange is no longer available; (ii) the Indicative Partnership Value per Unit updated at least every 15 seconds is no longer available, or (iii) the Exchange stops providing on the Exchange's Web site, via a hyperlink to the partnership's Web site, such value of the underlying investment, commodity or asset and Indicative Partnership Value per Unit.[25]

If the Exchange is trading Partnership Units pursuant to UTP, such as the Units, the Exchange will cease trading the Units if (i) the listing market stops trading the Units because of a regulatory halt similar to NYSE Arca Equities Rule 7.12 or a halt because the Indicative Partnership Value or the value of the underlying spot commodity or Oil Futures Contract is no longer available, or (ii) the listing market delists the Units. Additionally, the Exchange may cease trading the Units if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Units will be deemed ''Eligible Listed Securities,'' as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

USOF sought and received certain exemptive relief for the Units, including relief from the short sale rule, Rule 10a-1, and Regulation SHO under the Act.[26]

(e) *Surveillance.* The Exchange intends to utilize its existing surveillance procedures applicable to derivative products and shares of the streetTRACKS Gold Trust [27] to monitor trading in the Units. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Units.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Units and the underlying Oil Futures Contracts through ETP Holders in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including the CBOT. In addition, the Exchange has an Information Sharing Agreement in place with NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX. To the extent that USOF invests in Oil Interests traded on other exchanges, the Exchange will enter into information sharing agreements, acceptable to the Commission staff, with those particular exchanges.[28]

(f) *Information Bulletin.* Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (i) The procedures for purchases and redemptions of Units in Baskets (and that Units are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a),[29] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (iii) how information regarding the Indicative Partnership Value is disseminated; (iv) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (v) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Partnership. The Exchange notes that investors purchasing Units directly from the Partnership (by delivery of the Deposit Amount) will receive a prospectus. ETP Holders purchasing Units from the Partnership for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Partnership is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of WTI light, sweet crude oil, Brent crude oil, heating oil, gasoline, natural gas or other petroleum-based fuels, that the CFTC has regulatory jurisdiction over the trading of oil-based futures contracts and related options, and that trading in certain OTC commodity based derivatives is not within the jurisdiction of the CFTC and may therefore be effectively unregulated. Further, the Information Bulletin will disclose that the NAV for the Units will be calculated shortly after 4 p.m. ET each trading day.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [30] in general and furthers the objectives of Section 6(b)(5),[31] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act [32] because it deems the Units to be equity securities, thus rendering the Units subject to the

[24] *See* NYSE Arca Equities Rule 7.12.

[25] In the event the value of the underlying benchmark investment, commodity or asset or the Indicative Partnership Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

[26] *See* letter from James A. Brigagliano, Acting Associate Director, Division, Commission, to Mr. James M. Cain, Esq., Sutherland, Asbill & Brennan LLP, dated April 7, 2006.

[27] *See supra* note 10.

[28] In such event, the Exchange will file a proposed rule change pursuant to Rule 19b-4 of the Act, indicating such surveillance arrangements.

[29] The Exchange has proposed to amend NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. *See* Amendment No. 1 to SR–PCX–2005–115 (November 21, 2005).

[30] 15 U.S.C. 78s(b).

[31] 15 U.S.C. 78s(b)(5).

[32] 17 CFR 240.12f–5.

Exchange's existing rules governing the trading of equity securities.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–11 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–NYSEArca–2006–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–11 and should be submitted on or before June 23, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[34] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[35] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[36] The Commission notes that it previously approved the listing and trading of the Units on the Amex.[37] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[38] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSEArca rules deem the Units to be equity securities, thus trading in the Units will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[39] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the portion of the proposed rule change regarding UTP of the Units, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Units on the Exchange.
3. The Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Units on the Exchange that explains the special characteristics and risks of trading the Units.
4. The Exchange will require a member with a customer who purchases newly issued Units on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.
5. The Exchange will cease trading in the Units if (i) the listing market stops trading the Units because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the Indicative Partnership Value or the value of the underlying Oil Futures Contract for WTI light, sweet crude oil is no longer available, or (ii) the listing market delists the Units. Additionally, the Exchange may cease trading the Units if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Units on the Amex is consistent with the Act.[40] The Commission presently is not aware of any issue that would cause it to

[33] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78*l*(f).

[36] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[37] *See* Amex Order, *supra* note 4.

[38] 17 CFR 240.12f–5.

[39] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[40] *See* Amex Order, *supra* note 4.

revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Units.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2006–11), is hereby approved on an accelerated basis.[41]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8547 Filed 6–1–06; 8:45 am]

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[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53874; File No. SR–Phlx–2006–18]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Split Price Priority in Options

May 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on March 2, 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 and II below, which Items have been prepared by the Exchange. On May 9, 2006, Phlx filed an amendment to the proposed rule change (''Amendment No. 1'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the rule text of the proposed rule change to clarify its meaning and revised the purpose section to clarify the operation of the Exchange's current split price priority rule and the proposed modification to that rule.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1014(g)(i)(C)[4] to adopt a new split price priority provision that establishes priority for in-crowd participants in split price transactions over the quotations of participants that are not located in the crowd (*i.e.*, out-of-crowd Streaming Quote Traders (''SQTs'')[5] and Remote Streaming Quote Traders (''RSQTs'')[6]) even where the market has a bid/ask differential of one minimum trading increment.[7] The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; deleted language is in brackets.[8]

* * * * *

Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014. (a)–(f) No change.

(g) Equity Option and Index Option Priority and Parity

(i) (A)–(B)

(C) Purchase or sale priority for orders of 100 contracts or more. If a member purchases (sells) 50 or more option contracts of a particular series at a particular price or prices, he shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he purchased (sold) at the higher (lower) price or prices, but only if his bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales).

[4] Phlx Rule 1014(g)(i)(C) is subject to a pilot program scheduled to expire on June 30, 2006. *See infra* Section II. A.1.

[5] An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(A).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(B).

[7] Generally, all options on stocks, indexes, and Exchange Traded Funds quoting in decimals at $3.00 or higher have a minimum increment of $.10, and those quoting in decimals under $3.00 have a minimum increment of $.05. *See* Phlx Rule 1034(a).

[8] The bracketed word ''and'' in the final sentence of the rule text set forth below is indicated in Exhibit 4 of the proposed rule change.

When the market has a bid/ask differential of one minimum trading increment and the bid and/or offer represent the quotation of an out-of-crowd SQT or an RSQT, such member shall have priority over such SQT and/or RSQT with respect to both the bid and the offer.

The Options Committee may increase the ''minimum qualifying order size'' above 100 contracts for all products under its jurisdiction. Announcements regarding changes to the minimum qualifying order size shall be made via an Exchange circular. This paragraph is subject to a pilot scheduled to expire June 30, 2006, and shall only apply to transactions in equity options *(including* [and] options overlying Exchange Traded Fund Shares (''ETFs'')*)* and only to such transactions that are effected in open outcry.

(h) No change.

Commentary: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify an existing pilot program concerning split-price transactions (''pilot''),[9] which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to current Exchange priority rules, as described below. The pilot is scheduled to expire on June 30, 2006.

The Exchange proposes to modify the pilot such that when the market has a bid/ask differential of one minimum trading increment and the bid and/or offer represent the quotation of an out-of-crowd SQT or an RSQT, the rule would apply to grant priority over such

[9] *See* Securities Exchange Act Release No. 53021 (December 23, 2005), 70 FR 77435 (December 30, 2005) (SR–Phlx–2005–86).

SQT and/or RSQT with respect to the bid and/or the offer. Thus, the Exchange is expanding the pilot to include priority in both trades of the split price transaction where there is a minimum trading increment market, but only over an out-of-crowd SQT or an RSQT. Such priority would apply only when the bid and/or ask, as applicable, represent the quotation of an out-of-crowd SQT or an RSQT.

Current Pilot

The current pilot, applicable to equity options (including options overlying Exchange Traded Fund Shares, permits a member with an order for at least 100 contracts [10] who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield priority, including to existing customer interest in the limit order book. Absent this rule, such orders would be required to yield priority.[11]

For example, where the market is $.25–$.35, a Floor Broker who is representing an order to purchase 100 contracts and executes a purchase of 50 of those contracts at a price of $.30 has priority over all market participants to purchase the remaining 50 contracts in the order at $.25. Two trades would be reported to the tape, one a purchase of 50 contracts at $.30 and the other a purchase of 50 contracts at $.25. The Floor Broker's customer thus would receive a net purchase price of $.275 for 100 contracts.

In this example, the Floor Broker would not be able to use this provision in a minimum increment market (*e.g.*, $.25–$.30), because he or she could not execute the first trade at $.30 at all, regardless of the current split price priority provision, because that provision does not give priority over whoever is offering at $.30 until the second trade. Accordingly, the Exchange is proposing to amend the split price priority provision, as described below.

Proposed Modification to the Current Pilot

As stated above, the current pilot contemplates that a member who purchases (sells) 50 or more option contracts of a particular series at a particular price or prices has priority at the next lower (higher) price in purchasing (selling) up to the equivalent number of option contracts of the same series that he or she purchased (sold) at the higher (lower) price or prices. The proposed rule change would afford priority to members physically located in the crowd with respect to split price transactions in those instances when the market has a bid/ask differential of one minimum trading increment and the bid and/or ask represent quotations of members physically located outside of the crowd. The Exchange believes that this provision should enable it to compete for order flow in situations where Floor Brokers seek split price executions in open outcry when the bid and/or ask consists of RSQT quotations and/or the quotations of an out-of-crowd SQT and there is a bid/ask differential of one minimum trading increment.

The Exchange provides the following example: assume a Floor Broker represents an order to purchase 100 contracts in a series where the market is $0.25 bid, $0.30 offer, and both the bid and offer represent quotations submitted by out of-crowd SQTs [12] or RSQTs. Under the proposal, the Floor Broker and contra-side participant in the trading crowd would be afforded priority over the out-of-crowd SQT or RSQT at both $0.25 and $0.30, because the bid/ask differential is one minimum trading increment ($.05). This would enable the Floor Broker to execute a split-price order at a net price ($0.275) that improves the market. According to the Phlx, the effect (and ultimate benefit) to that Floor Broker's customer would be a net purchase price of $.275 for 100 contracts. The proposed rule change would apply only with respect to quotations submitted by out-of-crowd SQTs and RSQTs, and thus would not operate to afford priority over, for example, customer or broker-dealer orders or in-crowd SQT quotes.

The Exchange believes that, in situations where the market has a bid/ask differential of one minimum trading increment, it is potentially difficult for the Floor Broker to achieve price improvement for the Floor Broker's customer on the Phlx. Instead, the order might trade at another exchange that has no impediments, *i.e.*, rules that afford priority to in-crowd participants over out-of-crowd participants generally, regardless of split price priority.[13] Accordingly, the Exchange has proposed a limited exception to its priority rule in the context of split price transactions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. According to the Exchange, the rule would enable Floor Brokers representing split price orders in open outcry to provide split-price executions at improved prices on behalf of customers by establishing a limited priority rule regarding split-price transactions when the bid/ask differential is one minimum trading increment and the bid and/or ask represent the quotation of an out-of-crowd participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. 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

[10] Orders for a size of less than 100 contracts are not eligible for the current pilot and would not be affected by this proposed rule change.

[11] *See* Phlx Rule 119(a).

[12] The specialist and/or SQTs participating in a trading crowd may, in response to a verbal request for a market by a Floor Broker, state a bid or offer that is different than their electronically submitted bid or offer, provided that such stated bid or offer is not inferior to such electronically submitted bid or offer. *See* Phlx Rule 1014, Commentary .05(c).

[13] The Phlx cites to Chicago Board Options Exchange, Incorporated (''CBOE'') Rule 6.45A, which provides that only in-crowd market participants are eligible to participate in open outcry trade allocations. *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75). The Phlx notes that CBOE Rule 6.45A affords priority over out-of-crowd participants even where there is no split price priority situation. CBOE Rule 6.47 contains CBOE's split price provision, which is similar to current Phlx Rule 1014(g)(i)(C).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–18 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 Number SR–Phlx–2006–18. 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 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 Number SR–Phlx–2006–18 and should be submitted on or before June 23, 2006.

IV. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the 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.[16] The proposed rule change would provide a limited exception to the Exchange's split price priority rule by allowing a Floor Broker and a contra-side participant in the trading crowd to have priority over an out-of-crowd SQT or an RSQT when there is a bid/ask differential of one minimum trading increment that is established by the quotes of such SQT or RSQT. The Commission believes that the proposed rule change should help facilitate better priced executions for larger-sized orders on the floor of the Exchange. The Commission notes that it has previously approved rule proposals that permit an exchange to grant priority to in-crowd participants in open outcry auctions on its floor over market participants who are not physically present in the crowd.[17]

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. As noted above, the Exchange's proposal yields a result similar to that of CBOE rules previously approved by the Commission that permit a Floor Broker and a contra-side participant in the trading crowd to have priority in split price transactions over out-of-crowd participants when there is a bid/ask differential of one trading increment.[18] Accordingly, the Commission believes that it is appropriate to approve the proposed rule change on an accelerated basis to allow the Phlx to compete more effectively for larger-sized orders in open outcry transactions on the floor of the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change, as amended (Phlx–2006–18), is hereby approved on an accelerated basis until the expiration of the current split price priority pilot program on June 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8550 Filed 6–1–06; 8:45 am]

BILLING CODE 8010–01–P

[16] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See supra* note 13.

[18] *Id.*

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5433]

Notice of Public Meeting on FY 2007 Refugee Admissions Program

There will be a meeting on the President's FY 2007 Refugee Admissions Program on Wednesday, June 28, 2006 from 2 p.m. to 4 p.m. The meeting will be held at the Refugee Processing Center, 1401 Wilson Boulevard, Suite 700, Arlington, Virginia. The meeting's purpose is to hear the views of attendees on the appropriate size and scope of the FY 2007 Refugee Admissions Program.

Seating is limited. Persons wishing to attend this meeting must notify the Bureau of Population, Refugees, and Migration at telephone (202) 663–1045 by 5 p.m. Wednesday, June 21, 2006, to arrange for admission. Persons wishing to present oral comments, or to submit written comments for consideration, must provide them in writing by 5 p.m. Wednesday, June 21, 2006. All comments should be faxed to PRM at (202) 663–1364.

Any questions about the public meeting should be directed to Kelly Gauger, PRM/Admissions Program Officer at (202) 663–1055. Information about the Refugee Admissions Program may be found at *http://www.state.gov/g/prm/*.

Dated: May 24, 2006.

Kelly Ryan,

Deputy Assistant Secretary, Department of State.

[FR Doc. E6–8624 Filed 6–1–06; 8:45 am]

BILLING CODE 4710–33–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Bear Creek Dam Leakage Resolution

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) addressing the proposed resolution of leakage problems at Bear Creek Dam, Franklin County, Alabama. Since the dam was completed in 1969, there has been excessive leakage of water through its foundation and TVA seeks a long-term resolution of this leakage. TVA will use the EIS process to obtain public involvement on this proposal. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of this EIS.

DATES: Comments on the scope and environmental issues for the EIS must be postmarked or e-mailed no later than July 3, 2006 to ensure consideration.

ADDRESSES: Written comments should be sent to Charles P. Nicholson, Environmental Stewardship and Policy, Tennessee Valley Authority, Mail Stop WT 9B, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may be e-mailed to *cpnichol@tva.gov* or submitted by fax at (865) 632–6855.

FOR FURTHER INFORMATION CONTACT: Warren P. Behlau, Tennessee Valley Authority, Mail Stop LP 3D–C, 1101 Market Street, Chattanooga, Tennessee 37402–2801. Telephone (423) 751–8760. E-mail may be sent to *wpbehlau@tva.gov.*

SUPPLEMENTARY INFORMATION:

Background

Bear Creek Reservoir is one of four reservoirs located in northwest Alabama that comprise the Bear Creek Project. The Bear Creek Project was authorized by Congress in 1964 for the primary purposes of flood control, recreation, and economic development, including water supply. The project dams do not generate electricity. Construction of Bear Creek Dam began in 1967 and was completed in 1969. The earth-fill dam has a maximum height of 68 feet and length of 1385 feet. It impounds a reservoir with a maximum length of 12 miles, summer pool of 690 acres, and approximately 39 miles of shoreline. Most of the reservoir shoreline is owned by TVA and much of the adjacent back-lying land is owned by Bear Creek Development Authority (BCDA), a state agency. Shoreline development consists of an environmental education center and two public recreation areas with campgrounds and other facilities operated by BCDA, and a municipal raw water intake and treatment plant operated by the Franklin County Water Service Authority approximately 2.3 miles upstream of Bear Creek Dam.

Bear Creek Dam has a concrete chute spillway with an elevation of 602 feet. The reservoir has historically been operated with a winter pool elevation of 565 feet and a summer pool elevation of 576 feet. The target spring fill date is mid-April and the target date to begin the winter drawdown in November 15. Under normal conditions, discharges are through a tower-type intake structure, sluiceway tunnel, and stilling basin. The reservoir is operated to maintain a minimum continuous flow of 21 cubic feet per second at Red Bay, Alabama, about 23 miles downstream of Bear Creek Dam.

Bear Creek Dam is constructed of earth fill. A portion of the dam was constructed on residual soil and there are numerous sinkholes in its vicinity. Since the completion of the dam in 1969, there has been continuous leakage of water through the foundation of the dam. Although some leakage is typical of earthen dams, the amount at Bear Creek has been excessive. In 1972, TVA completed a major foundation drilling and grouting project which reduced the leakage. Since 1972 the leakage has slowly increased and TVA has attempted several subsequent repairs. The most recent repairs were in 2004–2005, when TVA completed another major drilling and grouting project. This repair project did not adequately reduce leakage when the reservoir was returned to its normal summer pool level.

The excessive leakage through the dam foundation increases the risk of dam failure, especially when the pool level is at an elevation above 570 feet. TVA has taken steps to minimize this risk by maintaining the summer reservoir pool at an elevation of 568 feet, eight feet lower than the normal summer operating level of 576 feet. The normal winter pool level continues to be 565 feet. Due to the limited size of the intake structure and sluiceway, however, TVA cannot pass enough water through them during many rainfall events to prevent the pool from rising above 570 feet. When heavy rains cause the reservoir to rise above elevation 576, TVA notifies the local emergency management agencies of the increased risk and monitors the situation closely. TVA also has equipment and materials on hand for emergency repairs, should a sinkhole or other problem develop.

TVA recognizes that these measures are not viable long-term solutions to the leakage problem. TVA's Hydro Board of Consultants has jointly agreed with TVA that it must take action to resolve the leakage problem.

Potential Alternatives

TVA is considering a range of alternatives. Although the No Action alternative, which consists of operating the dam as designed, would not remedy the leakage problem, it would provide a baseline for comparison with other alternatives and its consideration is required by the implementing regulations for the National Environmental Policy Act (NEPA). Other alternatives under consideration include: (1) Continue to operate the dam as done since 2005 with a lower summer pool elevation of 568 feet; (2) modify the dam by rebuilding the spillway at a lower elevation to maintain a winter pool elevation of 565 feet and with a maximum rise of 5 feet; (3) repair the dam by installing a grout curtain in the soil foundation or by building a barrier to prevent flow through the dam; (4) remove the dam and rebuild it in approximately the same location and with similar operating characteristics; (5) build a new weir dam, capable of maintaining a reservoir pool elevation of 565 feet, a short distance downstream of the Franklin County Water Service Authority water intake, remove Bear Creek Dam, and restore the former creek channel; and (6) remove the dam and restore the original creek channel.

TVA will use the results of the public scoping process and additional technical studies to refine the range of alternatives that will be evaluated in detail in the EIS.

Proposed Issues To Be Addressed

The EIS will contain descriptions of the existing environmental and socioeconomic resources within the area that would be affected by the proposed action. TVA's evaluation of potential environmental impacts to these resources will include, but not necessarily be limited to, the potential impacts on water quality, water supply, aquatic and terrestrial ecology, endangered and threatened species, wetlands, flooding and floodplains, recreation, aesthetics and visual resources, land use including agricultural operations, historic and archaeological resources, and socioeconomic resources.

Scoping Process

Scoping, which is integral to the process for implementing NEPA, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA's NEPA procedures require that the scoping process commence soon after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope and for identifying the significant issues related to a proposed action. The range of alternatives and the issues to be addressed in the draft EIS will be determined, in part, from written comments submitted by mail or e-mail, and comments presented orally or in writing at any public meetings. The preliminary identification of reasonable alternatives and environmental issues in

this notice is not meant to be exhaustive or final.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice.

TVA will conduct a public scoping meeting on June 20, 2006, at the Arts and Entertainment Center in Red Bay, Alabama. The meeting, which will be conducted in an open-house format, will be from 4 p.m. to 8 p.m. At the meeting, TVA staff will describe the project and the EIS process, answer questions, and solicit comments on the issues that the public would like addressed in the EIS. The meeting will be publicized through notices in local newspapers, by TVA press releases, on the TVA Web site at *http://www.tva.gov/environment/calendar.htm,* and in letters to local elected officials.

The agencies to be included in the interagency scoping are U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Bear Creek Development Agency, Alabama Department of Environmental Management, the Alabama Historical Commission, and other Federal, State, and local agencies, as appropriate. After consideration of the scoping comments, TVA will further identify alternatives and environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft EIS, and information about public meetings to comment on the draft EIS will be announced. TVA expects to release a draft EIS in the spring of 2007 and a final EIS in the fall of 2007.

In the event the situation unexpectedly worsens or is determined to be worse, it may be necessary to take action expeditiously to address this consistent with applicable procedures for emergency actions.

Dated: May 26, 2006.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. E6–8564 Filed 6–1–06; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Lawrence Municipal Airport, Lawrence, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the City of Lawrence, Massachusetts' request to change a portion (40.37 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located in North Andover, MA, off Clark Street in the area known of the Northwest quadrant of the Airport and is currently used for vacant land. The City plans to sell 17.44 acres and lease 22.9 acres for revenue production. Upon disposition is the property will be used as for development of an industrial park. Portions of the property were acquired under FAAP Project No. 9–19–007–0503 and ADAP Project No. 5–25–0026–06.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before July 3, 2006.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Michael Miller, Airport Manager at Lawrence Municipal Airport, 492 Sutton Street, North Andover, MA, Telephone 978–794–5880 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts, on May 17, 2006.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 06–5030 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of Finding of No Significant Impact (FONSI) on a Short Form Environmental Assessment (EA); Central Illinois Regional Airport, Bloomington, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Approval of Documents.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Central Illinois Regional Airport, Bloomington, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal action is: (a) To issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the development items listed below; (b) Approval of the Airport Layout Plan (ALP) for the development items listed below; and (c) Establish eligibility of the Central Illinois Regional Airport Authority to compete for Federal funding for the development projects depicted on the Airport Layout Plan.

The specific item in the local airport development project is to construct a new fuel farm.

Copies of the environmental decision and the Short Form EA are available for public information review during regular business hours at the following locations:

1. Central Illinois Regional Airport, 3201 CIRA Drive, Suite 200, Bloomington, Illinois.

2. Division of Aeronautics—Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, IL 62707.

3. Chicago Airports District Office, Room 320, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: E. Lindsay Butler, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Bulter can be contacted at (847) 294–7723 (voice), (847) 294–7046 (facsimile) or by e-mail at *lindsay.butler@faa.gov*.

Issued in Des Plaines, Illinois, on May 16, 2006.

Larry H. Ladendorf,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–5031 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting: RTCA Special Committee 206: Aeronautical Information Services Data Link

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link.

DATES: The meeting will be held June 12–16, 2006, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Met Office, FitzRoy Road, Exeter, Devon, EX1 3PB, United Kingdom. On site Contact: Mr. Doug Johnson, *doug.johnson@metoffice.com*, Tel. +44 (0)1392 885680; Fax +44 (0) 1392 885681.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 206 meeting. The agenda will include:

- *June 13:*
  - Opening Session (Chairman's Remarks and Introductions, Review and Approve Meeting Agenda and Minutes, Discussion, Action Item Review)
  - Presentations
  - Discussion of Joint Activities
  - Discussion of Joint versus separate Deliverable Documents
  - Breakout meetings of Subgroup 1 and Subgroup 2
- *June 13:*
  - Subgroup 1 and Subgroup 2
- *June 14:*
  - Subgroup 1 and Subgroup 2 Meetings
- *June 15:*
  - Subgroup 1 and Subgroup 2 Meetings
- *June 16:*
  - Subgroup 1 and Subgroup 2 Meetings
  - Closing Session (Other Business, Chairman Wrap Up and Conclusions, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 19, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–5029 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–24901]

Agency Information Collection Activities: Request for Comments for a 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's (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 August 1, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2006–24901 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 20590–0001.
- 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 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: Bethaney Bacher, 202–366–4196, or Matthew Leffler Schulman, 202–366–1929, Office of Natural & Human Environment, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Evaluate the Effects of National Scenic Byways Program Grants.

Background: Title 23, Section 162 of the United States Code describes the creation of the National Scenic Byways Program. This legislation was most recently amended in 2005 upon passage of the P.L. 109–59 Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). The legislation also includes provisions for review and dissemination of grant monies by the U.S. Secretary of Transportation. Grant applications are solicited on an annual basis. Eligible projects are on State designated byways, National Scenic Byways and All-American Roads, or Indian tribe scenic byways. Applications are completed by Federal, State, or local governmental agencies; Tribal governments; and non-profit organizations. The application information is collected electronically via the online Grant system and used to determine project eligibility. We are seeking approval from OMB for the forms used to collect the application information and used on *http://www.grants.gov.* Additional information on the National Scenic Byways Program and its grant program is available at *http://www.bywaysonline.org.*

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico (Right-of-Way

Department), Federal Land Management Agencies, State and local governments, non-profit agencies and Tribal Governments. It is estimated that 400 applications will be received.

Frequency: Annual.

Estimated Average Burden per Response: 20 hours.

Estimated Total Annual Burden Hours: 8000 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 the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. 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. E6–8589 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24210]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from forty-seven individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 3, 2006.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2006–24210 using any of the following methods:

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

All submissions must include the Agency name and docket number for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** Notice published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The forty-seven individuals listed in this Notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

Charles A. Adams Jr.

Mr. Adams, age 36, has had ITDM since 2005. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class 2 operator's license from Connecticut which qualifies him to drive any motor vehicle, including a recreational vehicle of any weight, except a commercial motor vehicle, an articulated vehicle, or combination of motor vehicle and trailer where the gross weight of the trailing unit or trailer is more than 10,000 miles.

Scott R. Anderson

Mr. Anderson, 53, has had ITDM since 2005. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His

ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Wisconsin.

Richard Bechtel

Mr. Bechtel, 56, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bechtel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Robert R. Chase

Mr. Chase, 69, has had ITDM since 1998. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chase meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative stable diabetic retinopathy. He holds a Class A CDL from Nebraska.

Dale J. Cleaver

Mr. Cleaver, 37, has had ITDM since 2000. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cleaver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Jeffrey W. Cotner

Mr. Cotner, 43, has had ITDM since 1995. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cotner was granted an exemption by FMCSA from the vision standard at 49 CFR 391.41(b)(10) on May 31, 2005. His ophthalmologist examined him in 2005 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Oregon.

Todd A. Dean

Mr. Dean, 43, has had ITDM since 2003. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dean meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Dale R. Gansz

Mr. Gansz, 44, has had ITDM since 1994. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gansz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Neal J. Gifford

Mr. Gifford, 41, has had ITDM since 2001. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gifford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Donald W. Havourd, Sr.

Mr. Havourd, 61, has had ITDM since 1998. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Havourd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Peter D. Jacobs

Mr. Jacobs, 48, has had ITDM since 1989. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jacobs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

David A. Kelley

Mr. Kelley, 52, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Kelly meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Jeffrey M. King

Mr. King, 33, has had ITDM since 2004. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. King meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

Milton A. Klise

Mr. Klise, 48, has had ITDM since 2002. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Klise meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Ohio.

Jeffrey Knight

Mr. Knight, 42, has had ITDM since 1973. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Knight meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that ''Since his laser treatment, his proliferative diabetic retinopathy is in complete involution and he has no further signs of diabetic retinopathy.'' He holds an operator's license from Washington.

Edward V. Kruse

Mr. Kruse, 58, has had ITDM since 1986. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kruse meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Lee P. Lembke

Mr. Lembke, 48, has had ITDM since 1992. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lembke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Dominick T. Mastroni

Mr. Mastroni, 45, has had ITDM since 2004. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mastroni meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that his non-proliferative diabetic retinopathy is stable. He holds a Class A CDL from Kansas.

Ronald S. Mavilla

Mr. Mavilla, 62, has had ITDM since 1999. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mavilla meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Derril W. Nunnally

Mr. Nunnally, 36, has had ITDM since 2003. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nunnally meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Ronald D. Olson

Mr. Olson, 42, has had ITDM since 1993. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Robert L. Olson

Mr. Olson, 74, has had ITDM since 1988. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Terence V. Parker

Mr. Parker, 44, has had ITDM since 2005. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Parker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Robert L. Pflugler, Jr.

Mr. Pflugler, 39, has had ITDM since 1997. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pflugler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

William E. Pruett, Jr.

Mr. Pruett, 36, has had ITDM since January 30, 2006. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pruett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Ronald B. Purdum

Mr. Purdum, 31, has had ITDM since 1998. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Purdum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Wilbert C. Rasely Jr.

Mr. Rasely, 53, has had ITDM since 1995. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rasely meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Maurice E. Ratliff, Sr.

Mr. Ratliff, 55, has had ITDM since 1995. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ratliff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

Ron R. Rawson

Mr. Rawson, 50, has had ITDM since 1985. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rawson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Arizona.

Duane C. Rieger

Mr. Rieger, 57, has had ITDM since 2002. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rieger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Gregory A. Rigg

Mr. Rigg, 47, has had ITDM since 1999. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rigg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Scott L. Shreffler

Mr. Shreffler, 42, has had ITDM since 2001. His endocrinologist examined him in 2006 and certified that he has had no

hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shreffler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Illinois.

Henry E. Sisler

Mr. Sisler, 63, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sisler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Virginia.

Vernon L. Small

Mr. Small, 58, has had ITDM since 2004. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Small meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Colorado.

Sandra L. Smith

Ms. Smith, 51, has had ITDM since 2001. Her endocrinologist examined her in 2006 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2006 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from South Carolina.

John J. Steigauf

Mr. Steigauf, 46, has had ITDM since 2004. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steigauf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Walter D. Stowman

Mr. Stowman, 48, has had ITDM since 1984. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stowman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D auto driver's license from New Jersey.

Thomas C. Torbett

Mr. Torbett, 32, has had ITDM since 1975. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Torbett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a class E operator's license from Missouri.

Derrick Underhill, Sr.

Mr. Underhill, 46, has had ITDM since 2003. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Underhill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Connecticut.

Paul M. Violette

Mr. Violette, 38, has had ITDM since 1999. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Violette meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class 2 operator's license from Connecticut which qualifies him to drive any motor vehicle, including a recreational vehicle of any weight, except a commercial motor vehicle, an articulated vehicle, or combination of motor vehicle and trailer where the gross weight of the trailing unit or trailer is more than 10,000 pounds.

Antonino S. Vita

Mr. Vita, 40, has had ITDM since 2004. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Vita meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Henry B. Walker-Waltz, III

Mr. Walker-Waltz, 24, has had ITDM since 1995. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walker-Waltz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

Arthur C. Webber

Mr. Webber, 52, has had ITDM since 2005. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Webber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Scott A. Wertz

Mr. Wertz, 39, has had ITDM since 1976. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wertz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from North Dakota.

Larry D. Williams

Mr. Williams, 63, has had ITDM since 2004. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Danny R. Wood

Mr. Wood, 39, has had ITDM since 2005. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Missouri.

Jeffrey E. Zaniewski

Mr. Zaniewski, 50, has had ITDM since 1999. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zaniewski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2005 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Nevada.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. We will consider all comments received before the close of business on the closing date indicated earlier in the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified in the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: May 26, 2006.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E6–8587 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule,'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24783]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 47 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before July 3, 2006.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2006–24783 using any of the following methods:

- *Web site: http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 47 individuals listed in this Notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Jawad K. Al-Shaibani

Mr. Al-Shaibani, age 43, has a prosthetic right eye due to a traumatic injury sustained in 1989 that caused a retinal detachment. The best corrected visual acuity in his left eye 20/20. Following an examination in 2006, his optometrist noted, ''He has sufficient vision for driving commercial vehicles.'' Mr. Al-Shaibani reported that he has driven straight trucks for 7 years, accumulating 280,000 miles, and tractor-trailer combinations for 2 years, accumulating 100,000 miles. He holds a Class A Commercial Driver's License (CDL) from Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Kenneth J. Bernard

Mr. Bernard, 54, has had amblyopia in his right eye since birth. The visual acuity in his right eye is count-finger-vision and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''With these results, I have found Mr. Bernard's vision sufficient enough to perform driving tasks required to operate a commercial vehicle.'' Mr. Bernard reported that he has driven straight trucks for 34 years, accumulating 889,440 miles. He holds a Class D Chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Allen G. Bors

Mr. Bors, 65, has a prosthetic right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bors reported that he has driven straight trucks for 44 years, accumulating 499,972 miles, and tractor-trailer combinations for 26 years, accumulating 99,996 miles. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Douglas L. Brazil

Mr. Brazil, 56, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/15. Following an examination in 2005, his optometrist noted, ''Douglas Brazil has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brazil reported that he has driven straight trucks for 9 years, accumulating 70,200 miles, tractor-trailer combinations for 19 years, accumulating 1.8 million miles, and buses for 5 years, accumulating 130,000 miles. He holds a Class C CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

John E. Breslin

Mr. Breslin, 39, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an

examination in 2006, his optometrist noted, ''I feel that John presents adequate vision for operating a commercial vehicle safely.'' Mr. Breslin reported that he has driven straight trucks for 20 years, accumulating 300,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.1 million miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Marcus S. Burkholder

Mr. Burkholder, 71, has a cataract in his left eye due to a traumatic injury sustained in 1950. The best corrected visual acuity in his right eye is 20/20 and in the left, light perception. Following an examination in 2005, his optometrist noted, ''Despite having no usable vision in his left eye, Mr. Burkholder has normal correctable vision in his right eye and in my opinion with glasses should be able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Burkholder reported that he has driven straight trucks for 3 years, accumulating 450 miles, and buses for 13 years, accumulating 65,000 miles. He holds a Class B CDL from Michigan. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Raymond L. Brush

Mr. Brush, 52, has complete loss of vision in his right eye due to a traumatic injury sustained in 1978 that caused optic neuropathy. The best corrected visual acuity in his left eye is 20/25. Following an examination in 2005, his ophthalmologist noted, ''In my opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brush reported that he has driven straight trucks for 7 years, accumulating 126,000 miles. He holds a Class D operator's license from Ohio. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Scott F. Chalfant

Mr. Chalfant, 38, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''It is my opinion that Mr. Chalfant has adequate vision for operating a commercial vehicle given the findings of my examination.'' Mr. Chalfant reported that he has driven straight trucks for 15 years, accumulating 140,000 miles. He holds a Class A CDL from Delaware. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Leroy A. Chambers

Mr. Chambers, 50, has a prosthetic left eye due to anophthalmia since 2002. The visual acuity in his right eye is 20/20. Following an examination in 2005, his ophthalmologist noted, ''He has very good experience as a commercial driver, and I believe he can safely continue in his job with his current visual status''. Mr. Chambers reported that he has driven tractor-trailer combinations for 26 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to obey a traffic sign.

Harvis P. Cosby

Mr. Cosby, 55, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100 and in the left, 20/15. Following an examination in 2005, his ophthalmologist noted, ''It is my professional opinion that this patient should have sufficient vision and visual field to perform the tasks of operating a commercial vehicle.'' Mr. Cosby reported that he has driven straight trucks for 12 years, accumulating 408,000 miles, tractor-trailer combinations for 20 years, accumulating 1.3 million miles, and buses for 5 years, accumulating 120,000 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Joseph H. Fowler

Mr. Fowler, 70, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/25. Following an examination in 2005, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform driving tasks while operating a commercial vehicle.'' Mr. Fowler reported that he has driven straight trucks for 40 years, accumulating 200,000 miles, and tractor-trailer combinations for 40 years, accumulating 2.8 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Francisco Espinal

Mr. Espinal, 42, has complete loss of vision in his right eye due to a traumatic injury sustained in 1984. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2005, his optometrist noted, ''Mr. Espinal has excellent vision in his left eye. I feel that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Espinal reported that he has driven straight trucks for 14 years, accumulating 266,000 miles, and tractor-trailer combinations for 7 years, accumulating 21,000 miles. He holds a Chauffeur's license from Indiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Brian G. Hagen

Mr. Hagen, 34, has loss of vision in his left eye due to a traumatic injury he sustained in 1990. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2006, his optometrist noted, ''In my medical opinion, Brian Hagen has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hagen reported that he has driven straight trucks for 4 years, accumulating 46,800 miles. He holds a Class C operator's license from Illinois. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to obey a traffic sign.

Edward J. Hess, Jr.

Mr. Hess, 56, has retinal detachment in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in the left, hand-movement-vision at four feet. Following an examination in 2005, his ophthalmologist noted, ''It is my medical opinion that Mr. Hess has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hess reported that he has driven straight trucks for 3 years, accumulating 45,000 miles. He holds an operator's license from New Hampshire. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Ralph E. Holmes

Mr. Holmes, 57, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''Ralph Holmes has sufficient vision to drive a commercial vehicle.'' Mr. Holmes reported that he has driven straight trucks for 35 years, accumulating 595,000 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no

crashes and one conviction for driving a CMV in violation of license restriction.

Timothy B. Hummel

Mr. Hummel, 49, has complete loss of vision in his right eye due to a traumatic injury he sustained in 2000. The visual acuity in his left eye is 20/25. Following an examination in 2005, his ophthalmologist noted, ''I certify that in my medical opinion, he has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Hummel reported that he has driven tractor-trailer combinations for 8 years, accumulating 800,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Larry L. Jarvis

Mr. Jarvis, 65, has complete loss of vision in his right eye due to a traumatic injury he sustained as a child. The best corrected visual acuity in his left eye is 20/25. Following an examination in 2006, his optometrist noted, ''Based on years of adaptation, Mr. Jarvis is visually qualified to continue in his profession as a commercial driver.'' Mr. Jarvis reported that he has driven straight trucks for 3 years, accumulating 135,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Charles E. Johnston

Mr. Johnston, 46, has a macular scar in his right eye due to a toxoplasmosis infection sustained as a child. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''The vision loss in the right eye is long-standing and was present when the patient began to drive. Thus I feel he is capable of driving commercial vehicles as he had in the past.'' Mr. Johnston reported that he has driven straight trucks for 7½ years, accumulating 138,750 miles, and tractor-trailer combinations for 7½ years, accumulating 11,250 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Volga Kirkwood

Mr. Kirkwood, 46, had his left eye enucleated due to a traumatic injury he sustained as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2006, his optometrist noted, ''I have confidence that vision is not impaired in his right eye and his monocular field of vision is adequate to operate a commercial vehicle.'' Mr. Kirkwood reported that he has driven straight trucks for 23 years, accumulating 1.3 million miles. He holds a Class B CDL from Missouri. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Richard M. Kriege

Mr. Kriege, 69, has corneal scaring and retinal detachment in his right eye due to an injury he sustained in 1985. The best corrected visual acuity in his right eye is 20/70 and in the left, 20/15. Following an examination in 2005, his optometrist noted, ''In my medical opinion, and that of Dr. Mathews, he has sufficient binocular vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Kriege reported that he has driven tractor-trailer combinations for 40 years, accumulating 3.2 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

David C. Leoffler

Mr. Leoffler, 42, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in the left, 20/400. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, my patient, David Leoffler has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Leoffler reported that he has driven straight trucks for 8 years, accumulating 160,000 miles, and tractor-trailer combinations for 8 years, accumulating 680,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

John C. Lewis

Mr. Lewis, 36, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 and in the left, 20/200. Following an examination in 2005, his optometrist noted, ''It is my opinion that Mr. John Lewis has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for 6 years, accumulating 495,000 miles and tractor-trailer combinations for 4½ years, accumulating 600,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Patrick E. Martin

Mr. Martin, 53, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''Mr. Martin has sufficient vision to perform the driving tasks of a commercial vehicle.'' Mr. Martin reported that he has driven straight trucks for 37 years, accumulating 1 million miles, and tractor-trailer combinations for 19 years, accumulating 1.6 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Leland K. McAlhaney

Mr. McAlhaney, 57, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in the left, 20/30. His optometrist examined him in 2006 and noted, ''It is my professional opinion that Mr. McAlhaney has the vision and visual performance to safely operate a commercial vehicle on public roads.'' Mr. McAlhaney reported that he has driven straight trucks for 30 years, accumulating 600,000 miles, and tractor-trailer combinations for 20 years, accumulating 490,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

William C. Mohr

Mr. Mohr, 51, has had amblyopia in his right eye due to an injury sustained as a child. The best corrected visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''In my opinion, Mr. Mohr has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Mohr reported that he has driven straight trucks for 25 years, accumulating 794,200 miles, and buses for 1 year, accumulating 25,000 miles. He holds a Class B CDL from Delaware. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Roger Moody

Mr. Moody, 54, has a corneal scar in his right eye due to a traumatic injury sustained more than 20 years ago. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''This condition is stable, and in my opinion, he has sufficient visual acuity and peripheral

acuity to perform the driving tasks required to operate a commercial vehicle.'' Mr. Moody reported that he has driven straight trucks for 20 years, accumulating 420,000 miles, tractor-trailer combinations for 7 years, accumulating 112,000 miles, and buses for 14 years, accumulating 2,800 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Larry A. Nienhuis

Mr. Nienhuis, 58, has had aphakia in his left eye since 1985. The best corrected visual acuity in his right eye is 20/20 and in the left, count-finger-vision at one foot. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, Mr. Nienhuis does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Nienhuis reported that he has driven straight trucks for 19 years, accumulating 140,600 miles and tractor-trailer combinations for 11 years, accumulating 704,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 15 mph.

Corey L. Paraf

Mr. Paraf, 43, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''In my expert medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Paraf reported that he has driven straight trucks for 9 years, accumulating 72,000 miles. He holds a Class C operator's license from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

John J. Pribanic

Mr. Pribanic, 48, has a prosthetic left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2005, his optometrist noted, ''Mr. Pribanic in my professional opinion has sufficient vision to safely operate a commercial vehicle.'' Mr. Pribanic reported that he has driven straight trucks for 1 year, accumulating 50,000 miles, and tractor-trailer combinations for 12 years, accumulating 900,000 miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Ronald M. Price

Mr. Price, 63, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/30. Following an examination in 2005, his ophthalmologist noted, ''In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Price reported that he has driven straight trucks for 45 years, accumulating 405,000 miles, and tractor-trailer combinations for 45 years, accumulating 810,000 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

John P. Raftis

Mr. Raftis, 53, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''It is my opinion that Mr. Raftis has more than adequate vision to perform required driving tasks.'' Mr. Raftis reported that he has driven straight trucks for 14 years, accumulating 400,400 miles, and tractor-trailer combinations for 13 years, accumulating 832,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Matthew B. Richardson

Mr. Richardson, 37, has complete loss of vision in his right eye due to a traumatic injury sustained as a child. The visual acuity in his left eye is 20/20. Following an examination in 2006, his optometrist noted, ''It is therefore, my opinion that this patient has sufficient vision to operate a commercial motor vehicle.'' Mr. Richardson reported that he has driven straight trucks for 18 years, accumulating 180,000 miles, tractor-trailer combinations for 4 years, accumulating 340,000 miles, and buses for 2 years, accumulating 20,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Bruce G. Robinson

Mr. Robinson, 37, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''I feel Mr. Robinson has sufficient vision to drive a commercial vehicle as he has been doing so for many years now.'' Mr. Robinson reported that he has driven straight trucks for 16 years, accumulating 104,320 miles, and tractor-trailer combinations for 13 years, accumulating 260,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Alton M. Rutherford

Mr. Rutherford, 50, has aphakia in his right eye due to a traumatic injury he sustained in 1988. The visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion as a board certified ophthalmologist, Mr. Rutherford has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rutherford reported that he has driven straight trucks for 10 years, accumulating 120,000 miles, and tractor-trailer combinations for 3 years, accumulating 108,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Wayne N. Savoy

Mr. Savoy, 53, has complete loss of vision in his right eye due to a traumatic injury he sustained as a child. The visual acuity in his left eye is 20/20. Following an examination in 2005, his ophthalmologist noted, ''His central and peripheral visions are certainly sufficient to perform the driving task required to operate a commercial vehicle.'' Mr. Savoy reported that he has driven straight trucks for 26 years, accumulating 936,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Richard A. Schneider

Mr. Schneider, 56, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2006, his ophthalmologist noted, ''Given his 20/20 vision, I do believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schneider reported that he has driven straight trucks for 23 years, accumulating 149,500 miles, tractor-trailer combinations for 5 years, accumulating 25,000 miles, and buses for 81/2 years, accumulating 161,500

miles. He holds a Class B CDL from Minnesota. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Joseph B. Shaw, Jr.

Mr. Shaw, 34, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''In my opinion, Joseph Bernard Shaw, Jr. has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Shaw reported that he has driven tractor-trailer combinations for 3 years, accumulating 600,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

David. W. Skillman

Mr. Skillman, 45, has retinal scarring due to toxoplasmosis in his right eye sustained more than 20 years ago. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''He has been driving commercially for many years, and he has sufficient vision to continue as a commercial driver.'' Mr. Skillman reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.3 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and one conviction for moving violations in a CMV, failure to keep in proper lane.

Thomas G. Smith

Mr. Smith, 45, has a prosthetic right eye due to a retinal detachment in 1978. The best corrected visual acuity in his left eye is 20/30. Following an examination in 2005, his optometrist noted, ''Has sufficient vision to perform the driving tasks required to operate commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 8 years, accumulating 180,000 miles, and tractor-trailer combinations for 11 years, accumulating 286,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Sandra J. Sperling

Ms. Sperling, 61, has had amblyopia in her left eye since childhood. The best corrected visual acuity in her right eye is 20/25 and in the left, 20/200. Following an examination in 2005, her ophthalmologist noted, ''It is my medical opinion that Ms. Sperling, 60-years-old, has adapted well to her amblyopia and has sufficient vision to perform driving tasks that she has been performing for numerous years in a commercial vehicle.'' Ms. Sperling reported that she has driven buses for 35 years, accumulating 630,000 miles. She holds a Class B CDL from Washington. Her driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Kenneth C. Steele

Mr. Steele, 54, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr. Steele has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Steele reported that he has driven straight trucks for 2 years, accumulating 100,000 miles, and tractor-trailer combinations for 10 years, accumulating 1 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

Ryan K. Steelman

Mr. Steelman, 39, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''It is my opinion that Ryan's vision is sufficient to perform commercial driving tasks.'' Mr. Steelman reported that he has driven straight trucks for 15 years, accumulating 300,000 miles, and tractor-trailer combinations for 12 years, accumulating 480,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Paul D. Totty

Mr. Totty, 37, has had a macular hole in his left eye due to vitreous traction since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2006, his optometrist noted, ''Patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Totty reported that he has driven straight trucks for 10 years, accumulating 120,000 miles. He holds a Class D operator's license from Arkansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Charles V. Tracey

Mr. Tracey, 63, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr. Tracey has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Tracey reported that he has driven straight trucks for 45 years, accumulating 786,915 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Duane L. Tysseling

Mr. Tysseling, 56, has had keratoconus in his right eye since 1985. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''It is my opinion that Duane does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Tysseling reported that he has driven straight trucks for 11/2 years, accumulating 45,000 miles, and tractor-trailer combinations for 21 years, accumulating 525,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Richard A. Westfall

Mr. Westfall, 48, has coloboma of the right eye since birth. The best corrected visual acuity in his right eye is count-finger-vision at one foot and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''In my opinion, judging from his examination and these tests, along with his longstanding excellent driving record, he has sufficient vision to operate a commercial vehicle.'' Mr. Westfall reported that he has driven straight trucks for 6 years, accumulating 420,000 miles and tractor-trailer combinations for 20 years, accumulating 2 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Leonard R. Wilson

Mr. Wilson, 59, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr.

Wilson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wilson reported that he has driven straight trucks for 35 years, accumulating 175,000 miles. He holds a Class B CDL from New Hampshire. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. The Agency will consider all comments received before the close of business July 3, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this Notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 26, 2006.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E6–8588 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16612; Notice 3]

Decision That Nonconforming 2002 Ferrari Spider and Coupe Passenger Cars Manufactured From September 1, 2002 Through December 31, 2002 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by the National Highway Traffic Safety Administration that nonconforming 2002 Ferrari Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 2002 Ferrari Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 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 Ferrari Spider and Coupe passenger car manufactured from September 1, 2002 through December 31, 2002), and they are capable of being readily altered to conform to the standards.

DATES: This decision was effective April 1, 2004. 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.

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. of North Miami, Florida (''AMC'') (Registered Importer 01–278), petitioned NHTSA to decide whether 2002 Ferrari Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are eligible for importation into the United States. NHTSA published a notice of the petition on December 11, 2003 (68 FR 69125) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One substantive comment was received in response to the notice of petition, from Ferrari North America, Inc. (FNA), the U.S. representative of the vehicle's original manufacturer. FNA's comment addressed issues it believed AMC had overlooked in describing alterations needed to conform 2002 Ferrari Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 models to certain of the FMVSS. FNA observed that the non-U.S. certified 2002 Ferrari 360 passenger cars that are the subject of the instant petition (i.e., those manufactured from September 1, 2002 through December 31, 2002), are identical, with respect to their conformance to applicable FMVSS, to the nonconforming 2002 Ferrari 360 passenger cars manufactured before September 1, 2002 that NHTSA has previously decided to be eligible for importation, as reflected in a notice of decision published on April 3, 2003 at 68 FR 16346 (Docket No. NHTSA–2002–13219). As a consequence, FNA contended that if the agency were to grant import eligibility to 2002 Ferrari 360 passenger cars manufactured from September 1, 2002 through December 31, 2002, that decision would have to be made on the same basis as the decision to grant import eligibility to the 2002 models manufactured before September 1, 2002.

The agency accorded AMC an opportunity to respond to the issues raised by FNA. FNA's comments, AMC's responses, and NHTSA's analysis are set forth below for each of the issues that FNA raised.

(1) *FMVSS No. 201 Occupant Protection in Interior Impact:* The petition identified a number of interior trim components in the non-U.S. certified model that must be replaced with U.S.-model components or modified to meet the standard. FNA identified 16 interior trim components that are not found in the non-U.S. certified model and stated that all of these should be replaced with U.S.-model components. FNA also requested additional information concerning the petitioner's proposed substitution of occupant interior components purchased from another RI. FNA expressed the belief that an RI responsible for certifying a vehicle cannot rely on components manufactured by another RI when conforming the vehicle, whether or not the components have been shown to

bring the vehicle into compliance with the standard. AMC responded that it was aware of the need for replacing 16 interior components, but could not provide technical information regarding the components that it intended to purchase from J.K. Technologies, another RI, on account of a nondisclosure agreement that it had entered with that company.

NHTSA's Analysis: The modifications AMC identified as needed to conform the vehicle to the standard would not prelude the vehicle from being deemed eligible for importation. Conformity packages submitted for vehicles imported under the decision must demonstrate that the vehicle is equipped with components that allow it to achieve compliance with the standard. Any modification or replacement of components necessary to meet the requirements of the standard must be shown to bring the vehicle into compliance. Such proof must be submitted by an RI as part of any conformity package submitted for 2002 Ferrari Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002.

Addressing the issue that FNA raised regarding the purchase by one RI of components manufactured or modified by another RI, the agency notes that if the supplier has proven to the agency's satisfaction, either through a import eligibility petition that was granted by the agency or through a conformity package that the agency approved, that a vehicle complies with the standard when equipped with the components at issue, the agency will allow the purchasing RI to demonstrate conformance by the installation of those components. This necessarily assumes the vehicle for which the supplying RI has manufactured or modified the components is of the same make, model, and model year as the vehicle on which the component is to be installed, or if the vehicle is of a different model year, there were no changes affecting compliance with the standard at issue between that model year and the model year of the vehicle for which the component is purchased.

(2) *FMVSS No. 301 Fuel System Integrity:* The petition identified a number of fuel system components in the non-U.S. certified model that must be replaced with U.S.-model components to achieve compliance with the standard. FNA contended that the same modifications required for the 2001 and 2002 Ferrari Spider and Coupe passenger cars manufactured before September 1, 2002, be required for those manufactured from September 1, 2002 through December 31, 2002. AMC responded that it intended to perform modifications identical to those identified as needed to conform vehicles in the earlier production run.

NHTSA's Analysis: Because FNA described the 2001 and 2002 models as being identical with respect to their conformance with all applicable FMVSS and AMC did not take issue with this representation, the agency has concluded that the following modifications, which were identified as need to conform the 2002 Ferrari 360 Spider and Coupe passenger cars manufactured before September 1, 2002 to the requirements of the standard, are appropriate for the those manufactured from September 1, 2002 through December 31, 2002 as well:

(a) replacement of the fuel/vapor separator, rollover valve, filler neck, vapor lines, evaporative (charcoal) canister, air pump, and associated hardware on non-U.S. certified versions of the vehicle to make them identical to those in the U.S. certified version;

(b) modification of the U.S.-model filler neck so that it can be attached to the non-U.S.-model tank; and

(c) relocation of the charcoal canister, air pump, fuel filler neck, and rollover valve so that they are in essentially the same position as those components found on the U.S. certified vehicle.

(3) *FMVSS No. 401 Interior Trunk Release:* The petition stated that an extra cable and actuator must be installed on the hood latch in order to allow an occupant to unlatch the hood from within the trunk, as required by the standard. FNA disagreed that the modifications described in the petition would bring the vehicle into compliance with all applicable requirements of paragraph S4.3(b)(1) of the standard. AMC responded by stating that it will install U.S.-model components so that the non-U.S.-certified vehicle complies with the standard in the same manner as the U.S.-certified vehicle.

NHTSA's Analysis: Because AMC's agreement to install U.S.-model components resolves the issue raised by FNA, the agency has concluded that the vehicles are capable of being readily altered in that manner to meet the requirements of the standard.

Conclusion

In view of the above considerations, NHTSA decided to grant the petition.

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–433 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 decided that 2002 Ferrari Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 that were not originally manufactured to comply with all applicable FMVSS, are substantially similar to 2002 Ferrari Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 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. E6–8539 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15681; Notice 3]

Decision That Nonconforming 2003 Ferrari Spider and Coupe Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by the National Highway Traffic Safety Administration that nonconforming 2003 Ferrari Spider and Coupe passenger cars are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 2003 Ferrari Spider and Coupe 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 2003 Ferrari Spider and Coupe passenger cars), and they are

capable of being readily altered to conform to the standards.

DATES: This decision was effective October 31, 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.

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 2003 Ferrari Spider and Coupe passenger cars are eligible for importation into the United States. NHTSA published a notice of the petition on August 1, 2003 (68 FR 45309) 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, from Ferrari North America, Inc. (FNA), the U.S. representative of the vehicle's original manufacturer. FNA's comment addressed issues it believed G&K had overlooked in describing alterations necessary to conform 2003 Ferrari Spider and Coupe passenger cars to a number of FMVSS and to the Bumper Standard. FNA observed that the non-U.S. certified 2003 Ferrari 360 passenger cars that are the subject of the instant petition are identical, with respect to their conformance to applicable FMVSS, to the nonconforming 2002 Ferrari 360 passenger cars manufactured before September 1, 2002 that NHTSA has previously decided to be eligible for importation, as reflected in a notice of decision published on April 3, 2003 at 68 FR 16346 (Docket No. NHTSA–2002–13219). As a consequence, FNA contended that if the agency were to grant import eligibility to 2003 Ferrari 360 passenger cars, that decision would have to be made on the same basis as the decision to grant import eligibility to the 2002 models manufactured before September 1, 2002.

The agency gave G&K an opportunity to respond to FNA's comments. G&K did not see the need to do so because it believed that FNA had raised no issues beyond the ones it raised in response to the eligibility petition for 2002 Ferrari 360 passenger cars manufactured before September 1, 2002 that was also submitted by G&K.

FNA's comments and NHTSA's analysis are set forth below for each of the issues that FNA raised.

(1) *49 CFR Part 581, Bumper Standard:* The petition stated that the front and rear bumper support structures in the non-U.S. certified model must be reinforced in order to comply with the Bumper Standard. FNA responded that the bumpers should be replaced with U.S.-model bumper components unless there is no doubt that G&K's proposed reinforcements will meet the requirements of 49 CFR part 581. In addition, FNA pointed out that NHTSA had specifically required that the bumpers on nonconforming 2002 Ferrari 360 passenger cars manufactured before September 1, 2002 must be replaced, and not merely modified to conform to the Bumper Standard.

NHTSA's Analysis: The agency notes that Bumper Standard compliance issues are not directly relevant to an import eligibility decision, as such a decision is to be based on the capability of a non-U.S. certified vehicle to be altered to conform to the FMVSS, and the Bumper Standard is not an FMVSS. However, because a vehicle that is not originally manufactured to comply with the Bumper Standard must be modified to comply with the standard before it can be admitted permanently into the United States, conformance with the Bumper Standard must be shown in the conformity package submitted to NHTSA to allow release of the DOT conformance bond furnished at the time of vehicle importation.

As part of the import eligibility decision for 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, NHTSA specifically required replacement of bumper components with U.S.-model components based on the petitioner's assertion that it would perform such a replacement in lieu of modifying the bumper components. After that decision, G&K submitted to the agency detailed descriptions of bumper modifications that were deemed sufficient to bring the bumpers on 2001 and 2002 Ferrari 360 passenger cars into conformance with the Bumper Standard. G&K requested and was granted confidentiality with respect to that information by NHTSA's Chief Counsel.

Based on the showing that G&K made with respect to non-U.S. certified 2002 Ferrari 360 passenger cars manufactured before September 1, 2002, NHTSA has concluded that the 2003 model vehicles that are the subject of the instant petition are also capable of being readily modified to comply with the Bumper Standard.

(2) *FMVSS No. 201 Occupant Protection in Interior Impact:* The petition identified a number of interior trim components in the non-U.S. certified model that must be either replaced with U.S.-model components or be modified to meet the standard. FNA contended that conformance with the standard could only be achieved by replacement of the components at issue, and not by their modification.

NHTSA's Analysis: The modifications that G&K identified as necessary to achieve conformance with the standard would not prelude the vehicle from being deemed eligible for importation. Conformity packages submitted for vehicles imported under the decision must demonstrate that the vehicle is equipped with components that allow it to conform to the standard. Any modification or replacement of components necessary to meet the requirements of the standard must be shown to bring the vehicle into compliance. Such proof must be submitted by an RI as part of any conformity package submitted for 2003 Ferrari 306 Spider and Coupe passenger cars.

(3) *FMVSS No. 208 Occupant Crash Protection:* The petition identified various occupant crash protection components in the non-U.S. certified model that must be replaced with U.S.-model components or modified to meet the standard. FNA stated that the components at issue should only be replaced with U.S.-model components

and not be modified to meet the standard.

NHTSA's Analysis: The modifications G&K identified as necessary to comply with the standard would not prelude the vehicle from being deemed eligible for importation. Conformity packages submitted for vehicles imported under the decision must demonstrate that the vehicle is equipped with components that allow it to conform to the standard. Any modification or replacement of components necessary to meet the requirements of the standard must be shown to bring the vehicle into compliance. Such proof must be submitted by an RI as part of any conformity package submitted for 2003 Ferrari 306 Spider and Coupe passenger cars.

(4) *FMVSS No. 301 Fuel System Integrity:* The petition identified a number of fuel system components in the non-U.S. certified model that must be replaced with U.S.-model components to achieve conformity with the standard. FNA requested that the same modifications required for 2002 Ferrari 360 Spider and Coupe passenger cars be required for the 2003 model as well.

NHTSA's Analysis: Because FNA described the 2002 and 2003 models as being identical with respect to their conformance with all applicable FMVSS and G&K did not take issue with this representation, the agency has concluded that the following modifications, which were identified as needed to conform the 2002 model to the requirements of the standard, are appropriate for the 2003 model as well:

(a) Replacement of the fuel/vapor separator, rollover valve, filler neck, vapor lines, evaporative (charcoal) canister, air pump, and associated hardware on non-U.S. certified versions of the vehicle to make them identical to those in the U.S. certified version;

(b) modification of the U.S.-model filler neck so that it can be attached to the non-U.S.-model tank; and

(c) relocation of the charcoal canister, air pump, fuel filler neck, and rollover valve so that they are in essentially the same position as those components found on the U.S. certified vehicle.

Conclusion

In view of the above considerations, NHTSA decided to grant the petition.

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–410 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA decided that 2003 Ferrari Spider and Coupe passenger cars that were not originally manufactured to comply with all applicable FMVSS, are substantially similar to 2003 Ferrari Spider and Coupe 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. E6–8543 Filed 6–1–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Change in State of Incorporation—Firemen's Insurance Company of Newark, NJ

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570, 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Firemen's Insurance Company of Newark, New Jersey has redomesticated from the state of New Jersey to the state of South Carolina, effective January 1, 2006.

Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2005 revision, at 70 FR 38518, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–05219–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: May 25, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–5040 Filed 6–1–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is reviewing public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service brought forward by the Area and Issue Committees.

DATES: The meeting will be held Thursday, June 29, 2006, 1:30 to 5:30 p.m., Friday, June 30, 2006, 8:30 a.m. to 5 p.m., and Saturday, July 1, 2006, 8 to 11:30 a.m., Mountain Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Thursday, June 29, 2006, 1:30 to 5:30 p.m., Friday, June 30, 2006, 8:30 a.m. to 5 p.m., and Saturday, July 1, 2006, 8 to 11:30 a.m., Mountain Time, at the Warwick Hotel in Denver, Colorado, 1776 Grant Street, Denver, CO 80203. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–231–2360, or write Barbara Toy, TAP Office, MS–1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or fax to 414–231–2360, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office reports, and discussion of next meeting.

Dated: May 26, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–8536 Filed 6–1–06; 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: 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 Tuesday, June 27, 2006, at 11 a.m., central time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2365.

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 Taxpayer Advocacy Panel will be held Tuesday, June 27, 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) 231–2365 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: May 26, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–8537 Filed 6–1–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for—	Date(s)	Location
Research Centers A	June 14, 2006	VA Central Office.
Research Centers B	June 28, 2006	Henley Park Hotel.

The addresses of the meetings are: VA Central Office, 1722 Eye Street, NW., Washington, DC. Henley Park Hotel, 926 Massachusetts Ave., NW., Washington, DC.

The purpose of the Merit Review Board is to provide advice on the specific quality, budget, safety and mission relevance of center-based research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review discussion and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, PhD, Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 254–0288.

Dated: May 25, 2006.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–5026 Filed 6–1–06; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for June 21–22, 2006, in Room 340, Cannon House Office Building, U.S. House of Representatives, in Washington, DC. The meeting will begin each day at 9 a.m. On June 21 the meeting will end at 4:30 p.m., and on June 22 the meeting will end at 3 p.m. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for the two-day session will include an overview of the Department of Veterans Affairs National Compensation and Pension Exam Program located in Nashville, Tennessee, with additional briefings by QTC, Veterans Benefits Administration and Veterans Health Administration to

address the process, quality, timeliness and cost of compensation and pension examinations. There will be a summary report of the Commission's site visit to California, and the Government Accountability Office (GAO) will present its findings on a study conducted to assess VA's Individual Unemployability program. The agenda will include updates on the progress of the research and studies being conducted by the Institute of Medicine (IOM) and the Center for Naval Analyses (CNA).

Interested persons may attend and present oral statements to the Commission. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may provided written comments for review by the Commission prior to the meeting, by e-mail to *veterans@vetscommission.intranets.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: May 26, 2006.

By Director of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–5070 Filed 6–1–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
June 2, 2006

Part II

Department of Education

Grants and Cooperative Agreements—Notice of Final Priorities and Notices of Funding Availability; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program; Funding Priorities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces certain final priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces six priorities for Disability Rehabilitation Research Projects (DRRPs); one priority for a Rehabilitation Research and Training Center (RRTC); and three priorities for Rehabilitation Engineering Research Centers (RERCs). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2006 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* These priorities are effective July 3, 2006.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on February 7, 2006 (71 FR 6318). The NPP included a background statement that described our rationale for each priority proposed in that notice.

This notice of final priorities (NFP) addresses 10 of the 15 priorities proposed in the NPP. The priorities addressed in this NFP are as follows:

- *Rehabilitation of Children with Traumatic Brain Injury (TBI)* (a DRRP, designated as Priority 4 in the NPP).
- *Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities* (a DRRP, designated as Priority 5 in the NPP).
- *Model Systems Knowledge Translation Center (MSKTC)* (a DRRP, designated as Priority 6 in the NPP).
- *Assistive Technology (AT) Outcomes Research Project* (a DRRP, designated as Priority 7 in the NPP).
- *Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision* (a DRRP, designated as Priority 8 in the NPP).
- *Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population* (a DRRP, designated as Priority 9 in the NPP).
- *RRTC on Effective Independent and Community Living Solutions and Measures* (designated as Priority 12 in the NPP).
- *RERC for Technologies for Successful Aging* (designated as Priority 13 in the NPP).
- *RERC for Wheelchair Transportation Safety* (designated as Priority 14 in the NPP).
- *RERC for Wireless Technologies* (designated as Priority 15 in the NPP).

We published the following three priorities in a separate notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472):

- *General DRRP Requirements* (designated as Priority 1 in the NPP).
- *National Data and Statistical Center for the Spinal Cord Injury (SCI) Model Systems* (a DRRP, designated as Priority 2 in the NPP).
- *National Data and Statistical Center for the Traumatic Brain Injury (TBI) Model Systems* (a DRRP, designated as Priority 3 in the NPP).

Because of the volume of comments received in response to the NPP, NIDRR intends to publish a separate notice of final priorities for the remaining two priorities proposed in the NPP (i.e., the Disability Business Technical Assistance Centers priorities designated as Priorities 10 and 11 in the NPP). More information on these other priorities and the projects and programs that NIDRR intends to fund in FY 2006 can be found on the Internet at: *http://www.ed.gov/fund/grant/apply/nidrr/priority-matrix.html.*

This NFP contains several changes from the NPP. Specifically, we have made changes to the DRRP priorities for *Rehabilitation of Children with Traumatic Brain Injury (TBI)*, *Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities*, and Model Systems Knowledge Translation Center (*MSKTC*); and the three RERC priorities (*i.e.*, the *RERC for Technologies for Successful Aging*, the *RERC for Wheelchair Transportation Safety*, and the *RERC for Wireless Technologies*). We fully explain these changes in the *Analysis of Comments and Changes* section that follows.

Analysis of Comments and Changes

In response to our invitation in the NPP, 51 parties submitted comments on the proposed priorities addressed in this NFP.

An analysis of the comments and the changes in the priorities since publication of the NPP follows. We discuss major issues according to general topic questions and priorities.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Scope of Work

General

Comment: Several commenters asked whether NIDRR intends to support an RRTC that is designed to address the rehabilitation needs of persons who are deaf or hard of hearing or who are blind or vision impaired.

Discussion: At this time, NIDRR does not have plans to propose priorities for FY 2006 for any RRTCs other than the *RRTC on Effective Independent and Community Living Solutions.*

Changes: None.

Comment: Several commenters asked whether NIDRR plans to use the DRRP mechanism as a substitute for the RRTC program mechanism to support certain projects that have been supported under the RRTC program in the past (e.g., rehabilitation research and training on deafness and hard of hearing).

Discussion: Both the DRRP and RRTC program mechanisms have unique, valued features. In general, the DRRP program is more flexible than the RRTC program because DRRPs *may* include research, demonstration projects, training, and related activities that help maximize the full inclusion and integration of individuals with disabilities into society and improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. In contrast, RRTCs *must* carry out advanced programs of research, conduct training activities, and conduct technical assistance. NIDRR believes that, because of the added flexibility that the DRRP mechanism offers, in some instances it is appropriate to use

it to support research, training, and related activities that previously have been supported through the RRTC program mechanism.

Changes: None.

Comment: Several commenters expressed concern that NIDRR did not include information in the proposed priorities about the resources available for the projects to be funded, such as level of funding and project duration.

Discussion: These details are not subject to public comment and, therefore, are not included in the NPP. We will include information about available resources in any notice inviting applications that NIDRR publishes for projects that it intends to fund using these priorities.

Changes: None.

Rehabilitation of Children with Traumatic Brain Injury (TBI) (a DRRP, designated as Priority 4 in the NPP).

Two parties submitted comments on the proposed DRRP priority on *Rehabilitation of Children with Traumatic Brain Injury (TBI).* One party provided substantive comments that require discussion in this NFP, while the other provided general positive feedback on the priority.

Comment: One commenter suggested that this priority should foster the development and validation of discipline specific outcome measures across the pediatric age spectrum so that the functional consequences of tested interventions can be accurately assessed.

Discussion: NIDRR agrees that well-validated outcome measures capable of assessing change across the pediatric age spectrum are critical. Without these measures, documentation of the functional consequences of rehabilitation interventions and transition strategies would be limited. With this priority, NIDRR is encouraging applicants to develop or test innovative approaches to treating children with TBI. This focus on treatment supports an emphasis on interventions research; however, in recognition of the important role of assessment in the measurement of treatment effectiveness, the priority has been changed to include development of outcome measures that may be used to assess the effectiveness of supported interventions and transition strategies.

Changes: Paragraphs (a) and (b) of the priority have been changed to provide for the development or testing of outcome measures necessary to assess the effectiveness of rehabilitation interventions and transition strategies for children with TBI.

Comment: One commenter suggested that the priority should require the development of mechanisms that would facilitate collaboration between multiple institutions as they work to understand and demonstrate the effects of specific interventions on children with TBI. The commenters suggested the following as examples of mechanisms that would facilitate this type of collaboration: data infrastructures with multi-institutional access, and universal flexible tools that can be used to develop multi-site collaborations.

Discussion: NIDRR recognizes the value of multi-site interventions research, particularly in light of the need for sample sizes that are large enough to allow for adequate assessment of outcomes. Nothing in the priority precludes an applicant from proposing multi-site interventions research or the development of the mechanisms necessary for this type of research. The peer review process will evaluate the merits of each proposal.

Changes: None.

Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities (a DRRP, designated as Priority 5 in the NPP).

Four parties submitted comments on the proposed DRRP priority for *Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities.* Two parties provided substantive comments that require discussion in this NFP, while the other two commenters provided general positive feedback on the priority.

Comment: One commenter suggested that requiring projects to focus their research on obesity in either the adolescent population or the adult population, rather than on both, may improve the likelihood that a research project will achieve its stated outcomes under the priority.

Discussion: NIDRR agrees that an applicant may limit its research project to focus only on obesity in the adolescent population or only on obesity in the adult population. We have revised the priority to clarify that an applicant may focus its research on one or both populations. The peer review process will evaluate the merits of each proposal.

Changes: We have revised this priority to clarify that applicants can focus their research and proposed activities on obesity either in the adolescent population or the adult population, or on obesity in both the adolescent and adult populations.

Comment: One commenter strongly recommended that the Department fund projects with proposals that reflect consumer interests.

Discussion: NIDRR agrees with this comment. Under its *General DRRP Requirements* priority (designated as Priority 1 in the NPP and published in the notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472)), each applicant must involve individuals with disabilities in planning and implementing the DRRP's research, training, and dissemination activities, and evaluating its work. As stated in the NPP, NIDRR intends to pair the *General DRRP Requirements* priority with each of the DRRP priorities proposed in the NPP. Accordingly, applicants for funding under this priority will be required to meet the requirements in the *General DRRP Requirements* priority as well. The requirement regarding the involvement of individuals with disabilities in the planning and implementation activities of a DRRP's work is intended to ensure that all DRRP priorities consider consumer perspectives.

Changes: None.

Model Systems Knowledge Translation Center (MSKTC) (a DRRP, designated as Priority 6 in the NPP).

One party submitted several comments on the proposed DRRP priority for the *Model Systems Knowledge Translation Center (MSKTC).* Some of these comments focused on the *Background* statement for this priority and do not require discussion in this NFP. We have responded to one comment regarding the *Background* statement, however, in an effort to clarify NIDRR's intent for this priority.

Comment: The commenter expressed concern that the *Background* statement included in the NPP for the MSKTC priority implied that the MSKTC will be responsible for disseminating materials produced from non-Model Systems Program research on SCI, TBI, and burn injury rehabilitation.

Discussion: The MSKTC will only be responsible for improving knowledge translation (KT) of research conducted within the three specified Model Systems Programs. Accordingly, the MSKTC will only be responsible for disseminating materials produced by the three Model Systems Programs specified in the priority.

Changes: None.

Comment: None.

Discussion: NIDRR has recently funded several projects that promote the KT objectives described in NIDRR's Long Range Plan. NIDRR expects that the MSKTC will collaborate with these and future NIDRR-funded projects to address KT issues of mutual interest. This collaboration may include the

MSKTC's participation in the KT task forces of NIDRR's National Center for the Dissemination of Disability Research or other NIDRR-funded KT projects so that the centers can share information about the current progress being made in the development of standards, research syntheses, and evidence in disability and rehabilitation research. The MSKTC also likely will be involved in sharing KT techniques for capacity building among researchers in Model Systems projects and for informing stakeholder organizations and individuals with disabilities about quality research. The MSKTC may be funded as a cooperative agreement in order to facilitate these and similar roles.

Changes: Paragraph (b) of this priority has been changed to clarify that the MSKTC must develop partnerships and collaborate with other NIDRR-funded projects in order to achieve the outcome of enhanced knowledge of advances in SCI, TBI and Burn Injury research.

Comment: The commenter asked whether NIDRR intends for the MSKTC to conduct syntheses of research in the fields of TBI, SCI, and Burn Injury research. The commenter pointed out that conducting these types of syntheses would require assessments of material produced outside the Model Systems Programs, and would likely be beyond the scope of the MSKTC.

Discussion: To meet this priority, applicants must contribute to an enhanced understanding of the quality and relevance of the Model Systems Programs' research on SCI, TBI and Burn Injury by identifying and applying appropriate standards and methods for conducting research synthesis. Applicants, therefore, may choose to identify standards or methods that assess research produced outside the Model Systems Programs if an assessment of this research helps evaluate the quality and relevance of the Model Systems Programs' research on SCI, TBI, and Burn Injury. NIDRR expects the MSKTC to provide guidance to Model Systems researchers on standards and methods for conducting research and reporting findings to enhance the likelihood that Model Systems research is useful to numerous stakeholders, including practitioners and individuals with TBI, SCI, and Burn Injury. NIDRR is particularly interested in ensuring that any information to be disseminated by the Model Systems centers meets the highest possible standards of quality, and is based on scientifically rigorous research. NIDRR also intends to ensure that, to the extent possible, any information needed to assess the quality of research findings and the relevance of findings to the various stakeholders, including consumers, practitioners, and researchers is available to users. It is up to applicants to propose ways in which standards related to these objectives might be identified, developed, or applied. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: The commenter requested clarification on how NIDRR intends for the MSKTC to bridge gaps between research and evidence-based practice.

Specifically, the commenter expressed concern about whether it is useful for the MSKTC to provide standards and methods for research syntheses to the Model Systems Programs since the Model Systems Programs conduct research, not research syntheses. The commenter added that requiring the MSKTC to provide information on evidence grading would be beneficial in improving research design, implementing research, and reporting findings.

Discussion: NIDRR applauds the commenter for providing an excellent summary of the purposes of the MSKTC. We would add that making research findings relevant to the various target populations is another goal of the MSKTC. While providing information on grading evidence may be an integral part of making research relevant, other strategies, including providing information on research syntheses, also may be relevant. NIDRR does not believe that it is appropriate to require all applicants to agree to provide information on evidence grading methodologies to the Model Systems Programs. That said, nothing in the priority prohibits an applicant from proposing to provide Model Systems Programs with this information. The peer review process will determine the merits of each proposal.

Changes: None.

Assistive Technology (AT) Outcomes Research Project (a DRRP, designated as Priority 7 in the NPP).

Nine parties submitted comments on the proposed DRRP priority for the *Assistive Technology (AT) Outcomes Research Project.* Three parties provided substantive comments that require discussion in this NFP, while the remainder of the commenters provided general positive feedback on the priority.

Comment: One commenter suggested that projects that develop a program to certify AT assessment providers should be eligible for funding under this priority.

Discussion: A project that proposes to develop a certification program for AT assessment providers may be eligible for funding under this priority if it supports the outcomes that NIDRR delineated in the priority. While NIDRR does not believe that it is appropriate to require all applicants to propose this type of program, nothing in the priority precludes an applicant from doing so. The peer review process will evaluate the merits of each proposal.

Changes: None.

Comment: One commenter suggested that this priority should include an additional outcome that focuses on the need for a unified framework for describing the impact of AT across populations and environments.

Discussion: While NIDRR agrees that a unified framework for describing the impact of AT across populations and environments should be a goal for the AT field, the development of this type of framework is beyond the scope of this priority. That said, nothing in the priority precludes an applicant from proposing to work toward the development of this type of a framework. The peer review process will evaluate the merits of each proposal.

Changes: None.

Comment: One commenter suggested that this priority should highlight the importance of outcomes associated with AT to support cognitive function.

Discussion: NIDRR agrees that AT to support cognitive function might be an excellent subject for further development for projects funded under this priority. However, NIDRR does not believe that all applicants should be required to focus their proposed research on this specific type of AT. Nothing in the priority, however, precludes an applicant from proposing to focus its research on AT to support cognitive function. The peer review process will evaluate the merits of each proposal.

Changes: None.

Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision (a DRRP, designated as Priority 8 in the NPP).

Four parties submitted comments on the proposed DRRP priority on *Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision.*

Comment: Two commenters expressed concern that the *Background* statement for this priority reflects a lack of understanding about the relationship between ''wayfinding technologies'' and ''conventional approaches'' to dealing with navigation and travel-related challenges facing individuals with blindness and low vision. Additionally, the commenters suggested that, in the

implementation of the priority, NIDRR should require grantees to recognize that mobility skills, whether practiced through proper cane technique or use of a guide dog, are essential to safe travel and that new technology may complement but not replace mobility skills training.

Discussion: In developing this priority, NIDRR considered existing literature and reports related to wayfinding technologies, intervention strategies, and related issues; as well as the current state of the science in the areas of wayfinding technologies, intervention strategies, and orientation and mobility techniques for navigation and travel problems facing individuals with blindness and low vision. Following our review of these materials and research findings, we identified a range of critical issues surrounding wayfinding technologies and intervention strategies, including lack of consensus about terminology and effectiveness of specific intervention strategies. The priority was developed with these issues in mind. Specifically, the priority was developed because of the need for further research regarding the effectiveness of wayfinding technologies and orientation and mobility techniques for independent travel of blind and visually impaired consumers. There are many questions and positions regarding essential mobility skills for safe travel. However, there is no basis for requiring that all applicants adopt a specific theory, philosophy, orientation or principle regarding independent travel skills, techniques, or intervention strategies. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter requested that this priority be expanded to address the mobility and wayfinding technology needs of deaf-blind individuals.

Discussion: NIDRR intends for this priority to specifically address the development of wayfinding technologies for the blind and visually impaired population. In order to be eligible for funding under this priority, applicants must propose activities focused on the areas of research specified in the priority. However, NIDRR believes that within the broad areas of research outlined in the priority, an applicant could propose to conduct research that addresses the needs of the deaf-blind population, particularly as a subpopulation of the blind and visually impaired population. NIDRR believes that it also would be appropriate for applicants to propose research that demonstrates how advances in wayfinding technologies may ultimately result in the development of solutions that will address the unique mobility challenges facing the deaf-blind population.

Changes: None.

Comment: One commenter encouraged the Department to support a project that examines the wide range of technologies addressing navigation and travel-related needs of individuals with blindness and low vision that are currently being implemented and developed in other countries. The commenter also suggested that, under this priority, wayfinding technologies should be examined in a variety of different pedestrian environments.

Discussion: NIDRR agrees that studies examining the wide range of technologies that are currently being implemented and developed worldwide, including examination of wayfinding technologies in a variety of different pedestrian environments, may be beneficial. The priority does not preclude an applicant from proposing an international focus, or an examination of wayfinding technologies in different pedestrian environments. However, NIDRR does not believe that it is appropriate to require all applicants to focus their research on one or both of these areas. The peer reviewers will assess the merits of research proposals submitted.

Changes: None.

Comment: One commenter stressed the importance of including individuals with visual impairments and their representatives in the planning and research activities of the projects funded under this priority.

Discussion: NIDRR agrees with this comment. Under its *General DRRP Requirements* priority (designated as Priority 1 in the NPP and published in the notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472)), each applicant must involve individuals with disabilities in planning and implementing the DRRP's research, training, and dissemination activities, and evaluating its work. As stated in the NPP, NIDRR intends to pair the *General DRRP Requirements* priority with each of the DRRP priorities proposed in the NPP. Accordingly, applicants for funding under this priority will be required to meet the requirements in the *General DRRP Requirements* priority as well.

Changes: None.

Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population (a DRRP, designated as Priority 9 in the NPP).

Nine parties submitted comments on the proposed DRRP priority on *Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population*.

Comment: Several commenters requested information on whether NIDRR intends to develop a separate priority that will focus on the needs of the 29 million persons identified as deaf, hard of hearing, late deafened, and language deprived.

Discussion: NIDRR and the Department's Rehabilitation Services Administration (RSA) have supported research activities that target the broader population of persons with hearing loss for more than 40 years. Although NIDRR is sensitive to the continuing rehabilitation needs of members of this broader population, we have determined that there is a need for research that focuses on the special needs of the sub-population of low functioning deaf. At this time, NIDRR does not intend to develop a separate priority that focuses on the broader population of persons with hearing loss for FY 2006.

Changes: None.

Comment: One commenter would like to see additional research focusing on employment opportunities for working age persons with deaf-blindness and also, additional research related to employment issues and deafness.

Discussion: While NIDRR recognizes the importance of studies examining employment issues and deafness, and the needs of working age persons with deaf-blindness, the population of individuals who are LFD is the target population for this priority. Research literature addressing the LFD population is limited. Moreover, NIDRR's own research portfolio currently does not include research that focuses on the LFD population. In contrast, NIDRR currently supports research on the employment of individuals with blindness and deafness, as well as a major study of blindness, deafness, and aging. Therefore, we believe that research targeting the LFD population will address a gap in current research, including NIDRR's own research portfolio; enhance our understanding about individuals who are deaf; and assist to improve outcomes for the LFD population.

Changes: None.

RRTC on Effective Independent and Community Living Solutions and Measures (designated as Priority 12 in the NPP).

Three parties submitted comments on the proposed priority for an *RRTC on Effective Independent and Community Living Solutions and Measures*.

Comment: One commenter suggested that this priority may not be supportable

under the statutory language authorizing research grants for RRTCs. The commenter suggested that the priority's focus on participation by individuals at home, in the community, or in educational or workplace activities was at odds with a requirement that RRTCs focus exclusively on the ability of individuals with disabilities to prepare for, secure, retain, regain, or advance in employment.

Discussion: NIDRR does not agree that RRTCs are required to focus exclusively on the ability of individuals with disabilities to prepare for, secure, retain, regain, or advance in employment or that the priority is inconsistent with the RRTC regulatory or statutory authority. Nothing in section 204 of the Rehabilitation Act of 1973, as amended, requires RRTC research grants to focus exclusively on the ability of individuals with disabilities to prepare for, secure, retain, regain, or advance in employment. Moreover, the purpose of RRTCs, as stated in the Department's regulations, is to (a) develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, and independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and (b) improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (see 34 CFR 350.2 and 350.20). RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities (see 34 CFR 350.22(a)). The emphasis of this priority is to enhance community living and participation in accordance with NIDRR's mission and its Long Range Plan. As reflected in NIDRR's overall portfolio of grants, we recognize the central role of employment for many individuals with disabilities. Nothing in this priority prohibits applicants from proposing research activities that address employment issues. The peer review process will evaluate the merits of each proposal.

Changes: None.

Comment: One commenter suggested that NIDRR should require the grantee under this priority to cooperate with NIDRR's RRTC on Employment Policy for Persons with Disabilities and its RRTC on Disability Statistics and Demographics. The commenter noted that problems faced by persons with disabilities are multi-faceted and that the process of knowledge translation and capacity building could be supported by cooperative ventures.

Discussion: We agree that outcomes for individuals with disabilities can be enhanced through coordination among NIDRR grantees. All NIDRR RRTCs must carry out coordinated advanced programs of rehabilitation research. As with other NIDRR grants, the NIDRR project officer for the grantee supported under this priority will work with the grantee to facilitate appropriate coordination with other NIDRR-supported RRTCs.

Changes: None.

Comment: One commenter suggested that this priority should require grantees to develop concise and sensitive measures of accessibility for different types of impairment-related needs. In addition, the commenter identified a need for the development of sampling frames and statistical criteria for determining sample size. The commenter also suggested that grantees should be required to develop and assess sources of indicators for environmental barriers to full participation.

Discussion: NIDRR agrees that it is important to develop measures of accessibility for different types of impairment-related needs, along with sample frames and statistical criteria for determining sample size. Through our research portfolio, we already support work in this area. That said, nothing in this RRTC priority prohibits applicants from proposing the specific research activities suggested by the commenter. The peer review process will evaluate the merits of each proposal.

Changes: None.

Comment: One commenter requested clarification on whether paragraph (b) of this priority requires research projects to focus solely on the implementation of the *Olmstead* v. *L.C.* (527 U.S. 581) decision, or if the priority allows for the evaluation of other aspects of the *Olmstead* decision as well. The commenter identified a number of potential research areas that go beyond the implementation of *Olmstead,* such as examination of the principles and philosophy of the decision as it applies to individuals with disabilities in different contexts, or examination of how the principles and philosophy of the decision have affected other cross disability populations in different contexts.

Discussion: In accordance with Executive Order 13217, NIDRR's mission, and its Long Range Plan, we are committed to support research that will maximize the availability of high quality community-based practices, programs, and services for individuals with disabilities. Successful implementation of the *Olmstead* decision requires that we understand and alleviate barriers to community living and that we maximize resources that facilitate community living. NIDRR believes that a broad array of research questions relating to the implementation of the *Olmstead* decision, including those areas proposed by the commenter, may be proposed under this priority. The peer review process will evaluate the merits of each proposal.

Changes: None.

Rehabilitation Engineering Research Centers (RERCs) (designated as Priorities 13, 14 and 15 in the NPP).

Nine parties submitted comments on the three proposed priorities for RERCs.

General

Comment: One commenter suggested that rather than requiring RERC grantees to develop plans to involve individuals with disabilities in their projects after they receive an award (i.e., within the first three months of the project period), it makes more sense to require all applicants to include these plans in their proposals. In this way, the plans would be peer reviewed as part of the application review process.

Discussion: NIDRR agrees that all RERC applicants should be required to include their plans to involve individuals with disabilities in their proposals.

Changes: The RERC requirement pertaining to plans for involving individuals with disabilities or their representatives in all phases of the RERC's activities that applicants under each priority must address has been revised to require applicants to include their plans to involve people with disabilities in their proposals.

Comment: One commenter suggested that all RERC applicants should be required to include plans to disseminate their research results in their proposal, as opposed to being required to develop these plans after receiving an award.

Discussion: NIDRR agrees that all RERC applicants should include plans to disseminate their research results in their proposals. These dissemination plans will be evaluated by the peer review panel using the Department's *Design of dissemination activities* selection criteria in 34 CFR 350.54(g).

Changes: The RERC requirement pertaining to dissemination plans that applicants under each priority must address has been revised to require applicants to include their plans to disseminate research results in their proposals.

Comment: One commenter suggested that all RERC applicants should be required to include their plans to transfer developed technologies to the marketplace in their proposals, as opposed to being required to develop these plans after receiving an award.

Discussion: The RERC priorities contain a requirement that each RERC must have the capability to assist in the transfer of successful solutions to relevant production and service delivery settings. The applicant's response to this requirement in its application will be considered as part of the peer reviewers' review of the applicant's proposed development activities. NIDRR believes that, with this information, the peer reviewers will be able to evaluate whether the applicant has the capability to transfer developed technologies to the marketplace.

Changes: None.

RERC for Technologies for Successful Aging (designated as Priority 13 in the NPP).

Comment: One commenter urged NIDRR to incorporate the principles of universal design in the priority for the *RERC for Technologies for Successful Aging.*

Discussion: NIDRR has long supported and advocated the principles of universal design and agrees that this priority should address the importance of universal design in product research and development.

Changes: We have revised this priority to require grantees to emphasize the principles of universal design in their product research and development.

Comment: One commenter suggested that this priority should include a focus on assistive technologies for cognition.

Discussion: NIDRR agrees that an RERC funded under this priority may research, develop, and evaluate assistive technologies for cognition. An applicant could propose activities that focus on assistive technologies for cognition and the peer review process will evaluate the merits of the applicant's proposal.

Changes: None.

Comment: One commenter stated that this priority should require applicants to address human-technology interfaces or operating controls for persons with vision impairment.

Discussion: NIDRR agrees that human-technology interfaces are critical for device utility. An applicant could propose activities that include the research, development, or evaluation of human-technology interfaces or operating controls for persons with vision impairment and the peer review process will evaluate the merits of the applicant's proposal.

Changes: None.

RERC for Wheelchair Transportation Safety (designated as Priority 14 in the NPP).

Comment: Four commenters stated that the priority for the *RERC for Wheelchair Transportation Safety* needed an additional statement to clarify the intent of the priority.

Discussion: NIDRR agrees that the addition of a qualifying statement will help clarify the intent of this priority. The intent of this priority is to improve the safety and independence of wheelchair users who remain seated in their wheelchairs while using public and private transportation services.

Changes: The priority has been revised to emphasize that the focus of the RERC's activities on wheeled mobility devices and wheelchair seating systems must relate to their use in the transportation environment.

Comment: One commenter stated that this priority should require applicants to improve the state of the science, design guidelines and performance standards, and usability of wheelchair securement and occupant restraint systems.

Discussion: NIDRR agrees that improvement in the state of the science, design guidelines and performance standards, and usability of wheelchair securement and occupant restraint systems would be beneficial to persons using wheelchairs. Nothing in this priority prohibits an applicant from proposing activities that improve the state of the science, design guidelines and performance standards, and usability of wheelchair securement and occupant restraint systems. The peer review process will evaluate the merits of each applicant's proposal.

Changes: None.

Comment: One commenter stated that this priority should address the safe use of scooters and large wheelchairs in transportation environments.

Discussion: NIDRR agrees that the increased use of scooters and large wheelchairs in the transportation environment deserves attention. An applicant could propose activities that include research and evaluation of scooter and large wheelchair use in transportation environments; the peer review process will evaluate the merits of each applicant's proposal.

Changes: None.

RERC for Wireless Technologies (designated as Priority 15 in the NPP).

Comment: One commenter urged NIDRR to incorporate the principles of universal design in the priority for the *RERC for Wireless Technologies.*

Discussion: NIDRR has long supported and advocated the principles of universal design and agrees that this priority should address the importance of universal design in product research and development.

Changes: We have revised this priority to require grantees to emphasize the principles of universal design in their product research and development.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: This NFP is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Priorities

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General DRRP Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Rehabilitation of Children With Traumatic Brain Injury (TBI)

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of a Disability Rehabilitation Research Project (DRRP) on the Rehabilitation of Children with Traumatic Brain Injury (TBI). Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Improved physical, cognitive, social/behavioral, family, educational, or employment outcomes for children with TBI by developing or testing rehabilitation interventions, the measures needed to assess the effectiveness of rehabilitation interventions, or both.

(b) Improved transition of children from health care facilities to school and community by developing or testing effective transition strategies, the measures needed to assess the effectiveness of transition strategies, or both.

(c) Improved TBI screening and special education services for children by developing or testing methods and procedures for use in school settings.

Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults With Disabilities

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of a Disability Rehabilitation Research Project (DRRP) on Disability and Obesity: Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the antecedents and consequences of obesity as a secondary condition among adolescents, adults, or both adolescents and adults with different types of pre-existing physical, sensory, cognitive, and behavioral-health impairments.

(b) Improved obesity screening and diagnosis among adolescents, adults or both adolescents and adults with different types of disabilities by developing or testing effective screening and diagnostic methods and procedures.

(c) Improved outcomes for adolescents, adults, or both adolescents and adults with disabilities with obesity by development or testing of prevention strategies and treatments.

Model Systems Knowledge Translation Center (MSKTC)

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of a Disability Rehabilitation Research Project to serve as the Model Systems Knowledge Translation Center (MSKTC). Under this priority, the MSKTC must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the quality and relevance of NIDRR's Spinal Cord Injury (SCI), Traumatic Brain Injury (TBI), and Burn Injury (Burn) Model Systems Programs' findings. The MSKTC must contribute to this outcome by identifying and applying appropriate standards and methods for conducting research syntheses. This will allow the Model Systems Programs to bridge gaps in evidence-based practice and research.

(b) Enhanced knowledge of advances in SCI, TBI, and Burn research among consumers, clinicians, and other end users of such information. The MSKTC must contribute to this outcome by (1) identifying effective strategies for, and guiding targeted dissemination of, SCI, TBI, and Burn Model Systems Programs' findings about available services and interventions for individuals with SCI, TBI, and Burn; and (2) developing partnerships and collaborating with key constituencies, other NIDRR-funded projects (*e.g.,* the National Center for the Dissemination of Disability Research and the National Rehabilitation Information Center), and groups conducting similar work.

(c) Centralization of SCI, TBI, and Burn Model Systems resources for effective and uniform dissemination and technical assistance. The MSKTC must contribute to this outcome by serving as a centralized resource for the SCI, TBI, and Burn Model Systems Centers.

Assistive Technology (AT) Outcomes Research Project

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of a Disability Rehabilitation Research Project (DRRP) for an Assistive Technology (AT) Outcomes Research Project. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Improvement of the AT field's ability to measure the impact of AT on the lives of people with disabilities by continuing to develop AT outcomes measures and measurement systems.

(b) Improvement of the AT field's ability to measure the impact of AT on the lives of people with disabilities by developing validated methods for measuring and classifying AT interventions, including key characteristics of both the AT device and AT provision (e.g., setting, assessment, fit/customization, user-training, and device maintenance).

(c) Enhanced understanding of the impact of AT on the lives of people with disabilities by conducting at least one research project that systematically applies state-of-the-science measures of AT interventions, outcomes, and data collections mechanisms.

(d) Collaboration with the relevant NIDRR-sponsored projects, such as the Rehabilitation Research Training Center on Measuring Rehabilitation Outcomes and relevant projects within the Rehabilitation Engineering Research Center program, as identified through consultation with the NIDRR project officer.

Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of a Disability Rehabilitation Research Project (DRRP) on Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision. To meet this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Effective technology solutions and intervention approaches that can enable blind and low vision individuals to safely and independently navigate their surroundings. The DRRP must contribute to this outcome by identifying or developing and testing methods, models, and measures that will inform the technology solutions and intervention approaches.

(b) Improved understanding about the effectiveness of wayfinding technology and orientation and mobility (O&M) techniques for navigation and travel problems. The DRRP must be designed to contribute to this outcome by, at a minimum, conducting comparative analysis of outcomes for specific subpopulations of individuals with blindness and low vision who use O&M techniques and wayfinding technology.

(c) Increased technical and scientific knowledge about the applications of navigation and travel technologies for individuals with blindness and low vision, leading to more effective use of technologies and intervention strategies, through the development of knowledge translation and utilization activities.

(d) Coordination of research activities. The DRRP must contribute to this outcome by collaborating and consulting with relevant Federal agencies responsible for the administration of public laws that address access to and usability of transportation and transit-related systems and environmental structures for individuals with disabilities, such as the Architectural and Transportation Barriers Compliance Board, the U.S. Department of Transportation's Federal Highway Administration, Federal Transit Administration and National Highway Traffic Safety Administration, and relevant NIDRR-funded research projects as identified through consultation with the NIDRR project officer.

Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population

Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for the funding of a Disability Rehabilitation Research Project (DRRP) on Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced knowledge about the unique functional and communication characteristics of the LFD population and the extent to which these characteristics affect disability and rehabilitation outcomes, including labor force participation and employment preparation. The DRRP must contribute to this outcome by developing and testing protocols that accurately measure population characteristics; and psychometrically sound instruments that measure predictors of disability, rehabilitation, and employment outcomes.

(b) Improved employment outcomes and reduction of barriers to labor force participation for individuals who are LFD. The DRRP must contribute to this outcome by developing theory-based intervention strategies and methods that help to enhance functional skills, social interaction, communication and literacy competencies, and scientifically-sound approaches for identifying barriers to labor force participation.

(c) Collaboration with NIDRR-sponsored projects, including the Rehabilitation Research and Training Center (RRTC) on Measuring Rehabilitation Outcomes and other relevant projects within NIDRR's RRTC and Field Initiated programs.

Rehabilitation Research and Training Centers (RRTCs)

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

General Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Rehabilitation Research and Training Center (RRTC) on Effective Independent and Community Living Solutions and Measures

Priority

The Assistant Secretary establishes a priority for the funding of a Rehabilitation Research and Training Center (RRTC) on Effective Independent and Community Living Solutions and Measures. To meet this priority, the RRTC's research must be designed to contribute to the following outcomes:

(a) Enhanced participation by individuals with disabilities at home, in the community, or in educational or workplace activities through development of effective theory-based intervention methods and outcome measures.

(b) Improved intervention approaches and guidelines that help to remove or reduce barriers to full community integration and participation for individuals with disabilities. The RRTC must contribute to this outcome by conducting rigorous research examining the implementation of the *Olmstead* v. *L.C.* (527 U.S. 581) decision and practices that serve as facilitators or barriers to independent and community living.

(c) Improved understanding about the economic utility of existing or proposed policies and practices to maximize independence and participation for individuals with disabilities through development of scientifically sound, valid and reliable methods and measures to assess these policies and practices.

Rehabilitation Engineering Research Centers Program General Requirements of Rehabilitation Engineering Research Centers (RERCs)

RERCs carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (a) solve rehabilitation problems and remove environmental barriers and (b) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or
- Demonstrating and disseminating (a) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or
- Facilitating service delivery systems change through (a) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Rehabilitation Engineering Research Centers (RERCs) for Technologies for Successful Aging, Wheelchair Transportation Safety, and Wireless Technologies

Priorities

The Assistant Secretary for Special Education and Rehabilitative Services establishes the following three priorities for the funding of (a) an RERC for Technologies for Successful Aging, (b) an RERC for Wheelchair Transportation Safety, and (c) an RERC for Wireless Technologies. Within its designated priority research area, each RERC will focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of persons with disabilities.

(a) *RERC for Technologies for Successful Aging.* Under this priority, the RERC must research, develop and evaluate innovative technologies and approaches that will improve the quality of life of older persons with disabilities and promote health, safety, independence, and active engagement. The RERC must emphasize the principles of universal design in its product research and development.

(b) *RERC for Wheelchair Transportation Safety.* Under this priority, the RERC must research, develop, and evaluate innovative technologies and strategies that will improve the safety and independence of wheelchair users who remain seated in their wheelchairs while using public and private transportation services. The RERC must research and develop innovative technologies and strategies that will improve the current state of the science, design guidelines and performance standards, and usability of wheeled mobility devices and wheelchair seating systems for use in the transportation environment.

(c) *RERC for Wireless Technologies.* Under this priority, the RERC must research, develop, and evaluate innovative technologies that facilitate equitable access to, and use of, future generations of wireless technologies for individuals with disabilities of all ages. The RERC must emphasize the principles of universal design in its product research and development.

Under each priority, the RERC must be designed to contribute to the following programmatic outcomes:

(1) Increased technical and scientific knowledge-base relevant to its designated priority research area.

(2) Innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its designated priority research area. The RERC must contribute to this outcome by developing and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, and institutions of higher education.

(4) Improved focus on cutting edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR and the field regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to public and private organizations, persons with disabilities, and employers on policies, guidelines, and standards related to its designated priority research area.

In addition, under each priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal and then implement a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research, a plan to disseminate its research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Develop and implement in the first year of the project period, in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by the RERC are successfully transferred to the marketplace;
- Conduct a state-of-the-science conference on its designated priority research area in the third year of the project period and publish a comprehensive report on the final outcomes of the conference in the fourth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for

administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these final priorities are minimal while the benefits are significant. Grantees may incur some costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these final priorities is that the establishment of new DRRPs, a new RRTC, and new RERCs will support the President's NFI and will improve the lives of persons with disabilities. The new DRRPs, RRTC, and RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects, 84.133B Rehabilitation Research and Training Centers Program, and 84.133E Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g), 764(a), 764(b)(2), and 764(b)(3).

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4935 Filed 6–1–06; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Assistive Technology (AT) Outcomes Research Project; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–8.

DATES: *Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 19, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $450,000.

Estimated Range of Awards: $400,000–$450,000.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *AT Outcomes Research Project* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Assistive Technology (AT) Outcomes Research Project.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $450,000.

Estimated Range of Awards: $400,000—$450,000.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–8.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a detailed budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006. Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 19, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6082, 550 12th Street, SW., Washington, DC between 12:30 p.m. and 2:30 p.m. After the meeting, NIDRR staff also will be available from 3 p.m. to 4:30 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov*.

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In

order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects—CFDA Number 84.133A–8 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT,** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–8), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–8), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–8), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone:

(202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4934 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Model Systems Knowledge Translation Center (MSKTC); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–9.

DATES: *Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 19, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $600,000.

Estimated Range of Awards: $550,000–$600,000.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *MSKTC* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Model Systems Knowledge Translation Center (MSKTC).*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $600,000.

Estimated Range of Awards: $550,000–$600,000.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–9.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 19, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6082, 550 12th Street, SW., Washington, DC between 12:30 p.m. and 2:30 p.m. After the meeting, NIDRR staff also will be available from 3 p.m. to 4:30 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 60270, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects—CFDA Number 84.133A–9 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your

application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–9), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–9), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–9), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

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(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

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VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4933 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Rehabilitation of Children with Traumatic Brain Injury (TBI); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–10.

DATES: Applications Available: June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 19, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $300,000.

Estimated Range of Awards: $250,000—$300,000.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Rehabilitation of Children with TBI* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Rehabilitation of Children with Traumatic Brain Injury (TBI).*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $300,000.

Estimated Range of Awards: $250,000—$300,000.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–10.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning

the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1 ″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 19, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6082, 550 12th Street, SW., Washington, DC between 12:30 p.m. and 2:30 p.m. After the meeting, NIDRR staff also will be available from 3 p.m. to 4:30 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects-CFDA Number 84.133A–10 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-*

Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–10), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–10), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–10), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed

research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4932 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–11.

DATES: *Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 15, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $450,000.

Estimated Range of Awards: $400,000–$450,000.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Mobility Aids and Wayfinding Technologies for Individuals With Blindness and Low Vision.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $450,000.

Estimated Range of Awards: $400,000–$450,000.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

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To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–11.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

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components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006. Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 15, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6075, 550 12th Street, SW., Washington, DC between 1 p.m. and 3 p.m. After the meeting, NIDRR staff also will be available from 3 p.m. to 4:30 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects—CFDA Number 84.133A–11 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–11), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–11), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

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The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy

requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4924 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–12.

DATES: Applications Available: June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006. Date of Pre-Application Meeting: June 16, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $450,000.

Estimated Range of Awards: $400,000–$450,000.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals

with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Improving Employment Outcomes for the LFD Population* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Improving Employment Outcomes for the Low Functioning Deaf (LFD) Population.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $450,000.

Estimated Range of Awards: $400,000–$450,000.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–12.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 16, 2006. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 10 a.m. and 12 noon. On the same day, NIDRR staff also will be available from 1:30 p.m. to 4 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Lynn Medley, U.S.

Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.medley@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

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- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
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If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that

assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html*.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4923 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–16.

DATES: Applications Available: June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 19, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $250,000.

Estimated Range of Awards: $200,000–$250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

Priorities: NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability and Rehabilitation Research Projects (DRRP) Requirements and *Reducing Obesity and Obesity-Related Secondary Conditions in Adolescents and Adults with Disabilities.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research

Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $250,000.

Estimated Range of Awards: $200,000–$250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–16.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a detailed budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:* Applications Available: June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 19, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6082, 550 12th Street, SW., Washington, DC between 12:30 p.m. and 2:30 p.m. After the meeting, NIDRR staff also will be available from 3 p.m. to 4:30 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.*, other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted

electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects—CFDA Number 84.133A–16 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–16), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260,

Attention: (CFDA Number 84.133A–16), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–16), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of

Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4925 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Research and Training Centers (RRTC)—RRTC on Effective Independent and Community Living Solutions and Measures; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–14.

DATES: *Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 19, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $650,000.

Estimated Range of Awards: $600,000—$650,000.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15 percent.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2006, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Rehabilitation Research and Training Centers (RRTC) on Effective Independent and Community Living Solutions and Measures.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $650,000.

Estimated Range of Awards: $600,000–$650,000.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15 percent.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133B–14.

Individuals with disabilities may obtain a copy of the application package

in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract; Human Subjects narrative; Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006. Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 19, 2006. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 10 a.m. and 12 noon. On the same day, NIDRR staff also will be available from 1:30 p.m. to 4 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.medley@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Rehabilitation Research Training Centers Program–CFDA Number 84.133B–14 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Rehabilitation Research Training Centers Program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at*http://e-Grants.ed.gov/help/Grantsgov SubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8×11.pdf*).

You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–14), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133B–14), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–14), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The

GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html*.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4926 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Engineering Research Centers (RERCs)—RERC for Technologies for Successful Aging; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–1.

DATES: *Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 22, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $900,000.

Estimated Range of Awards: $850,000–$900,000.

Maximum Award: We will reject any application that proposes a budget exceeding $900,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2006, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34

CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC for Technologies for Successful Aging.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $900,000.

Estimated Range of Awards: $850,000–$900,000.

Maximum Award: We will reject any application that proposes a budget exceeding $900,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
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3. *Submission Dates and Times: Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priority and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 22, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6075, 550 12th Street, SW., Washington, DC between 10 a.m. and 12 noon. After the meeting, NIDRR staff also will be available from 1:30 p.m. to 4 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Rehabilitation Engineering Research Centers Program-CFDA Number 84.133E–1 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Rehabilitation Engineering Research Centers Program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

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- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
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- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
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U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133E–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices*: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4927 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Engineering Research Centers (RERCs)—RERC for Wireless Technologies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–7.

DATES: *Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 22, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $950,000.

Estimated Range of Awards: $900,000–$950,000.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2006, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC for Wireless Technologies.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $950,000.

Estimated Range of Awards: $900,000–$950,000.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–7.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection

criteria that reviewers use to evaluate your application. We strongly recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, Application for Federal Assistance; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract; Human Subjects narrative; Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priority and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 22, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6075, 550 12th Street, SW., Washington, DC between 10 a.m. and 12 noon.

After the meeting, NIDRR staff also will be available from 1:30 p.m. to 4 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Rehabilitation Engineering Research Centers Program—CFDA Number 84.133E–7 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Rehabilitation Engineering Research Centers Program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the

steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT,** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–7), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133E–7), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–7), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html*.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4931 Filed 6–1–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Engineering Research Centers (RERCs)—RERC for Wheelchair Transportation Safety; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–8.

DATES: *Applications Available:* June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Date of Pre-Application Meeting: June 22, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $900,000.

Estimated Range of Awards: $850,000–$900,000.

Maximum Award: We will reject any application that proposes a budget exceeding $900,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2006, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC for Wheelchair Transportation Safety.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $900,000.

Estimated Range of Awards: $850,000–$900,000.

Maximum Award: We will reject any application that proposes a budget exceeding $900,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–8.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″× 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, Application for Federal Assistance; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a detailed budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 2, 2006.

Deadline for Transmittal of Applications: July 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the priority and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on June 22, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6075, 550 12th Street, SW., Washington, DC between 10 a.m. and 12 noon. After the meeting, NIDRR staff also will be available from 1:30 p.m. to 4 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For

information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Rehabilitation Engineering Research Centers Program-CFDA Number 84.133E–8 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Rehabilitation Engineering Research Centers Program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you

experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–8), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133E–8), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–8), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call

the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: May 23, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–4922 Filed 6–1–06; 8:45 am]

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Federal Register

Friday,
June 2, 2006

Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 175

Hazardous Materials: Infectious Substances; Harmonization With the United Nations Recommendations; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 175

[Docket No. PHMSA–2004–16895 (HM–226A)]

RIN 2137–AD93

Hazardous Materials: Infectious Substances; Harmonization With the United Nations Recommendations

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

ACTION: Final rule.

SUMMARY: PHMSA is revising the transportation requirements for infectious substances, including regulated medical waste, to adopt new classification criteria, new exceptions, and packaging and hazard communication requirements consistent with revised international standards and to clarify existing requirements to promote compliance. These revisions will ensure an acceptable level of safety for the transportation of infectious substances and facilitate domestic and international transportation.

EFFECTIVE DATE: This final rule is effective October 1, 2006.

Voluntary Compliance Date: Voluntary compliance is authorized 30 days following publication of this final rule.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation or by e-mail to *Eileen.Edmonson@dot.gov* or *infocntr@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA), published a notice of proposed rulemaking (NPRM) to revise the requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to the transportation of infectious substances affecting humans and animals, including regulated medical waste (67 FR 53118). In the NPRM, PHMSA proposed to harmonize the HMR requirements applicable to the transportation of Division 6.2 materials with requirements in the 13th and 14th Editions of the UN Recommendations for the Transport of Dangerous Goods (UN Recommendations), the 2005–2006 Edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the International Maritime Organization Dangerous Goods Code. Specifically, we proposed to:

- Revise the classification system for Division 6.2 materials from the current four-tiered risk group system to a two-tiered system—Category A and Category B.
- Replace the proper shipping name ''Diagnostic specimens'' with ''Biological substance, Category B.''
- Adopt packaging requirements for Category A and Category B infectious substances consistent with those in the UN Recommendations and ICAO Technical Instructions.
- For Category B infectious substances, require the name, address, and telephone number of a person knowledgeable about the Category B infectious substance to be provided on a written document, such as an air waybill, accompanying the shipment or on the package.
- Permit a sample of an unknown infectious substance shipped for analysis or diagnosis to be transported as a Category B infectious substance, unless there is a strong suspicion that the unknown infectious substance meets the criteria for Category A, in which case the unknown material must be transported as a Category A infectious substance.
- Require sharps packagings to be securely closed and leakproof in all orientations.
- Require the development and implementation of transportation security plans for select agents and toxins affecting animals, as identified in 9 CFR part 121.

The comment period for the proposed rule closed on July 18, 2005. PHMSA received 13 comments, all of which support revising the requirements to harmonize them with current international standards. The following companies, organizations, and individuals submitted comments: Gary Gilliam (Gilliam; RSPA–2004–16889–2); Alcoa, Inc. (Alcoa; RSPA–2004–16889–3); Steven V. Schulte (Schulte; RSPA–2004–16889–4); The Daniels Corporation (Daniels; RSPA–2004–16889–6); Shoolah Escott (Escott; RSPA–2004–16889–7); National Solid Waste Management Association/ Medical Waste Institute (NSWAM/MWI; RSPA–2004–16889–8); American Blood Centers (ABC; RSPA–2004–16889–9); Air Transport Association of America, Inc. (ATA; RSPA–2004–16889–10); Stericycle, Inc; (Stericycle; RSPA–2004–16889–11); JBM Associates, Inc. (JBM; RSPA–2004–16889–12); American Clinical Laboratory Association (ACLA; RSPA–2004–16889–13); Air Line Pilots Association (ALPA; RSPA–2004–16889–14); and TEN–E Packaging Services, Inc. (TEN–E; RSPA–2004–16889–15 and –16).

II. Discussion of Comments

A. Classification of Division 6.2 Materials

The HMR currently incorporate a risk-group-based classification system for infectious substances. The regulations require Division 6.2 materials to be assigned to risk groups based on the degree to which they cause injury through disease, with Risk Group 1 presenting the lowest risk and Risk Group 4 presenting the highest risk. Assignment of an infectious substance to a risk group is based on the known medical history of the source patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgment concerning individual circumstances of the source patient or animal. Division 6.2 materials assigned to Risk Group 1 are excepted from the HMR and the UN Recommendations.

The current requirements for assigning pathogens to risk groups are based on the risks posed in the laboratory environment, not in the transportation environment. Pathogens in transport do not pose the same level of risk that they do in the laboratory. Laboratory workers perform extensive manipulations of infectious substances that place the workers at higher risk of infection because of accidental exposures caused by splashes or spills. Moreover, certain laboratory processes—such as vortexing, mixing, or centrifuging—can generate aerosols or airborne particles that can place workers who perform such operations at increased risk. These conditions do not exist in transport.

The risk group classification system resulted in transportation problems, including shipper confusion in assigning risk groups, and shipment delays or refusal to transport associated with carriers' and transport workers' perceptions about the risks associated with the transportation of infectious substances. A delay in transportation or a refusal to transport a specimen may have life-threatening implications for a patient or a population. Moreover, transportation problems can delay research necessary to develop treatments or slow the spread of disease, and can interfere with the

implementation of appropriate measures to address new disease outbreaks. Because of these transportation problems, the UN Committee of Experts on the Transport of Dangerous Goods worked with scientists and public health professionals at the World Health Organization (WHO), the U.S. Centers for Disease Control and Prevention (CDC), and other agencies to develop a classification scheme for infectious substances that would be more appropriate for the transportation environment.

In December 2002, the United Nations adopted a number of revisions for the 13th Revised Edition of the UN Recommendations related to the transportation of infectious substances, primarily involving how infectious substances are classed and packaged. In July 2004, the UN Committee of Experts on Dangerous Goods recommended further revisions to these standards; these revisions were adopted for the 14th Revised Edition of the UN Recommendations in December 2004. At the same time, the ICAO Dangerous Goods panel adopted many of the amendments for the 14th Revised Edition of the UN Recommendations in the 2005–2006 Edition of the ICAO Technical Instructions through an addendum to the ICAO Technical Instructions.

The amendments in the 13th and 14th Editions of the UN Recommendations are the result of long and thoughtful consultations among regulators, scientists, medical professionals, and the transport community. The result is a set of standards for the transportation of infectious substances that are easier to use and impose a high level of safety appropriate to the degree of risk and conditions of transport. PHMSA's May 9, 2005 NPRM proposed to harmonize HMR requirements for the transportation of infectious substances with the international standards.

Commenters generally support PHMSA's efforts to more closely align the requirements for transporting infectious substances with current international requirements by adopting a two-tiered classification system. The majority of commenters state they believe the requirements will ease the movement of these materials in transit and reduce confusion, thereby increasing safety. Therefore, in this final rule, we are adopting the classification system as proposed in the NPRM.

The requirements adopted in this final rule establish a two-tiered classification system for Division 6.2 materials—Category A and Category B. Category A infectious substances pose a higher degree of risk than Category B infectious substances. Category A material is an infectious substance transported in a form capable of causing permanent disability or life-threatening or fatal disease to otherwise healthy humans or animals when exposure to it occurs. An exposure occurs when an infectious substance is released outside of its protective packaging, resulting in physical contact with humans or animals. Category A infectious substances are assigned to existing identification numbers UN 2814 (for substances causing disease in humans or in both humans and animals) or UN 2900 (for substances causing disease in animals only), and are to be packaged and described according to applicable HMR provisions for these materials. The following are examples of Category A infectious substances, as designated by scientists at WHO and the U.S. Department of Health and Human Services (HHS). Please note this list is not all inclusive and is provided only as guidance. Note also that many of the entries on the list include the modifier ''(cultures only).'' For these materials, only cultures of the listed infectious substances are considered Category A infectious substances. Other forms of these infectious substances may be transported as Category B infectious substances.

Category A infectious substances UN No. and proper shipping name	Micro-organism
UN 2814—Infectious substances affecting humans and animals	Bacillus anthracis (cultures only). Brucella abortus (cultures only). Brucella melitensis (cultures only). Brucella suis (cultures only). Burkholderia mallei—Pseudomonas mallei—Glanders (cultures only). Burkholderia pseudomallei—Pseudomonas pseudomallei (cultures only). Chlamydia psittaci—avian strains (cultures only). Clostridium botulinum (cultures only). Coccidioides immitis (cultures only). Coxiella burnetti (cultures only). Crimean-Congo hemorrhagic fever virus. Dengue virus (cultures only). Eastern equine encephalitis virus (cultures only). Escherichia coli, verotoxigenic (cultures only). Ebola virus. Flexal virus. Francisella tularensis (cultures only). Guanarito virus. Hantaan virus. Hantaviruses causing hemorrhagic fever with renal syndrome. Hendra virus. Herpes B virus (cultures only). Human immunodeficiency virus (cultures only). Highly pathogenic avian influenza virus (cultures only). Japanese Encephalitis virus (cultures only). Junin virus. Kyasanur forest disease virus. Lassa virus. Machupo virus. Marburg virus. Monkeypox virus. Mycobacterium tuberculosis (cultures only). Nipah virus.

Category A infectious substances UN No. and proper shipping name	Micro-organism
UN 2900—Infectious substances affecting animals only	Omsk hemorrhagic fever virus. Poliovirus (cultures only). Rabies and other lyssaviruses (cultures only). Rickettsia prowazekii (cultures only). Rickettsia rickettsia (cultures only). Rift Valley fever virus (cultures only). Russian spring-summer encephalitis virus (cultures only). Sabia virus. Shigella dysenteriae type I (cultures only). Tick-borne encephalitis virus (cultures only). Variola virus. Venezuelan equine encephalitis virus (cultures only). Vesicular stomatitis virus (cultures only). West Nile virus (cultures only). Yellow fever virus (cultures only). Yersinia pestis (cultures only). African swine fever virus (cultures only). Avian paramyxovirus Type 1—Velogenic Newcastle disease virus (cultures only). Classical swine fever virus (cultures only). Foot and mouth disease virus (cultures only). Lumpy skin disease virus (cultures only). Mycoplasma mycoides—Contagious bovine pleuropneumonia (cultures only). Peste des petits ruminants virus (cultures only). Rinderpest virus (cultures only). Sheep-pox virus (cultures only). Goatpox virus (cultures only). Swine vesicular disease virus (cultures only).

A Category B infectious substance is one that does not meet the criteria for inclusion in Category A. A Category B infectious substance does not cause permanent disability or life-threatening or fatal disease to humans or animals when exposure to it occurs. Under the provisions of the 13th Edition of the UN Recommendations, adopted in December 2002, a Category B infectious substance is described as ''Diagnostic Specimen'' or ''Clinical Specimen'' and assigned to UN 3373.

Currently, the HMR define a ''diagnostic specimen'' to mean any human or animal material being transported for diagnostic or investigative purposes. In accordance with current § 173.199, diagnostic specimens are excepted from most HMR requirements except for minimal packaging and hazard communication. Historically, the HMR have permitted a proper shipping name, such as ''Diagnostic specimen,'' listed in the § 172.101 Table to be used to describe a non-hazardous material on a shipping paper and package marking provided the UN or NA identification number is not included. See §§ 172.202(e) and 172.303(b)(3). However, adoption of the proper shipping name ''Diagnostic specimen'' in both the international standards and the HMR resulted in some confusion on the part of both shippers and carriers who are accustomed to using these terms to refer to human or animal samples that have a low probability of containing an infectious pathogen. In addition, using these terms to describe shipments of Category B infectious substances is not completely accurate—there are many shipments of Category B infectious substances that may not be diagnostic specimens as that term is usually defined.

The UN Sub-Committee of Experts on the Transport of Dangerous Goods discussed the proper shipping name issue during its July 2004 meeting and agreed to adopt a different proper shipping name for Category B infectious substances—''Biological substance, Category B.'' The UN adopted this proper shipping name for the 14th Revised Edition of the UN Recommendations, which is effective January 1, 2007; ICAO adopted the new proper shipping name through an addendum to the 2005–2006 ICAO Technical Instructions. The addendum permits use of the new proper shipping name as an alternative to ''Diagnostic Specimen'' or ''Clinical Specimen'' until January 1, 2007, at which time the new name must be used. Consistent with the revised international standards, the May 9, 2005 NPRM proposed to adopt the proper shipping name ''Biological substance, Category B'' in the HMR. No commenters opposed this proposal, and it is adopted in this final rule. Thus, a Category B infectious substance must be described as ''Biological substance, Category B'' and assigned to UN 3373.

B. Packaging Requirements for Category B Infectious Substances

Currently, the HMR require Risk Group 2 and 3 infectious substances (most of which will be classed as Category B infectious substances under this final rule) to be transported in triple packagings certified to comply with the performance standards in § 178.609, including a drop test from a height of 9 m (30 ft), a water spray test, and a puncture test. In the NPRM, we proposed to permit Category B infectious substances to be transported in non-specification triple packagings capable of passing a drop test only at a height of 1.2 meters (3.9 feet). Commenters support this proposal. We are adopting this requirement in this final rule.

The NPRM proposed to require these packagings to be capable of passing the drop test set forth in § 178.603, which prescribes tests for all non-bulk packaging designs. As suggested by one commenter (TEN–E), in this final rule, we are replacing the reference to § 178.603 with § 178.609. The drop test established in § 178.609 applies specifically to infectious substance packagings; this testing configuration more appropriately addresses the integrity issues for infectious substance packages.

The NPRM proposed to require the outer packaging of the triple pack authorized for the transportation of Category B infectious substances to be rigid; the proposal is consistent with requirements adopted for air shipments of Category B infectious substances in the ICAO Technical Instructions. One commenter (ACLA) suggests this requirement is unnecessary because a packaging capable of passing a 1.2 meter drop test has sufficiently demonstrated it can withstand normal transportation conditions. The commenter states this requirement would impose unnecessary costs on clinical laboratories with no safety benefit. We disagree. As indicated above, Category B packagings must be capable of passing a drop test, but need not be capable of passing a puncture or other performance test. A requirement for a rigid outer packaging will help to ensure that the entire package can withstand punctures and other conditions that may be encountered during transportation and particularly at package sorting facilities. In addition, a rigid outer packaging will help to ensure that package markings are intact and legible in the event the package is damaged during transportation. We therefore find the safety benefits of a requirement for a rigid outer packaging outweigh the minimal additional cost of such packaging. However, we do agree a rigid packaging conforming to HMR requirements may be placed inside an envelope or other non-rigid overpack conforming with § 173.25 of the HMR.

The commenter (ACLA) also asks us to provide guidance concerning what constitutes a rigid outer packaging. An outer packaging is defined under § 171.8 as the outermost enclosure of a composite or combination packaging together with any absorbent materials, cushioning, and any other components necessary to contain and protect inner receptacles or inner packagings. A rigid packaging is sufficiently stiff and unyielding so as to retain its original shape and dimensions at all times and under all conditions of transportation.

Current HMR requirements require infectious substances packed with materials intended to stabilize or prevent degradation of the sample to be transported in accordance with provisions applicable to the hazard class of the stabilizing material used. In the NPRM, we proposed to relax this requirement to except Packing Group II or III materials used to stabilize or prevent degradation of infectious materials up to a limit of 30 mL (1 ounce) or 30 g (1 ounce) in each inner packaging from HMR requirements. A commenter (ACLA) suggests we permit each inner packaging to contain up to 250 mL (25% of the total permitted volume of liquid material per primary receptacle) of Packing Group II or III material. We disagree. For shipments by air, the maximum quantity contained in each inner receptacle of the package may not exceed 1 L; the maximum quantity contained in each outer package may not exceed 4 L. Thus, the revision proposed by ACLA would permit as much as 1 L of a stabilizing material or preservative to be transported in a single package with no additional packaging or hazard communication requirements. Particularly for shipments transported by aircraft, we believe quantities of Packing Group II or III materials in excess of 30 mL pose a sufficient hazard as to require at least minimal regulation. The limit of 30 mL per inner receptacle is consistent with the small quantity exception in § 173.4, which excepts small quantities (up to 30 mL or 30 g per inner receptacle) of certain hazard materials from all HMR requirements provided minimal packaging requirements are met. Moreover, the triple packaging design for infectious substances is similar to the minimal packaging authorized for small quantities of hazardous materials under § 173.4. Thus, we are adopting the limitation on the quantity of preservative permitted in each inner packaging as proposed in the NPRM. If a shipper elects to use a larger quantity of preservative, the shipment must conform to HMR requirements applicable to the specific material and quantity being shipped.

Two commenters (Escott, JBM) asked us to clarify that the requirement for a pressure differential test for packagings used to transport Category B infectious substances applies only to transportation by aircraft. As discussed in the NPRM, this provision in existing § 173.199(b)(4) is not changed in this final rule. Either the primary or secondary receptacle for a liquid Category B infectious substance must be capable of withstanding, without leakage, an internal pressure producing a pressure differential of 95 kPa (0.95 bar, 14 psi) when offered or intended for transport by aircraft.

C. Emergency Contact Information for Category B Infectious Substances

Currently, the HMR require packages of Risk Group 2 and 3 infectious substances (most of which will be classed as Category B infectious substances under this final rule) to be accompanied by shipping papers that include a telephone number that is monitored at all times the hazardous material is in transportation; the telephone number must be the number of a person who is knowledgeable about the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material (see § 172.604). Because Category B infectious substances are excepted from shipping paper requirements, in the May 9, 2005 NPRM, we proposed to require the proper shipping name; UN number; and name, address, and telephone number of a person knowledgeable about the material to be provided on a written document, such as an air waybill, accompanying a Category B infectious substance shipment or on the package itself. Two commenters object to the requirement for a contact telephone number. One commenter (Escott) suggests the expense of monitoring the number while the shipment is in transit would impose a significant cost burden on clinical laboratories, medical facilities, and other infectious substance shippers. A second commenter (JBM) suggests the address on the packaging should be sufficient for contacting the responsible party in the event of an incident.

This provision to add the emergency contact name and telephone number for Category B infectious substances is intended to harmonize hazard communication for these materials with requirements in the 2005–2006 ICAO Technical Instructions. The number need not be monitored at all times the hazardous material is in transportation, as would be required under § 172.604 of the HMR. However, we do intend it to be monitored during a company's administrative office hours. Thus, we expect the burden of complying with this requirement will be minimal. Consistent with revisions adopted by ICAO in November 2005, in this final rule, we are not requiring an address as part of the contact information. Emergency contact information shown on a shipping document or on the package must include the name and telephone number of a person knowledgeable about the shipment.

We disagree that the number should not be required. Having access to a telephone number will enable transport workers and emergency responders to contact a person knowledgeable about the shipment within a reasonable period of time and, thus, will facilitate the retrieval of information concerning the material and its potential hazards.

D. Exceptions for Certain Shipments

The HMR currently except certain shipments of infectious substances from all regulatory requirements when the shipments are transported by a private

or contract carrier in a motor vehicle used exclusively to transport these materials. In the NPRM, we propose to expand this exception to Category B infectious substances transported for research, diagnosis, investigational activities, or disease treatment or prevention. One commenter (Escott) recommends the HMR include minimal packaging requirements for such shipments, such as non-specification triple packagings with absorbent material, and minimal marking and labeling requirements. Escott states, ''When I worked in a hospital, I received specimens that were transported by a courier and were leaking * * *'' We do not agree Category B shipments transported by private or contract carriers should be regulated under the HMR. We do not have reports of safety problems involving courier shipments of infectious materials under the exception currently provided in the HMR. Courier shipments typically are packaged in primary receptacles, sealed in leak-proof plastic bags, and placed in a leak proof outer container that includes cushioning material. Further, couriers are familiar with the materials they transport, and are trained in the application of the Occupational Safety and Health Administration (OSHA) standards for handling potentially infectious materials. Requiring additional packaging and hazard communication requirements would add to the cost of shipping such materials without improving safety. Therefore, we are adopting the exception as proposed in the NPRM.

In the NPRM, we indicated the HMR do not apply to a human or animal sample transported for routine testing when the testing is not related to the diagnosis of an infectious disease and when there is no reason to suspect the sample is infectious. Routine screening tests include: (1) Blood or urine tests a doctor may order as part of a routine medical examination to monitor cholesterol levels, blood glucose levels, hormone levels, or prostate specific antibodies (PSA); (2) blood or urine tests to monitor liver or kidney functions in individuals who are not known to have an infectious disease and who are following a particular drug therapy regime; (3) blood or urine tests conducted for insurance or employment purposes and/or intended to determine the presence of alcohol or drugs; (4) DNA tests; and (5) pregnancy tests. Routine tests for diagnoses for other than the presence of pathogens include biopsies to detect cancer and antibody titre testing. This exception proposed in the NPRM is consistent with exceptions adopted in the UN Recommendations for substances unlikely to cause disease in humans or animals, and substances for which there is a low probability an infectious pathogen is present.

Three of the four commenters addressing this issue (ACLA, Alcoa, ABC), support the exception from the HMR for transporting specimens from apparently healthy individuals and animals for routine diagnostic testing for other than an infectious disease. These commenters state many years of experience shows the probability of such samples being infectious is low, and, therefore, their transportation is unlikely to compromise safety. These commenters also state permitting the transportation of samples from apparently healthy individuals for routine testing will facilitate the processing of such samples and initiation of appropriate patient treatment. One commenter (JBM) opposes the exception. The commenter suggests samples from apparently healthy individuals may contain pathogens and recommends minimal packaging standards to guard against the release of the sample during transportation.

We agree with the commenters who suggest that samples from apparently healthy individuals and animals being transported for routine testing unrelated to the diagnosis of an infectious disease are not likely to be infectious and, thus, pose a minimal safety risk. Patient specimens excepted from regulation under the HMR are those from persons believed by professional judgment to have a minimal likelihood of harboring an infectious agent. These specimens typically are blood, serum, urine, stool, biopsies, hair, finger or toe nails, semen, or other similar samples from a body. According to health care specialists and scientists at WHO and the U.S. Department of Health and Human Services, the risk of infection during transportation from samples taken from apparently healthy patients and animals and transported for routine testing is extremely small. Therefore, we are adopting the exception from HMR requirements for such samples as proposed in the NPRM.

Shippers and carriers should be aware ICAO has adopted minimal standards applicable to the transportation of human or animal specimens for which there is minimal likelihood that pathogens are present. Such specimens are not subject to ICAO requirements when they are transported in a packaging designed to prevent any leakage and marked with the words ''Exempt human specimen'' or ''Exempt animal specimen,'' as applicable. This is a mandatory ICAO requirement; however, we are not adopting it in this final rule. Such samples are not transported in a quantity or form that poses an unreasonable risk to health and safety. Thus, for purposes of the HMR, such specimens are not considered hazardous materials and are not subject to any requirements. Note that use of the ''Exempt human specimen'' or ''Exempt animal specimen'' marks by a shipper indicates that the relevant packages do not contain a hazardous material. Therefore, packages bearing these marks may be accepted by air carriers making a business decision to not accept hazardous materials. Conversely, packages bearing the Proper Shipping Names ''Infectious Substance, affecting humans'' or ''Infectious Substance, affecting animals'' or ''Biological Substance, Category B'' must be rejected by air carriers making a business decision to not accept hazardous materials.

E. Notification to Pilot-in-Command

Generally, a notification to the pilot-in-command (NOPIC) is required for shipments of hazardous materials subject to the HMR or ICAO Technical Instructions. The NOPIC includes the proper shipping name, hazard class, and identification number of the hazardous material; the total number of packages; the net quantity or gross weight for each package; the location of the packages on the aircraft; any additional information required by the regulations; and confirmation that no damaged or leaking packages have been loaded on the aircraft (see § 175.33 of the HMR and Chapter 4, paragraph 4.1.1, and Chapter 7, paragraph 7.4.1 of the ICAO Technical Instructions). The NOPIC provides the pilot-in-command with information to make critical decisions and take necessary safety precautions in the event of an emergency on board the aircraft.

In the preamble to the NPRM, we indicated, consistent with the ICAO Technical Instructions, we were not proposing to require a NOPIC for air shipments of Category B infectious substances. We noted that ICAO narrowly decided against such a requirement for the 2005–2006 Edition of the ICAO Technical Instruction. ICAO members opposed to the requirement cited the low risk in transportation associated with Category B infectious substances, new ICAO requirements for hazard communication for Category B shipments, and the possibility that increased regulation would result in fewer carriers electing to transport Category B shipments. Members supporting the NOPIC

requirement cited the benefit of information being available to the pilot and emergency responders in the event of an emergency or an accident. We invited commenters to address this issue, and whether or not the HMR should require a NOPIC for shipments of Category B infectious substances.

Of the three commenters who address this issue, two (ATA, ACLA) support the ICAO decision to not require a NOPIC for Category B infectious substances. These commenters note Category B infectious substances pose a reduced risk in transportation because they do not cause permanent disability or life-threatening or fatal disease to humans or animals. These commenters agree the hazard communication requirements in the ICAO Technical Instruction provide sufficient information for package handlers and emergency responders to make necessary safety decisions in the event of an emergency. The commenters also state the NOPIC provision would increase administrative and training costs and could result in the refusal by some carriers to transport these materials. The ultimate impact of a NOPIC provision in the HMR, according to these commenters, could be to impede or delay transportation of Category B infectious substances.

One commenter (ALPA) supports a requirement for a NOPIC for shipments of Category B infectious substances. This commenter suggests a NOPIC is necessary to enable transport workers to make informed judgments concerning the segregation and loading of packages and enhances the ability of the pilot in command to make potentially life-saving decisions concerning the occupants of his or her aircraft and to advise emergency personnel.

As indicated above, Category B infectious materials pose a reduced risk in transportation because they do not cause life-threatening or fatal disease in otherwise healthy humans or animals. The hazard communication requirements adopted in this final rule are adequate to assure transport workers exercise care in handling packages of Category B materials and protect themselves if they discover a damaged or leaking package. We agree with commenters who suggest the impact of requiring a NOPIC for shipments of Category B infectious materials would be to impede or delay transportation of these shipments; such delays could adversely affect patient treatment and public health. Therefore, we are not adopting a requirement for a NOPIC for shipments of Category B infectious substances in this final rule.

F. Regulated Medical Waste

The HMR currently define regulated medical waste (RMW) to mean a waste or reusable material known to contain or suspected to contain an infectious substance in Risk Group 2 or 3, and generated in the diagnosis, treatment, or immunization of human beings or animals; research on the diagnosis, treatment, or immunization of human beings or animals; or the production or testing of biological products. In the NPRM, we proposed to revise this definition to mean a waste or reusable material known to contain or suspected to contain a Category B infectious substance. In accordance with the definition proposed in the NPRM, RMW containing a Category A infectious substance must be classed as Division 6.2, described as an infectious substance affecting humans or affecting animals only, as appropriate, assigned to UN 2814 or UN 2900, and transported in accordance with all applicable requirements. Medical waste containing a Category A infectious substance may not be transported under the shipping name ''Regulated medical waste, n.o.s.,'' UN 3291. Medical waste containing a Category A infectious substance must be described as ''Infectious substances, affecting humans'' or ''Infectious substances, affecting animals,'' assigned to UN 2814 or UN 2900, and packaged in a UN specification packaging conforming to the requirements of § 173.196 of the HMR. Infectious medical waste containing a Category A infectious substance is not excepted from regulation under 173.134(c) of the HMR when transported by private or contract carriers.

One commenter (Stericycle) expresses concern about the NPRM's treatment of RMW containing a Category A infectious substance, suggesting the proposals could be confusing for facilities generating RMW and the carriers transporting them. The commenter asks us to consider permitting RMW containing a Category A infectious substance to be transported as ''Regulated medical waste, n.o.s.,'' UN 3291, noting that about one-half of the materials listed in the preamble to the NPRM as Category A infectious materials are currently assigned to Risk Group 2 or 3 materials permitted to be transported as RMW under UN 3291.

The requirements adopted in this final rule for the transportation of RMW containing a Category A infectious substance are the same as the current HMR requirements for the transportation of RMW containing a Risk Group 4 infectious substance. A Category A infectious substance is one transported in a form capable of causing permanent disability or life-threatening or fatal disease to an otherwise healthy human or animal when exposure to it occurs. Certain Category B infectious substances in culture form pose a significant risk in transportation and were added to the Category A list under the regulations of the UN Recommendations, ICAO Technical Instructions, and the IMDG Code. We have adopted this provision as proposed in the NPRM to harmonize with these requirements.

As Stericycle notes, a number of the infectious agents on the list of Category A infectious substances are currently considered Risk Group 2 or 3 materials. However, they are included on the Category A list only as cultures—that is, when the pathogen is intentionally propagated. Most cultured infectious substances are not transported for disposal, but are destroyed or rendered non-infectious onsite. In all other forms, these materials are considered Category B infectious substances and may be transported as ''Regulated medical waste, n.o.s.,'' UN 3291. Requiring infectious medical waste containing a Category A infectious substance to be transported as an infectious substance, UN 2814 or 2900, appropriately addresses the risks posed by these materials. Therefore, we are adopting the requirements applicable to the transportation of RMW as proposed in the NPRM. RMW containing a Category A infectious substance should be handled and managed at medical facilities in the same manner as RMW containing a Risk Group 4 infectious substance is currently handled.

G. Sharps Containers

As currently required under the HMR, sharps containers generally must comply with § 173.197, which requires sharps to be in a UN specification packaging that is puncture resistant for sharps and sharps with residual fluid, as demonstrated by conformance with the design and test requirements in subpart M of part 178 at the Packing Group II performance level. The performance tests must be conducted with the packaging assembled as if for transportation, including with the closure secured as it would be for transportation. A sharps container that conforms to these requirements need not be placed in an outer packaging for transport. Under § 178.2(c), the packaging manufacturer must provide each person to whom the packaging is sold or transferred with a notification in writing specifying the types and dimensions of the closures, including gaskets and any other components

needed to assure the packaging is capable of passing the required tests. This notification must also include any procedures to be followed, including closures for inner packaging and receptacles, to enable a shipper to effectively assemble and close the package to prevent leakage during transportation.

A sharps container placed inside a bulk packaging, such as a UN specification Large Packaging or a non-specification bulk outer packaging or wheeled cart, must be puncture resistant. A sharps container that is 20 gallons or less in volume need not be a UN specification packaging if it is to be placed in a bulk outer packaging. A sharps container that is larger than 20 gallons in volume that is placed inside a bulk packaging must be capable of passing the performance tests in subpart M of part 178 at the Packing Group II performance level. A sharps container that will be placed in a bulk outer packaging for transportation may be reused only if it is specifically cleared or approved by FDA as a medical device for reuse and must have a capacity of between 2 and 40 gallons.

The HMR include an exception from certain requirements for regulated medical waste (RMW), including sharps, transported by a private or contract carriers (see § 173.134(c)). Under this exception, RMW, including sharps, may be transported in a rigid, non-bulk packaging that conforms to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in OSHA standards at 29 CFR 1910.1030. The packaging requirements in §§ 173.24 and 173.24a address general packaging issues such as packaging integrity, filling limits, and closures. Specifically with regard to leakproofness, § 173.24(f) requires closures to be leakproof and secured against loosening. The OSHA standards at 29 CFR 1910.1030 require sharps containers to be puncture resistant and leakproof (see 1910.1030(d)(4)(iii)(A)(1)).

The NPRM proposed to clarify that sharps containers must be securely closed to prevent leaks or punctures based on our enforcement experience indicating insecure closures permit sharps to protrude from sharps containers during transportation. In the last two years, we have initiated five civil enforcement cases related to inadequate closures on sharps containers; there have been a number of other instances where an inspector identified problems with the closures, but did not initiate a civil enforcement action. One commenter (Gillian) states ''single use sharps container lids * * * will come off inside a transport container * * *. Some 40% of these containers have the lid dislodged in transport spilling their contents into the red bag.'' The commenters who address this issue (Gillian, NSWMA/MWI, Stericycle) are concerned the proposed requirement is not sufficiently precise and does not include sufficient guidance on the procedures to be followed to ensure compliance by container manufacturers or shippers. To address commenters' concerns that the proposal concerning closures was not sufficiently precise, in this final rule, we are modifying the provisions to specify a sharps packaging must be securely closed to prevent punctures or leakage during transportation in accordance with the instructions provided by the packaging manufacturer.

In the NPRM, we discussed Food and Drug Administration (FDA) requirements for sharps containers regulated as medical devices subject to pre-market review by FDA and asked commenters to address whether the HMR should permit FDA-cleared or -approved sharps containers to be used for the transportation of sharps and, if so, under what circumstances. The two commenters who addressed this issue had mixed views. One commenter (NSWMA) opposes the use of FDA-cleared sharps containers for transportation unless the container conforms in all respects to the HMR requirements in §§ 173.197 and 173.134. The commenter notes FDA's review process is intended to address whether the device is reasonable safe and effective for its intended use in hospital, laboratory, or healthcare facility settings, not in transportation. A second commenter (Stericycle), however, asserts the FDA requirements address the integrity of the material used to make sharps containers and assure containers meet puncture-resistance criteria and are leak-proof on the sides and bottom. This commenter recommends the HMR require all sharps to be transported in FDA-cleared containers.

As we stated in the preamble to the NPRM, sharps containers cleared or approved by FDA may not meet current HMR requirements in §§ 173.134 and 173.197. For example, the FDA review process is designed to determine, among other things, whether sharps containers are leak resistant on the sides and bottom and whether closures are leak resistant. This is a lesser standard than the leak-proofness standard established in the HMR. For this reason, we disagree with the commenter who recommends the HMR require all sharps to be transported in FDA-cleared containers. FDA-cleared sharps containers may be used to transport sharps provided the container conforms to applicable HMR requirements or the sharps container is placed inside a leak-proof outer packaging.

Two commenters express concern about the current requirement in the HMR for sharps containers to be leak-proof. One commenter (Stericycle) notes certain sharps containers are designed specifically to allow for venting to assure steam penetration during autoclaving and suggests the leak-proofness standard negatively impacts the effectiveness of autoclaving. This commenter suggests there are safe and effective alternatives to a leak-proofness standard for transportation, such as requiring containers to be positioned in an upright position in a transport vehicle or requiring absorbent material in sharps containers. Another commenter (Daniels) is concerned the HMR do not include a leak-proofness test standard. This commenter asserts sharps containers should be required to be leak-proof without secondary containment and proposes a leak-proofness test for incorporation into the HMR.

We did not propose in the NPRM to modify the current requirements for sharps containers to be leakproof. Thus, the comments concerning these requirements are beyond the scope of this rulemaking. However, we may consider revising the requirements for sharps containers in a future rulemaking.

H. Miscellaneous Comments

The HMR currently require air carriers to inspect all hazardous materials packages prior to transportation to ensure that the package conforms to HMR requirements and has no holes, leakage, or other indication that its integrity has been compromised (see § 175.30 (b)). Except for radioactive materials packages, there are no current requirements for inspecting packages for signs of leakage when they are unloaded from an aircraft. In the NPRM, we proposed to require for air transportation each package and overpack containing a Division 6.2 material to be inspected for signs of leakage. If evidence of leakage is discovered, the cargo compartment in which the package or overpack was transported must be disinfected. This proposal is consistent with the inspection requirements for air shipments in the ICAO Technical Instructions. One commenter (ALPA) suggests this requirement should also apply to packages of Division 6.2 materials transported on pallets or in

unit load devices. We agree, and are adopting this change in this final rule.

One commenter (JBM) asks us to clarify the difference between the exception for medical equipment in § 173.134(b)(12) and the requirements for the transportation of used health care products in § 173.199. In accordance with § 173.134(b)(12), medical equipment, including equipment intended for use, cleaning, or refurbishment is excepted from the HMR when it is transported in accordance with standards established by the Occupational Safety and Health Administration (OSHA) at 29 CFR 1910.1030. The regulations in § 173.199 are intended for the transportation of used health care products that do not conform to the OSHA standards.

A commenter (Schulte) suggests we move the requirements for the transportation of used health care products from § 173.199 and relocate them to § 173.134. The commenter states placing the requirements for used health care products in the same section as requirements for the transportation of Category B infectious substances suggests the risk from the transportation of used health care products is the same as for Category B infectious substances. We agree; in this final rule, we are relocating the requirements for used health care products currently in § 173.199(d) to § 173.134(b)(12)(ii).

III. Section-by-Section Review

This section-by-section review summarizes the changes adopted in this final rule.

Part 171

Section 171.8. In § 171.8, we are removing the definition for Risk Group.

Part 172

Section 172.101. In the Hazardous Materials Table, we are making several revisions. Most importantly, we are removing the current entry for ''Diagnostic Specimens'' for consistency with the 14th Revised Edition of the UN Recommendations. We are adding an entry for ''Biological substance, Category B.'' This entry will apply to shipments of Category B infectious substances, which must be classed as Division 6.2, described as a ''Biological substances, Category B,'' and assigned to UN 3373.

In addition, we are revising the entries for ''Infectious substances, affecting animals'' and ''Infectious substances, affecting humans'' to delete Special Provision A81 (see discussion below).

Section 172.102. We are removing Special Provision A81, which permits the quantity limits currently specified in the HMT for air shipments to be exceeded for shipments of body fluids packaged in accordance with § 173.196. This special provision is no longer necessary because paragraphs (b)(5) and (c)(6) of § 173.199 include quantity limits for air transportation applicable to shipments of Category B infectious substances.

Section 172.200. Consistent with requirements in the ICAO Technical Instructions, in § 172.200(b)(4) we are clarifying the shipping paper requirements do not apply to Category B infectious substances prepared in accordance with § 173.199 of the HMR. This is consistent with the requirements adopted for the UN Recommendations under Packing Instruction 650 and Special Provision 319, which except Category B infectious substances from shipping paper requirements.

Section 172.203. Under this final rule, unknown samples of infectious substances shipped for analysis and diagnosis may be transported in accordance with requirements for Category B infectious substances, because historically, materials meeting this definition have been transported in a similar manner with no adverse safety impact or increased risk to transport workers or the general public. For situations where the identity of the agent or pathogen is not known, but sufficient information is available to strongly suspect a Category A infectious substance, this final rule requires an indication on shipping papers that the sample contains a Category A infectious material. Suspected Category A infectious substances must be shipped in accordance with all applicable hazard communication and packaging requirements for Category A infectious substances. The determination as to whether to ship an unknown sample as a Category A or Category B infectious substance should be made by appropriate medical or public health officials based on known medical conditions and history of the source patient or animal, endemic local conditions, and symptoms of the source patient or animal. Thus, in paragraph (k) of § 172.203, we are authorizing a shipping paper accompanying a shipment of a suspected Category A infectious substance to include the words ''suspected Category A infectious substance'' in parentheses as an alternative to a technical name to describe the pathogen(s) it contains when the infectious substance is not known. Thus, the shipping description for a suspected Category A infectious substance affecting humans would read, ''Infectious substances, affecting humans (suspected Category A infectious substance), 6.2, UN 2814''. For known Category A pathogens, the technical name of the pathogen must be indicated.

Section 172.301. Consistent with the UN Recommendations, paragraph (b) of § 172.301 states technical names need not be marked on the outer packaging of Division 6.2 materials.

Section 172.800. We are requiring persons who offer for transportation or transport select agents and toxins regulated by USDA under 9 CFR part 121 to develop and implement security plans in accordance with requirements in Subpart I of part 172 of the HMR.

Part 173

Section 173.6. The current exception for materials of trade (MOTS) prohibits Risk Group 4 infectious substances from being transported as MOTS. We are modifying § 173.6(a)(4) to prohibit Category A infectious substances and suspected Category A infectious substances, rather than Risk Group 4 infectious substances, from being transported as materials of trade (MOTS). This amendment is consistent with the definition and classification criteria for infectious substances adopted for the UN Recommendations. In addition, we are modifying the packaging requirements for MOTS shipments of Division 6.2 materials. For consistency with international standards, we are limiting the amount of material each packaging may contain rather than the capacities of the packagings used. Finally, we are adding a requirement for sharps containers to be securely closed to prevent leaks or punctures. As indicated above, we are concerned the closures currently being used for sharps containers may not be adequate to assure no contents will be released during transportation.

Section 173.24a. We are modifying paragraph (c)(2) in § 173.24a to prohibit a package containing inner packagings of Division 6.2 materials from containing any other hazardous materials except for dry ice, liquid nitrogen, or small amounts of other hazardous material in Packing Groups II or III used to preserve or stabilize the infectious substance. Hazardous materials most commonly used to preserve or stabilize an infectious substance include methanol, isopropyl alcohol, boric acid, formaldehyde, formalin, and sodium borate. This provision is consistent with a provision adopted for the 2005–2006 edition of the ICAO Technical Instructions and by the UN Transport of Dangerous Goods Subcommittee for the 14th Revised Edition of the UN Recommendations.

The packaging requirements for Division 6.2 materials, which include triple packaging and absorbent material, are comparable to the packaging permitted for transporting hazardous materials in accordance with the small quantity exceptions in § 173.4 and should minimize the risk of a release in transportation. Therefore, when a hazardous preservative, such as a Class 3 or Class 8 material in Packing Groups II or III, is included in the inner packaging with the material, the preservative is not be subject to HMR requirements provided the amount in the inner packaging does not exceed 30 mL for a liquid or 30 g for a solid. The maximum quantity in an outer package, including a hazardous material used to preserve or stabilize a sample, may not exceed 4 L or 4 kg. Note this exception applies only to materials in Packing Groups II or III; PG I materials are not authorized. Note also, for amounts in excess of 30 mL or 30 g per inner packaging, hazardous preservative materials are regulated under the HMR and must be transported in accordance with requirements applicable to their specific classification and characteristics.

Section 173.134. We are making a number of revisions to § 173.134 for consistency with definitions and provisions adopted for the UN Recommendations, as follows:

(1) We are modifying the definition for a Division 6.2 material. The definition adopted in this final rule replaces the Risk Group ranking system with the two-tiered Category A and Category B system adopted by the UN Recommendations. The definition includes a requirement for a Division 6.2 material to be assigned an appropriate identification number: UN 2814 for Category A infectious substances affecting humans or both humans and animals; UN 2900 for Category A infectious substances affecting animals only; UN3373 for Category B infectious substances; and UN 3291 for Regulated medical waste.

(2) We are modifying the definition for ''biological product'' to replace the Risk Group ranking references with references to Category A and Category B infectious substances.

(3) We are adopting a definition for ''cultures'' consistent with the definition for ''cultures'' adopted in the UN for the 14th Revised Edition of the UN Recommendations. Cultures are the result of a process by which pathogens are intentionally propagated by use of ideal conditions, including temperature, environment, and nutrient-based propagation media. The definition adopted in this final rule refers to cultures prepared for the intentional generation of pathogens and does not include patient specimens intended for diagnostic or clinical purposes.

(4) We are adopting a new definition for ''patient specimen.'' As defined in this final rule, ''patient specimen'' means human or animal materials collected directly from humans or animals and transported for research, diagnosis, investigational activities, or disease treatment or prevention. Examples include excreta, secreta, blood and its components, tissue and tissue swabs, and body parts.

(5) We are modifying the definition for ''regulated medical waste'' to incorporate Category A and Category B infectious substances. RMW containing a Category A infectious substance must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate. RMW containing Category B infectious substances is assigned to UN 3291.

(6) We are modifying the listed exceptions in paragraph (b) of § 173.134 for consistency with the UN Recommendations. Most of the exceptions are unchanged. However, we are adding an exception for a material with a low probability of containing an infectious substance or where the concentration of the infectious substance is at a level naturally occurring in the environment that will not cause disease when exposure occurs. Examples include foodstuffs and certain environmental samples. The new provision referring to environmental samples would replace the exception for these materials in current § 173.134(b)(13). In addition, we are adding an exception for dried blood spots and for specimens used to detect fecal occult blood. These are specimens collected from healthy patients for routine testing and screening (e.g., DNA analysis, forensic studies, immunologic studies, cancer screening, and nutritional evaluations of infants, children, and adults). The specimen is placed on paper, allowed to saturate the paper, and then dried completely. The specimens pose an extremely minimal risk of infection, and may be rendered unusable if placed in packaging that retains moisture or heat to the sample. More than 100 million specimens have been safely transported by routine mail over the last 30 years. Health professionals recommend these materials should be transported in a double-envelope system forming a double-layer protective barrier (i.e., inner and outer-sealed high quality, air-permeable paper envelope) or an attached heavy paper fold-over flap container placed into a secondary high-quality paper envelope.

In addition, in this final rule, we are excepting from regulation under the HMR a human or animal sample transported for routine testing not related to diagnosis of an infectious disease and for which there is no reason to suspect the sample is infectious. Routine screening tests include: (1) Blood or urine tests a doctor may order as part of a routine medical examination to monitor cholesterol levels, blood glucose levels, hormone levels, or prostate specific antibodies (PSA); (2) blood or urine tests to monitor liver or kidney functions for the millions of people who are not known to have an infectious disease and who are following a particular drug therapy regime; (3) blood or urine tests conducted for insurance or employment purposes and/or intended to determine the presence of alcohol or drugs; (4) DNA tests; and (5) pregnancy tests. Tests for diagnoses other than for the presence of pathogens include biopsies to detect cancer and antibody titre testing. This exception is consistent with exceptions adopted in the UN Recommendations for substances unlikely to cause disease in humans or animals and substances for which there is a low probability infectious substances are present.

(7) We are revising the exceptions in paragraph (c)(1) applicable to the transportation of regulated medical waste. We are adding a requirement for sharps containers shipped in accordance with this exception to be securely closed to prevent leaks or punctures. In addition, we are modifying paragraph (c)(2) to revise the current reference to Risk Group 2 or 3 infectious substances to Category B infectious substances.

(8) We are relocating requirements for transporting used health care products from § 173.199(d) to § 173.134(b)(12)(ii).

Section 173.196. We are modifying the Division 6.2 material packaging requirements in § 173.196 for consistency with the UN Recommendations. Generally, the revisions are editorial and do not change current packaging requirements. We are adding a requirement for outer packagings to be rigid. Note the packaging requirements in § 173.196 apply to shipments of Category A infectious substances only. The language describing the minimum size of the outer packaging is revised to clarify no external dimension of the packaging, i.e., no measurement on any outer surface of the packaging, shall be less than 100 mm (3.9 inches). Category B infectious substances are to be

transported in accordance with the provisions in § 173.199.

Section 173.197. We are modifying the RMW packaging requirements in § 173.197 to incorporate Category A and Category B infectious substances. The revisions do not substantively change the current packaging requirements for non-bulk or bulk shipments of RMW.

We are revising § 173.197(b) for clarification by correcting in the first sentence, ''except as otherwise provided in § 173.134 of this subpart'' to read ''except as authorized by § 173.134(c).'' In addition, in current paragraph (b) non-bulk RMW packaging is currently described as a DOT specification packaging meeting the requirements of Part 178 at the PG II performance level. We are revising the phrase ''DOT specification'' to read ''UN standard'' because non-bulk PG II refers to packagings in Part 178, Subpart L, conforming to a UN standard.

In § 173.197(d)(2)(iii), the reference to the drop test requirement prescribed in § 178.603 for non-bulk packagings is not correct. It should read ''Each Cart must be capable of meeting the requirements of § 178.810 (drop test) at the Packing Group II performance level.'' This section contains the drop test requirements for an intermediate bulk packaging.

In § 173.197(e)(3), in the introductory paragraph, we are revising the wording ''the performance tests in § 178.601'' to read ''the performance tests in part 178, subpart M''. There are no performance tests in § 178.601. This revision makes § 173.197(e)(3) consistent with § 173.197(b). Finally, we are adding a requirement for sharps containers to be securely closed to prevent leaks or punctures in conformance with instructions provided by the packaging manufacturer. We are concerned the closures currently being used for sharps containers may not be adequate to ensure no contents will be released during transportation.

Section 173.199. We are modifying this section for consistency with the UN Recommendations and ICAO Technical Instructions. Under this final rule, the provisions of § 173.199 will apply to shipments of Category B infectious substances. The packaging requirements are substantially the same as the current requirements for shipping diagnostic specimens, except we are requiring the outer packaging to be rigid. The completed packaging must be capable of passing the drop tests in §§ 178.609(d) and (h) at a height of 1.2 meters (3.9 feet). We are adopting pass/fail criteria for the drop test—there must be no leakage from the primary receptacle, and the primary receptacle must remain protected by absorbent material, when required, in the secondary packaging. In addition, we are requiring the use of absorbent materials for solids that may become liquid during transportation.

Consistent with amendments adopted for the UN Recommendations, we are removing the current capacity limitations for shipment of Category B infectious substances, except for Category B infectious substances transported by air. For air shipments of these materials, we are modifying the current limitations on capacity consistent with the amendments adopted in the 2005–2006 ICAO Technical Instructions. For liquids, we are increasing the amount of material permitted in each inner packaging from 500 mL (16.9 ounces) to 1 L (34 ounces); the limitation on the total amount of material permitted in the outer packaging remains 4 L (1 gallon). For solids, we are deleting the limitation on the amount of material permitted in each inner packaging; again, the limitation on the total amount of material permitted in the outer packaging remains 4 kg (8.8 pounds). We are also requiring at least one surface of the outer packaging to have a minimum dimension of 100 mm by 100 mm (3.9 inches).

Consistent with provisions proposed to be adopted for the 14th Edition of the UN Recommendations, we are requiring a package containing a Category B infectious substance and prepared in accordance with § 173.199 to be marked with the identification number ''UN 3373'' in a square-on-point configuration and with the proper shipping name ''Biological substances, Category B.'' Each side of the square-on-point mark must be at least 50 mm in length, and the proper shipping name ''Biological substances, Category B'' must be in letters at least 6 mm high. The proper shipping name, UN number, and the name, address, and telephone number of a person knowledgeable about the shipment must be included on a written document, such as an air waybill or bill of lading, or on the outer packaging. The knowledgeable person should be available during the company's administrative office hours to provide information about how to respond to emergencies or releases involving the package and appropriate first aid. Finally, we are permitting small amounts of hazardous materials in Packing Groups II or III, not to exceed 30 mL (1 ounce) or 30 g (1 ounce) in each inner packaging, to be used to preserve or stabilize the material. Such preservatives are not subject to HMR requirements.

Category B infectious substances prepared in accordance with § 173.199 are excepted from all other HMR requirements except for incident reporting and the requirements in Part 175 of the HMR prohibiting a hazardous material subject to the HMR requirements from being transported in the cabin of a passenger aircraft or the flight deck of any aircraft.

The requirements in § 173.199(d) for used health care products are relocated to § 173.134(b)(12)(ii).

Part 175

Section 175.630. We are adding a new paragraph (c) to this section to require air carriers to inspect packages containing Division 6.2 materials for leakage when they are unloaded. If evidence of leakage is found, the cargo compartment must be disinfected. In response to comments, we are modifying the proposal in this final rule to require air carriers to inspect unit load devices as well as individual packages and packages in overpacks.

IV. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule adopts regulations to enhance the safe and secure transportation of infectious substances in intrastate, interstate, and foreign commerce. To this end, as discussed in detail earlier in this preamble, the final rule revises current HMR requirements applicable to infectious substances for classification, packaging, and hazard communication and for offerors and transporters of certain infectious substances to develop and implement security plans.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This final rule adopts regulations applicable to the transportation of infectious substances in commerce consistent with international standards applicable to such transportation. To this end, as discussed in detail earlier in this preamble, the final rule harmonizes current HMR requirements for infectious substances with the standards adopted for the transportation of

infectious substances in the UN Recommendations, the 2005–2006 ICAO Technical Instructions, and Amendment 32 to the IMDG Code. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation; at the same time, harmonization ensures the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and security and without imposing undue burdens on the regulated public. As discussed in detail earlier in this preamble, there are several instances where we elected not to propose adoption of a specific provision of the UN Recommendations or the ICAO Technical Instructions. Further, we are maintaining a number of current exceptions for domestic transportation to minimize the compliance burden on the regulated community.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule will reduce transportation costs for shipments of certain infectious substances. We estimate annual cost savings of $3.85 billion. Additional benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety, security, and efficiency resulting from consistent domestic and international transportation requirements. The final rule will result in new costs of compliance related to the development and implementation of transportation security plans for persons who ship USDA-regulated select agents and toxins. A regulatory evaluation for this final rule is in the public docket for this rulemaking.

This final rule relaxes requirements for transporting Category B infectious substances. Currently, many of these infectious substances must be shipped in appropriately marked and labeled UN specification packagings and accompanied by shipping papers and emergency response information; these infectious substances are also subject to incident reporting requirements. Under this final rule, Category B infectious substances may be shipped in non-specification packagings, marked with the appropriate UN number. However, they are excepted from labeling and shipping documentation requirements. Category B infectious substances are also excepted from incident reporting requirements, except for shipments by aircraft.

We estimate that shippers of most infectious substances will realize an average cost savings of $77 per shipment. There are no published data on the number of infectious substances shipments transported each year. Industry estimates suggest about 160 million patient samples are shipped outside of a local area each year (ground transportation of infectious substances is excepted from most HMR requirements). A shipment may contain from one to 20 test tubes or primary containers, with an average of about 3 primary containers per package. Thus, the number of shipments transported annually by air may total 53 million. Under this final rule, most of these shipments will realize a cost savings of $77, for a total annual cost savings of $3.85 billion (50 million shipments × $77/shipment).

This final rule will also result in significant non-monetized benefits. The final rule harmonizes the requirements in the HMR for transporting infectious substances with international standards in the UN Recommendations, the ICAO Technical Instructions, and the International Maritime Dangerous Goods Code. Harmonization of requirements in the HMR with international standards will allow us to avoid inconsistencies between the regulations, thereby facilitating rapid and efficient transportation of infectious substances across national or international borders, which is critical to public health. Moreover, harmonized regulations reduce the potential for misunderstanding and confusion and, thus, enhance safety.

Estimating the security benefits of this final rule is difficult. In the end, when security measures are evaluated, an element of judgment is required to determine whether the costs of the measures are justified by the benefits that will accrue. We believe the relatively small costs imposed on individual companies to comply with the security plan requirements are more than offset by the benefits if there is a finite chance that these measures might avert a successful attack. Most entities handling USDA-regulated select agents and toxins likely have already implemented security measures similar to those required under the HMR. The security requirements are not onerous. They are prudent, common sense security measures in line with public expectations about the need to take action to protect hazardous materials shipments from terrorist acts.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements but does not propose any regulation with substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), (4), and (5) described above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to harmonize domestic regulations for the

transportation of infectious substances with international standards.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption of this final rule will be 90 days from publication in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. A regulatory evaluation for this NPRM, which includes a detailed small business impact analysis, is in the public docket for this rulemaking.

Businesses likely to be affected by the provisions of this final rule are the more than 441,000 establishments comprising North American Industrial Classification System Major Groups 32, 48, 54, and 62, including offices and clinics of doctors of medicine, dentists, doctors of osteopathy, chiropractors, optometrists, podiatrists, and health practitioners; nursing and personal care facilities; hospitals; medical and dental laboratories; and patients. For purposes of the small business impact analysis, the definition of ''small business'' has the same meaning as under the Small Business Act. The majority of the businesses likely to be affected by the provisions of this final rule are small businesses (from 68% of general medical and surgical hospitals to nearly 100% of doctors' offices and research laboratories).

For the most part, affected businesses will incur no increased costs to comply with the provisions of this final rule; indeed, the provisions of this final rule will reduce overall transportation costs for most of these entities. Manufacturers and distributors of packages intended for the transportation of infectious substances will incur costs associated with retaining copies of filling and closure instructions for such packages; we estimate the cost per company will be about $750/year. In addition, air carriers will incur increased costs associated with new cargo inspection requirements; we estimate these costs would amount to $1.34 per package of infectious substances transported. Finally, the final rule imposes new costs on the regulated industry for shipments of select agents and toxins regulated by USDA; we estimate these costs would amount to $1,125 per company to develop a security plan and a subsequent annual cost of $225 per entity to update and maintain the security plan. The annual costs attributed to the provisions of this final rule are minimal, especially when compared to the $300 billion in receipts reported by the health services industry. We believe none of those costs will be disproportionately borne by any of the identified groups of small businesses.

Benefits resulting from the adoption of the amendments in this final rule include reduced transportation costs for shipments of certain infectious substances and enhanced transportation safety, security, and efficiency resulting from consistent domestic and international transportation requirements. For example, companies shipping infectious substances can expect to experience an average cost savings of $77 per shipment as packaging costs decrease from between $88.30–$143.78 to between $29.85–$48.07 as a result of new packaging requirements for Category B infectious substances and $1.90 per shipment as a result of revised hazard communication requirements for Category B infectious substances. In addition, the final rule will result in enhanced security for the transportation of select agents. Finally, the final rule removes inconsistencies between the HMR and international transportation standards applicable to the transportation of infectious substances, thereby facilitating efficient transportation across national and international borders and reducing the potential for misunderstanding and confusion in applying the regulatory requirements.

Based on the above analysis, I certify that while this final rule will affect a significant number of small entities it will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure potential impacts of draft rules on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this final rule. We are adopting changes to certain HMR requirements for the transportation of infectious substances in order to promote safer transportation practices, facilitate international commerce, and make these requirements compatible with new international standards regarding the transportation of infectious substances.

J. Privacy Act

Any comments received into any of our dockets may be searched electronically by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11,

2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR parts 171, 172, 173, and 175 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITION

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

§ 171.8 [Amended]

■ 2. In § 171.8, the definition for ''Risk Group'' is removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 4. In § 172.101, in the Hazardous Materials Table, the following changes are made:

■ a. The entry ''Diagnostic specimen'' is removed.

■ b. The entry ''Biological substance, Category B'' is added in appropriate alphabetic order.

■ c. The entries ''Infectious substances, affecting animals *only;*'' ''Infectious substances, affecting humans;'' and ''Regulated medical waste, n.o.s.'' are revised.

The additions and revisions read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/ rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
	Biological substance, Category B.	6.2	UN3373			A82	134	199	None	4 L or 4 kg	4 L or 4 kg	A	40
		*	*		*	*	*		*	*			
G	Infectious substances, affecting animals *only*.	6.2	UN2900		6.2	A82	134	196	None	50 mL or 50 g.	4 L or 4 kg	B	40
G	Infectious substances, affecting humans.	6.2	UN 2814		6.2	A82	134	196	None	50 mL or 50 g.	4 L or 4 kg	B	40
		*	*		*	*	*		*	*			
G	Regulated medical waste, n.o.s.	6.2	UN3291	II	6.2	A13	134	197	197	No limit	No limit	B	40
		*	*		*	*	*		*	*			

* * * * *

§ 172.102 [Amended]

■ 5. In § 172.102, in paragraph (c)(2), Special Provision A81 is removed.

■ 6. In § 172.200, paragraph (b)(4) is added to read as follows:

§ 172.200 Applicability.

* * * * *

(b) * * *

(4) Category B infectious substances prepared in accordance with § 173.199.

■ 7. In § 172.203, in paragraph (k) introductory text a sentence is added after the last sentence to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) * * * A material classed as Division 6.2 and assigned identification number UN 2814 or 2900 because it is suspected to contain an unknown Category A infectious substance must have the words ''suspected Category A infectious substance'' entered in parentheses in place of the technical name as part of the proper shipping description.

* * * * *

■ 8. In § 172.301, paragraph (b) is revised to read as follows.

§ 172.301 General marking requirements for non-bulk packagings.

* * * * *

(b) *Technical names.* In addition to the marking required by paragraph (a) of this section, each non-bulk packaging containing a hazardous material subject to the provisions of § 172.203(k) of this part, except for a Division 6.2 material, must be marked with the technical name in parentheses in association with the proper shipping name in accordance with the requirements and exceptions specified for display of technical descriptions on shipping papers in § 172.203(k) of this part. A technical name should not be marked on the outer package of a Division 6.2 material.

* * * * *

■ 9. In § 172.800, paragraph (b)(6) is revised to read as follows:

§ 172.800 Purpose and applicability.

* * * * *

(b) * * *

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73 or, by April 1, 2007, a select agent or toxin regulated by the United States Department of Agriculture under 9 CFR part 121; or

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 10. In § 173.6, paragraph (a)(4) is revised to read as follows:

§ 173.6 Materials of trade exceptions.

(a) * * *

(4) A Division 6.2 material, other than a Category A infectious substance, contained in human or animal samples (including, but not limited to, secreta, excreta, blood and its components, tissue and tissue fluids, and body parts) being transported for research, diagnosis, investigational activities, or disease treatment or prevention, or is a biological product or regulated medical waste. The material must be contained in a combination packaging. For liquids, the inner packaging must be leakproof, and the outer packaging must contain sufficient absorbent material to absorb the entire contents of the inner packaging. For sharps, the inner packaging (sharps container) must be constructed of a rigid material resistant to punctures and securely closed to prevent leaks or punctures, and the outer packaging must be securely closed to prevent leaks or punctures. For solids, liquids, and sharps, the outer packaging must be a strong, tight packaging securely closed and secured against movement, including relative motion between packages, within the vehicle on which it is being transported.

(i) For other than a regulated medical waste, the amount of Division 6.2 material in a combination packaging must conform to the following limitations:

(A) One or more inner packagings, each of which may not contain more than 0.5 kg (1.1 lbs) or 0.5 L (17 ounces), and an outer packaging containing not more than 4 kg (8.8 lbs) or 4 L (1 gallon); or

(B) A single inner packaging containing not more than 16 kg (35.2 lbs) or 16 L (4.2 gallons) in a single outer packaging.

(ii) For a regulated medical waste, a combination packaging must consist of one or more inner packagings, each of which may not contain more than 4 kg (8.8 lbs) or 4 L (1 gallon), and an outer packaging containing not more than 16 kg (35.2 lbs) or 16 L (4.2 gallons).

* * * * *

■ 11. In § 173.24a, paragraph (c)(2) is revised to read as follows:

§ 173.24a Additional general requirements for non-bulk packagings and packages.

* * * * *

(c) * * *

(2) A packaging containing inner packagings of Division 6.2 materials may not contain other hazardous materials except—

(i) Refrigerants, such as dry ice or liquid nitrogen, as authorized under the HMR;

(ii) Anticoagulants used to stabilize blood or plasma; or

(iii) Small quantities of Class 3, Class 8, Class 9, or other materials in Packing Groups II or III used to stabilize or prevent degradation of the sample, provided the quantity of such materials does not exceed 30 mL (1 ounce) or 30 g (1 ounce) in each inner packaging. The maximum quantity in an outer package, including a hazardous material used to preserve or stabilize a sample, may not exceed 4 L (1 gallon) or 4 kg (8.8 pounds). Such preservatives are not subject to the requirements of this subchapter.

* * * * *

■ 12. In § 173.134, paragraph (a) introductory text and paragraphs (a)(1), through (a)(5) are revised; paragraph (a)(6) is removed; paragraphs (a)(7), (a)(8), and (a)(9) are redesignated paragraphs (a)(6), (a)(7), and (a)(8) respectively, and paragraphs (b), (c)(1)(ii), and (c)(2) are revised to read as follows:

§ 173.134 Class 6, Division 6.2–Definitions and exceptions.

(a) *Definitions and classification criteria.* For the purposes of this subchapter, the following definitions and classification criteria apply to Division 6.2 materials.

(1) *Division 6.2 (Infectious substance)* means a material known or reasonably expected to contain a pathogen. A pathogen is a microorganism (including bacteria, viruses, rickettsiae, parasites, fungi) or other agent, such as a proteinaceous infectious particle (prion), that can cause disease in humans or animals. An infectious substance must be assigned the identification number UN 2814, UN 2900, UN 3373, or UN 3291 as appropriate, and must be assigned to one of the following categories:

(i) *Category A:* An infectious substance in a form capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure to it occurs. An exposure occurs when an infectious substance is released outside of its protective packaging, resulting in physical contact with humans or animals. A Category A infectious

substance must be assigned to identification number UN 2814 or UN 2900, as appropriate. Assignment to UN 2814 or UN 2900 must be based on the known medical history or symptoms of the source patient or animal, endemic local conditions, or professional judgment concerning the individual circumstances of the source human or animal.

(ii) *Category B:* An infectious substance that is not in a form generally capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure to it occurs. This includes Category B infectious substances transported for diagnostic or investigational purposes. A Category B infectious substance must be described as ''Biological substance, Category B'' and assigned identification number UN 3373. This does not include regulated medical waste, which must be assigned identification number UN 3291.

(2) *Biological product* means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent arsenic compound) applicable to the prevention, treatment, or cure of a disease or condition of human beings or animals. A *biological product* includes a material subject to regulation under 42 U.S.C. 262 or 21 U.S.C. 151–159. Unless otherwise excepted, a *biological product* known or reasonably expected to contain a pathogen that meets the definition of a Category A or B infectious substance must be assigned the identification number UN 2814, UN 2900, or UN 3373, as appropriate.

(3) *Culture* means an infectious substance containing a pathogen that is intentionally propagated. *Culture* does not include a human or animal patient specimen as defined in paragraph (a)(4) of this section.

(4) *Patient specimen* means human or animal material collected directly from humans or animals and transported for research, diagnosis, investigational activities, or disease treatment or prevention. *Patient specimen* includes excreta, secreta, blood and its components, tissue and tissue swabs, body parts, and specimens in transport media (*e.g.*, transwabs, culture media, and blood culture bottles).

(5) *Regulated medical waste* means a waste or reusable material derived from the medical treatment of an animal or human, which includes diagnosis and immunization, or from biomedical research, which includes the production and testing of biological products. *Regulated medical waste* is assigned to UN 3291, except for *regulated medical waste* containing a Category A infectious substance, which must be classed as a Division 6.2 material, described as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate.

* * * * *

(b) *Exceptions.* The following are not subject to the requirements of this subchapter as Division 6.2 materials:

(1) A material that does not contain an infectious substance or that is unlikely to cause disease in humans or animals.

(2) Non-infectious biological materials from humans, animals, or plants. Examples include non-infectious cells, tissue cultures, blood or plasma from individuals not suspected of having an infectious disease, DNA, RNA or other non-infectious genetic elements.

(3) A material containing micro-organisms that are non-pathogenic to humans or animals.

(4) A material containing pathogens that have been neutralized or inactivated such that they no longer pose a health risk.

(5) A material with a low probability of containing an infectious substance, or where the concentration of the infectious substance is at a level naturally occurring in the environment so it cannot cause disease when exposure to it occurs. Examples of these materials include: Foodstuffs; environmental samples, such as water or a sample of dust or mold; and substances that have been treated so that the pathogens have been neutralized or deactivated, such as a material treated by steam sterilization, chemical disinfection, or other appropriate method, so it no longer meets the definition of an infectious substance.

(6) A biological product, including an experimental or investigational product or component of a product, subject to Federal approval, permit, review, or licensing requirements, such as those required by the Food and Drug Administration of the U.S. Department of Health and Human Services or the U.S. Department of Agriculture.

(7) Blood collected for the purpose of blood transfusion or the preparation of blood products; blood products; plasma; plasma derivatives; blood components; tissues or organs intended for use in transplant operations; and human cell, tissues, and cellular and tissue-based products regulated under authority of the Public Health Service Act (42 U.S.C. 264–272) and/or the Food, Drug, and Cosmetic Act (21 U.S.C. 332 *et seq.*).

(8) Blood, blood plasma, and blood components collected for the purpose of blood transfusion or the preparation of blood products and sent for testing as part of the collection process, except where the person collecting the blood has reason to believe it contains an infectious substance, in which case the test sample must be shipped as a Category A or Category B infectious substance in accordance with § 173.196 or § 173.199, as appropriate.

(9) Dried blood spots or specimens for fecal occult blood detection placed on absorbent filter paper or other material.

(10) A Division 6.2 material, other than a Category A infectious substance, contained in a patient sample being transported for research, diagnosis, investigational activities, or disease treatment or prevention, or a biological product, when such materials are transported by a private or contract carrier in a motor vehicle used exclusively to transport such materials. Medical or clinical equipment and laboratory products may be transported aboard the same vehicle provided they are properly packaged and secured against exposure or contamination. If the human or animal sample or biological product meets the definition of regulated medical waste in paragraph (a)(5) of this section, it must be offered for transportation and transported in conformance with the appropriate requirements for regulated medical waste.

(11) A human or animal sample (including, but not limited to, secreta, excreta, blood and its components, tissue and tissue fluids, and body parts) being transported for routine testing not related to the diagnosis of an infectious disease, such as for drug/alcohol testing, cholesterol testing, blood glucose level testing, prostate specific antibody testing, testing to monitor kidney or liver function, or pregnancy testing, or for tests for diagnosis of non-infectious diseases, such as cancer biopsies, and for which there is a low probability the sample is infectious.

(12) Laundry and medical equipment and used health care products, as follows:

(i) Laundry or medical equipment conforming to the regulations of the Occupational Safety and Health Administration of the Department of Labor in 29 CFR 1910.1030. This exception includes medical equipment intended for use, cleaning, or refurbishment, such as reusable surgical equipment, or equipment used for testing where the components within which the equipment is contained essentially function as packaging. This exception does not apply to medical equipment being transported for disposal.

(ii) Used health care products not conforming to the requirements in 29 CFR 1910.1030 and being returned to the manufacturer or the manufacturer's designee are excepted from the requirements of this subchapter when offered for transportation or transported in accordance with this paragraph (b)(12). For purposes of this paragraph, a health care product is used when it has been removed from its original packaging. Used health care products contaminated with or suspected of contamination with a Category A infectious substance may not be transported under the provisions of this paragraph.

(A) Each used health care product must be drained of free liquid to the extent practicable and placed in a watertight primary container designed and constructed to assure that it remains intact under conditions normally incident to transportation. For a used health care product capable of cutting or penetrating skin or packaging material, the primary container must be capable of retaining the product without puncture of the packaging under normal conditions of transport. Each primary container must be marked with a BIOHAZARD marking conforming to 29 CFR 1910.1030(g)(1)(i).

(B) Each primary container must be placed inside a watertight secondary container designed and constructed to assure that it remains intact under conditions normally incident to transportation. The secondary container must be marked with a BIOHAZARD marking conforming to 29 CFR 1910.1030(g)(1)(i).

(C) The secondary container must be placed inside an outer packaging with sufficient cushioning material to prevent movement between the secondary container and the outer packaging. An itemized list of the contents of the primary container and information concerning possible contamination with a Division 6.2 material, including its possible location on the product, must be placed between the secondary container and the outside packaging.

(D) Each person who offers or transports a used health care product under the provisions of this paragraph must know about the requirements of this paragraph.

(13) Any waste or recyclable material, other than regulated medical waste, including—

(i) Garbage and trash derived from hotels, motels, and households, including but not limited to single and multiple residences;

(ii) Sanitary waste or sewage;

(iii) Sewage sludge or compost;

(iv) Animal waste generated in animal husbandry or food production; or

(v) Medical waste generated from households and transported in accordance with applicable state, local, or tribal requirements.

(14) Corpses, remains, and anatomical parts intended for interment, cremation, or medical research at a college, hospital, or laboratory.

(15) Forensic material transported on behalf of a U.S. Government, state, local or Indian tribal government agency, except that—

(i) Forensic material known or suspected to contain a Category B infectious substance must be shipped in a packaging conforming to the provisions of § 173.24.

(ii) Forensic material known or suspected to contain a Category A infectious substance or an infectious substance listed as a select agent in 42 CFR Part 73 must be transported in packaging capable of meeting the test standards in § 178.609 of this subchapter. The secondary packaging must be marked with a BIOHAZARD symbol conforming to specifications in 29 CFR 1910.1030(g)(1)(i). An itemized list of contents must be enclosed between the secondary packaging and the outer packaging.

(16) Agricultural products and food as defined in the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 332 *et seq.*).

(c) * * *

(1) * * *

(i) * * *

(ii) The specific packaging requirements of § 173.197, if packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030, provided the material does not include a waste concentrated stock culture of an infectious substance. Sharps containers must be securely closed to prevent leaks or punctures.

(2) A waste stock or culture of a Category B infectious substance may be offered for transportation and transported as a regulated medical waste when it is packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030 and transported by a private or contract carrier in a vehicle used exclusively to transport regulated medical waste. Medical or clinical equipment and laboratory products may be transported aboard the same vehicle provided they are properly packaged and secured against exposure or contamination. Sharps containers must be securely closed to prevent leaks or punctures.

* * * * *

■ 13. In § 173.196, the section title and paragraphs (a) introductory text, (a)(2), (a)(3), and (b) are revised, to read as follows.

§ 173.196 Category A infectious substances.

(a) *Category A infectious substances packaging.* A packaging for a Division 6.2 material that is a Category A infectious substance must meet the test standards of § 178.609 of this subchapter and must be marked in conformance with § 178.503(f) of this subchapter. A packaging for a Category A infectious substance is a triple packaging consisting of the following components:

* * * * *

(2) A watertight secondary packaging. If multiple fragile primary receptacles are placed in a single secondary packaging, they must be either wrapped individually or separated to prevent contact between them.

(3) A rigid outer packaging of adequate strength for its capacity, mass and intended use. The outer packaging must measure not less than 100 mm (3.9 inches) at its smallest overall external dimension.

* * * * *

(b) *Additional requirements for packaging Category A infectious substances.* Category A infectious substances must be packaged according to the following requirements, depending on the physical state and other characteristics of the material.

(1) *Infectious substances shipped at ambient temperatures or higher.* Primary receptacles must be made of glass, metal, or plastic. Positive means of ensuring a leakproof seal must be provided, such as heat seal, skirted stopper, or metal crimp seal. If screw caps are used, they must be secured by positive means, such as with adhesive tape, paraffin sealing tape, or manufactured locking closure. Lyophilized substances may also be transported in primary receptacles that are flame-sealed with glass ampoules or rubber-stoppered glass vials fitted with metal seals.

(2) *Infectious substances shipped refrigerated or frozen (ice, pre-frozen packs, dry ice).* Ice, dry ice, or other refrigerant must be placed around the secondary packagings or in an overpack with one or more complete packages marked in accordance with § 178.503 of this subchapter. Interior supports must be provided to secure the secondary packagings in the original position after

the ice or dry ice has dissipated. If ice is used, the outer packaging or overpack must be leakproof. If dry ice is used, the outer packaging or overpack must permit the release of carbon dioxide gas and otherwise meet the provisions in § 173.217. The primary receptacle and the secondary packaging must maintain their integrity at the temperature of the refrigerant used, as well as the temperatures and pressures of transport by aircraft to which they could be subjected if refrigeration were lost.

(3) *Infectious substances shipped in liquid nitrogen.* The primary receptacle and the secondary packaging must maintain their integrity at the temperature of the liquid nitrogen as well as the temperatures and pressures of transport by aircraft to which they could be subjected if refrigeration were lost. Refrigerated liquid nitrogen packagings must be metal vacuum insulated vessels or flasks vented to the atmosphere to prevent any increase in pressure within the packaging. The use of safety relief valves, check valves, frangible discs, or similar devices in the vent lines is prohibited. Fill and discharge openings must be protected against the entry of foreign materials that might cause an increase in the internal pressure. The package orientation markings specified in § 172.312(a) of this subchapter must be marked on the packaging. The packaging must be designed to prevent the release of any refrigerated liquid nitrogen irrespective of the packaging orientation.

* * * * *

■ 14. In § 173.197, paragraphs (a), (b), (d)(1)(iv), (d)(1)(vi), (d)(2)(iii), (d)(3)(vi), (e)(2) and (e)(3) introductory paragraph are revised to read as follows:

§ 173.197 Regulated medical waste.

(a) *General provisions.* Non-bulk packagings, Large Packagings, and non-specification bulk outer packagings used for the transportation of regulated medical waste must be rigid containers meeting the provisions of subpart B of this part.

(b) *Non-bulk packagings.* Except as provided in § 173.134(c) of this subpart, non-bulk packagings for regulated medical waste must be UN standard packagings conforming to the requirements of Part 178 of this subchapter at the Packing Group II performance level. A non-bulk packaging used as a sharps container must be puncture-resistant for sharps and sharps with residual fluid as demonstrated by conducting the performance tests in Part 178, subpart M, of this subchapter on packagings containing materials representative of the sharps and fluids (such as sterile sharps) intended to be transported in the packagings. Sharps containers must be securely closed to prevent leaks or punctures in conformance with the instructions provided by the packaging manufacturer in accordance with § 178.2(c) of this subchapter.

* * * * *

(d) * * *

(1) * * *

(iv) Untreated concentrated stock cultures of infectious substances containing Category A materials may not be transported in a Cart or BOP.

* * * * *

(vi) Division 6.1 or Class 7 chemotherapeutic waste; untreated concentrated stock cultures of infectious substances containing Category B infectious substances; unabsorbed liquids; and sharps containers may be transported in a Cart or BOP only if packaged in rigid non-bulk packagings conforming to paragraph (a) of this section.

* * * * *

(2) * * *

(iii) Each Cart must be capable of meeting the requirements of § 178.810 (drop test) at the Packing Group II performance level.

* * * * *

(3) * * *

(vi) Division 6.1 or Class 7 chemotherapeutic waste, untreated concentrated stock cultures of infectious substances containing Category B infectious substances, unabsorbed liquids, and sharps may be transported in a BOP only if separated and secured as required in paragraph (d)(3)(v) of this section.

* * * * *

(e) * * *

(2) *Liquids.* Liquid regulated medical waste transported in a Large Packaging, Cart, or BOP must be packaged in a rigid inner packaging conforming to the provisions of subpart B of this part. Liquid materials are not authorized for transportation in inner packagings having a capacity greater than 19 L (5 gallons).

(3) *Sharps.* Sharps transported in a Large Packaging, Cart, or BOP must be packaged in a puncture-resistant inner packaging (sharps container). Each sharps container must be securely closed to prevent leaks or punctures in conformance with instructions provided by the packaging manufacturer. Each sharps container exceeding 76 L (20 gallons) in volume must be capable of passing the performance tests in Part 178, subpart M, of this subchapter at the Packing Group II performance level. A sharps container may be reused only if it conforms to the following criteria:

* * * * *

15. In § 173.199, the section title and paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(5), and (c), (d), and (e) are revised, to read as follows:

§ 173.199 Category B infectious substances.

(a) *Category B infectious substances.* Except as provided in this paragraph (a), Category B infectious substances are excepted from all other requirements of this subchapter when offered for transportation or transported in accordance with this section. Category B infectious substances offered for transportation or transported under the provisions of this section are subject to the incident reporting requirements in §§ 171.15 and 171.16 of this subchapter and to the requirements in § 175.85 of this subchapter concerning cargo location. Except as provided in paragraph (a)(9) of this section, a Category B infectious substance meeting the definition of a hazard class other than Division 6.2 must be offered for transportation or transported in accordance with applicable requirements of this subchapter.

(1) A Category B infectious substance must be packaged in a triple packaging consisting of a primary receptacle, a secondary packaging, and a rigid outer packaging.

(2) Primary receptacles must be packed in secondary packaging in such a way that, under normal conditions of transport, they cannot break, be punctured, or leak their contents into the secondary packaging.

(3) Secondary packagings must be secured in rigid outer packagings with suitable cushioning material such that any leakage of the contents will not impair the protective properties of the cushioning material or the outer packaging.

(4) The completed package must be designed, constructed, maintained, filled, its contents limited, and closed so that under conditions normally encountered in transportation, including removal from a pallet or overpack for subsequent handling, there will be no release of hazardous material into the environment. Package effectiveness must not be substantially reduced for minimum and maximum temperatures, changes in humidity and pressure, and shocks, loadings and vibrations normally encountered during transportation. The packaging must be capable of successfully passing the drop tests in §§ 178.609(d) and (h) of this subchapter at a drop height of at least 1.2 meters (3.9 feet). Following the drop

tests, there must be no leakage from the primary receptacle, which must remain protected by absorbent material, when required, in the secondary packaging. At least one surface of the outer packaging must have a minimum dimension of 100 mm by 100 mm (3.9 inches).

(5) The following mark must be displayed on the outer packaging on a background of contrasting color. The width of the line must be at least 2 mm (0.08 inches) and the letters and numbers must be at least 6 mm (0.24 inches) high. The size of the mark must be such that no side of the diamond is less than 50 mm (1.97 inches) in length. The proper shipping name ''Biological substances, Category B'' must be marked on the outer packaging adjacent to the diamond-shaped mark in letters that are at least 6 mm (0.24 inches) high.

(6) When packages are placed in an overpack, the package markings required by this section must be either clearly visible or reproduced on the outside of the overpack.

(7) The name and telephone number of a person who is either knowledgeable about the material being shipped and has comprehensive emergency response and incident mitigation information for the material, or has immediate access to a person who possesses such knowledge and information, must be included on a written document (such as an air waybill or bill of lading) or on the outer packaging.

(8) For transportation by aircraft, each package, overpack, pallet, or unit load device containing a Category B infectious substance must be inspected for leakage when it is unloaded from the aircraft. If evidence of leakage is found, the cargo compartment in which the package, overpack, pallet, or unit load device was transported must be disinfected. Disinfection may be by any means that will make the material released ineffective at transmitting disease.

(9) A packaging containing inner packagings of Category B infectious substances may not contain other hazardous materials except—

(i) Refrigerants, such as dry ice or liquid nitrogen, as authorized under paragraph (d) of this section;

(ii) Anticoagulants used to stabilize blood or plasma; or

(iii) Small quantities of Class 3, Class 8, Class 9, or other materials in Packing Groups II and III used to stabilize or prevent degradation of the sample, provided the quantity of such materials does not exceed 30 mL (1 ounce) or 30 g (1 ounce) in each inner packaging. Such preservatives are not subject to the requirements of this subchapter.

(10) Clear instructions on filling and closing a packaging used to transport a Category B infectious substance must be provided by the packaging manufacturer and subsequent distributors to the consignor or person who prepares the package to enable the package to be correctly prepared for transport. A copy or electronic image of these instructions must be retained by the manufacturer and subsequent distributors for at least one year from the date of issuance, and made available for inspection by a Federal or state government representative upon request. Packagings must be filled and closed in accordance with the information provided by the packaging manufacturer or subsequent distributor.

(b) *Liquid Category B infectious substances.* Liquid Category B infectious substances must be packaged in conformance with the following provisions:

(1) The primary receptacle must be leakproof.

(2) Absorbent material must be placed between the primary receptacle and secondary packaging. If several fragile primary receptacles are placed in a single secondary packaging, they must be either individually wrapped or separated to prevent contact between them. The absorbent material must be of sufficient quantity to absorb the entire contents of the primary receptacles and not compromise the integrity of the cushioning material or the outer packaging.

* * * * *

(5) For shipments by aircraft, the maximum quantity contained in each primary receptacle, including any material used to stabilize or prevent degradation of the sample, may not exceed 1 L (34 ounces), and the maximum quantity contained in each outer packaging, including any material used to stabilize or prevent degradation of the samples, may not exceed 4 L (1 gallon). The outer packaging limitation does not include ice, dry ice, or liquid nitrogen when used to maintain the integrity of the material.

(c) *Solid Category B infectious substances.* Solid Category B infectious substances must be packaged in a triple packaging, consisting of a primary receptacle, secondary packaging, and outer packaging, conforming to the following provisions:

(1) The primary receptacle must be siftproof.

(2) If several fragile primary receptacles are placed in a single secondary packaging, they must be either individually wrapped or separated to prevent contact between them.

(3) The secondary packaging must be siftproof.

(4) If residual liquid may be present in the primary receptacle during transportation, then the material must be transported in accordance with requirements in paragraph (b) of this section. A solid material that may become liquid during transportation must be transported in accordance with paragraph (b) of this section.

(5) Except for packages containing body parts, organs, or whole bodies, for shipment by aircraft, the outer packaging may not contain more than 4 kg (8.8 pounds), including any material used to stabilize or prevent degradation of the samples. The outer packaging limitation does not include ice, dry ice, or liquid nitrogen when used to maintain the integrity of the material.

(d) *Refrigerated or frozen specimens (ice, dry ice, and liquid nitrogen).* In addition to complying with the requirements in this paragraph (d), dry ice and liquid nitrogen must be offered for transportation or transported in accordance with the applicable requirements of this subchapter.

(1) Ice or dry ice must be placed outside the secondary packaging or in an overpack. Interior supports must be provided to secure the secondary packagings in the original position after the ice or dry ice has dissipated. If ice is used, the outside packaging must be leakproof or must have a leakproof liner. If dry ice is used, the outside packaging must permit the release of carbon dioxide gas and otherwise meet the provisions in § 173.217. The primary receptacle and secondary packaging must maintain their integrity at the temperature of the refrigerant used, as well as the temperatures and pressures of transport by aircraft they could be subjected to if refrigeration were lost, and sufficient absorbent material must be provided to absorb all liquid, including melted ice.

(2) The package is marked ''Carbon dioxide, solid'' or ''Dry ice'' and an

indication that the material being refrigerated is used for diagnostic treatment purposes (e.g., frozen medical specimens).

(e) *Training.* Each person who offers or transports a Category B infectious substance under the provisions of this section must know about the requirements of this section.

PART 175—CARRIAGE BY AIRCRAFT

■ 16. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 17. In § 175.630, the section heading is revised and paragraph (c) is added to read as follows:

§ 175.630 Special Requirements for Division 6.1 (poisonous) material and Division 6.2 (infectious substances) materials.

* * * * *

(c) When unloaded from the aircraft, each package, overpack, pallet, or unit load device containing a Division 6.2 material must be inspected for signs of leakage. If evidence of leakage is found, the cargo compartment in which the package, overpack, or unit load device was transported must be disinfected. Disinfection may be by any means that will make the material released ineffective at transmitting disease.

Issued in Washington, DC, on May 24, 2006, under the authority delegated in 49 CFR part 1.

Brigham A. McCown,

Acting Administrator.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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