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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 8, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 71, No. 144

Thursday, July 27, 2006

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 71, No. 144
Thursday, July 27, 2006

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1491

RIN 0578–AA37

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Interim Final Rule with request for comments.

SUMMARY: On behalf of the Commodity Credit Corporation (CCC), the Natural Resources Conservation Service (NRCS), hereafter referred to as the Agency, is amending the Interim Final Rule implementing the Farm and Ranch Lands Protection Program (FRPP) at 7 CFR part 1491 to clarify certain program policies and legal requirements. Specifically, the Agency is addressing policy and legal requirements in eight areas: Fair market value definition; program eligibility as to forest lands; the nature of the real property rights the United States is acquiring and how it will exercise those rights; compliance with Department of Justice (DOJ) Title Standards; exercising United States' rights; the implementation of Federal appraisal requirements required by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970; impervious surface limitations on the easement area; and indemnification requirements. NRCS requests comments on this amendment. Cooperative agreements signed on or after the publication of this Interim Final Rule will be administered.

This rule is being published as an Interim Final Rule, with request for comments under the authority of section 2702 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–17, which allows the promulgation of an Interim Final Rule effective upon publication. The Agency made a determination that publishing this Interim Final Rule is appropriate and necessary given the fact that this rule is making program changes to address and clarify existing Federal law and policy requirements.

DATES: This rule is effective on July 27, 2006. Comments must be received by September 25, 2006.

ADDRESSES: This Interim Final Rule can be accessed via the Internet at: *http://www.nrcs.usda.gov/programs/frpp.* Send comments by mail to the Easement Program Division, NRCS, 1400 Independence Avenue, SW., Room 6819–S, Washington, DC 20250–1400, or fax comments to (202) 720–9689.

FOR FURTHER INFORMATION CONTACT: Robert Glennon, Farm and Ranch Lands Protection Program Manager, NRCS, 1400 Independence Avenue, SW., Room 6819–S, Washington, DC 20250–1400; telephone: (202) 720–9476; e-mail: *Robert.Glennon@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, repealed the Farmland Protection Program (FPP), established by the Federal Agriculture Improvement and Reform Act of 1996, and authorized a new FPP. NRCS named the new program FRPP to both distinguish it from the repealed program and to better describe the types of land the program seeks to protect. Under FRPP, the Secretary of Agriculture, acting through NRCS, is authorized, on behalf of the CCC and under its authorities, to purchase conservation easements or other interests in land for the purpose of protecting topsoil by limiting nonagricultural uses of the land. NRCS purchases conservation easements by partnering with eligible entities (partners) that have pending offers for the acquisition of conservation easements. NRCS memorializes this partnership relationship and obligates funding through the use of FRPP cooperative agreements. As explained in the preamble to the final FRPP rule, FRPP is a real property acquisition program, not a financial assistance or grants program.

NRCS, on behalf of CCC, published final regulations for FRPP on May 16, 2003 (68 FR 26461), which are codified at 7 CFR part 1491. Since that time, several issues have arisen as to the implementation of FRPP. Some of these issues, such as the degree to which impervious surfaces are allowed on FRPP easements and how much forest land is eligible for enrollment into FRPP, were clarified through internal policy and set forth in the Agency program manual. However, because of the public's interest in these matters, the Agency has decided to amend the final FRPP rule to address these policies and request the public's comments. In addition, questions have arisen as to the nature of the property rights the United States is purchasing when it funds FRPP easements and whether the DOJ Title Standards and Federal appraisal requirements are applicable to FRPP acquisitions. The Agency is taking the opportunity presented by the publishing of this amendment to clarify these matters as well.

Discussion of Changes

Below NRCS discusses each of the amendments to 7 CFR part 1491 by subject area.

Subpart A—General Provisions

Definition of Fair Market Value

NRCS is amending § 1491.3 to change the definition of fair market value to the value of the landowner's whole property before the easement, and the value of the landowner's whole property after the easement. The current definition compares the value of the whole property before the easement and the remainder property after the easement. The current definition does not consider the difference in value between the property being protected by the easement and the remainder of the land that is not protected when it is owned by the same individual who owns the protected land. Although the easement may lower the value of the land being protected by preventing development for certain uses, the easement may increase the value of adjacent land. The demand for land adjacent to protected land may increase resulting in an increase to the value of the adjacent land in response to the increased demand.

Consequently, comparing the value of the whole property before and after the easement is recorded is the only way to assess its fair market value.

Eligibility of Forest Lands

NRCS amends § 1491.4 to expand the scope of forest land which is eligible for enrollment under FRPP as forest lands incidental to the farm operation. The FRPP authorizing legislation defines eligible land as ''cropland, rangeland, grassland, pasture land, and forest land that is incidental part of the agricultural operation.'' In June 2002, NRCS instituted a policy to ensure that FRPP would not compete with the Forest Legacy Program. The 2002 policy set out in the NRCS Conservation Programs Manual, Part 519 defined ''incidental forest land'' as any land less than 50 percent of the total easement area.

This policy unintentionally created an impediment to enrolling land in the Eastern States where forested acreage is an integral and important supplemental part of the farming operation. In the East, streams occur throughout cropland, and wet, stony, and rocky soils are randomly interspersed with prime farmland. Forest land in the East is also typically interspersed with cropland because of its location adjacent to those streams, and the fact that it has not been cleared in order to maintain water quality. In addition, forests on wet, stony, or rocky soil have not been cleared because they were not practical to farm. In these areas of the Nation, the incidental forest land policy has resulted in landowners subdividing tracts or deforesting acres offered for the program or ''carving out'' portions of the property that will not meet the definition of incidental forest land. For these reasons, NRCS revisited this policy to provide NRCS State Conservationists the flexibility to enroll lands containing more than 50 percent forest land under certain circumstances.

Specifically, NRCS is establishing a national limitation that not more than two-thirds of the easement acreage may be occupied by forested acreage, including sugarbush and pulpwood. NRCS' new policy permits NRCS to pay for forest land up to the same acreage amount as the nonforested, agricultural soils acreage, provided all other FRPP eligibility criteria are met and that such forest land is supplemental to the agricultural operation. NRCS has included in this Interim Final Rule a new subparagraph to paragraph 1491.4(d) incorporating this policy. Regarding management of forested acres, it is the Agency's practice to work with its FRPP partners to address the management of these forested acres.

NRCS has also added a new definition in section 1491.3 for ''forest land'' in this Interim Final Rule. This definition will assist with the determination of the extent of acreage for which NRCS will contribute funding. Consistent with other NRCS conservation programs, ''forest land'' means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included in this definition is land that is bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. Exceptions may be made by the Chief for land primarily managed through a low-input system for food, fiber, or other agricultural products.

Real Property Interest of the United States

Over the past several years, questions have arisen regarding certain legal aspects of FRPP's administration. The Agency addresses these matters and, where applicable, amends the FRPP regulation.

Historically, the United States has acquired a ''contingent right'' in FRPP-funded easements which allows the Secretary, at his or her discretion, to enforce or take title to the conservation easement should the Secretary determine that the partner is not enforcing the easement or is attempting to divest itself of the easement without prior approval of and payment of consideration to the Secretary. Under FRPP, the Secretary of Agriculture is authorized ''to purchase conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity,'' which means that the Secretary is to purchase a presently vested real property right. To avoid any confusion, NRCS is clarifying the nature of the rights acquired under FRPP so there can be no question that these rights are presently vested, insurable real property rights. The Agency is doing this by re-characterizing its ''contingent right,'' as well as requiring that the United States is identified as a grantee in FRPP funded deeds. Both changes are discussed below.

This rulemaking amends the FRPP final regulation to change the terminology from ''contingent right'' to ''rights.'' The property rights provision required in FRPP easements will read substantially as follows:

> Under this Conservation Easement, the same rights have been granted to the United States that have been granted to the grantee/partner. However, the Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that the grantee/partner fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law. In the event that the grantee/partner attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests in this Conservation Easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement shall become vested solely in the United States of America.

This ''rights'' provision is similar to the old ''contingent right'' clause. The Agency is making this change to clarify that the United States is a grantee under the terms of the deed consistent with both the statutory authority for FRPP and the DOJ Title Standards. In order to effectuate this change, this amendment changes the text at §§ 1491.4(a), 1491.22(d), and 1491.30(b) of the FRPP rule to insert the requirement that the rights of the United States as a grantee are to be included in all FRPP-funded easements.

An additional reason for adding the United States as a grantee is to ensure that the United States appears in the chain of title. Grantee status facilitates enforcement of these Federal rights vis a vis subsequent landowners, and also has the beneficial effect of preventing condemnation of the easements by local authorities because State and local governments cannot condemn Federal property.

These changes do not alter the fundamental relationship NRCS has had with its FRPP partners or their primary stewardship responsibilities for FRPP funded easements. The clarifications noted above are just that—clarifications so that there is no ambiguity as to the rights the United States is acquiring. The Department anticipates and intends that its relationship with its partners will remain the same as it was prior to the publication of this rule. The Department continues to see its role as a backstop to ensure the viability of FRPP easements with primary stewardship and management of the easements squarely in the hands of the

partner. Finally, NRCS is considering the use of a conservation easement template addendum under the authority of paragraph 1491.4(f) that incorporates the co-grantee status of the United States and other FRPP policies regarding particular uses of the easement area, including the extent of the easement area that can have an impervious surface (see discussion below). NRCS believes the use of a template addendum may minimize the extent that NRCS will need to require modification to cooperating entities' standard deed provisions to conform to FRPP policies. NRCS solicits comments on this proposal.

Title Review

This section discusses Federal policy regarding title review for Federal acquisition of real property. No amendments to the rule are necessary to implement this requirement because it is simply a statement of existing Federal law and policy. Requirements at 40 U.S.C. 3111 state:

> Public money may not be expended to purchase land or any interest in land unless the Attorney General gives prior written approval of the sufficiency of title to the land for the purpose for which the Federal Government is acquiring the Property.

This law codifies prudent business practices by fostering uniformity and requiring the adequacy of title acquired by the various departments and agencies of the Federal Government. DOJ promulgated the Title Standards to implement 40 U.S.C. 3111. The Attorney General has delegated the authority to approve title to the USDA. The Office of the General Counsel (OGC) reviews title for legal sufficiency on behalf of the USDA. Under FRPP, the United States is acquiring an interest in land, and the Government must comply with 40 U.S.C. 3111. Consequently, the legal sufficiency of title of all FRPP funded easements must be reviewed and approved by OGC prior to conveyance. OGC title review is non-delegable. The process used to approve title for FRPP-funded acquisitions is generally the same as other real property acquisitions of the Department, such as the Wetlands Reserve Program or the Grassland Reserve Program. FRPP conservation easements are purchased by partners, and these partners also review title for sufficiency prior to the acquisition of a conservation easement. The Agency is sensitive to this fact, as well as the need for timely review, given closing deadlines. USDA will work closely with its partners to ensure that title review is completed in a timely manner. The partners can facilitate OGC's review by ensuring that any [clouds] on title have been removed or subordinated as necessary, and by promptly forwarding title documents to NRCS for review. The Department's experience thus far with the sufficiency of title review by its FRPP partners has varied. Some partners are thorough in their title review; other partners are not. A review by OGC will ensure that title acquired on all FRPP funded easements is legally sufficient. This benefits the United States, as well as its partners, because adequacy of title is critical in ensuring the viability of the conservation easement itself.

Exercising the United States' Rights

The FRPP partners have asked the Agency about the process it intends to follow when it exercises its rights under FRPP easements. To date, NRCS has not had to exercise its enforcement rights, nor has it had to take title to any FRPP-funded easements. However, the Agency believes that it is important to set forth a uniform, predictable process that will be utilized if and when the need arises to enforce or take sole title to an FRPP easement. Consequently, the Agency is amending the FRPP regulation at paragraph 1491.30(g) to set forth the general process the Agency will follow when exercising the United States' rights. Specifically, NRCS will notify the grantee/partner in writing, by certified mail at the last known address, prior to exercising its rights. NRCS also will specify in that notice the particular right that is being exercised and will state the specific event of noncompliance which caused the action. The grantee/partner will have up to 60 days to address the noncompliance. If NRCS determines that the noncompliance is not cured within the 60-day period, the NRCS right of enforcement will become final. In cases where imminent harm may occur to the conservation values being protected or to the easement deed itself, the Agency reserves the right to waive the period to cure. In these cases, NRCS will still send a written notification to the grantee/partner. The Agency is amending the definition § 1491.3 to define the term ''imminent harm'' to mean those easement violations or threatened violations that, in the opinion of the Agency, would likely cause immediate and significant degradation to the conservation values; for example, those violations which would adversely impact soil structure or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

The general circumstances under which NRCS may exercise the United States' rights under FRPP easements are contained within the rights language itself. In exercising its rights, the United States will be guided by its stewardship responsibilities and the protection of the conservation values that the easement seeks to protect.

Appraisal

In keeping with Federal and congressional efforts to improve the validity of conservation easement appraisals, the Agency is also addressing issues related to its appraisal policy in this rulemaking. As set forth at 7 CFR 1491.4, the value of the conservation easement must be appraised prior to FRPP fund disbursement. However, the FRPP final rule at 7 CFR 1491.4(e) erroneously states that such appraisals are to be conducted by a State-certified or licensed general appraiser. This rule amends that language to provide that NRCS requires that appraisals must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. This change is made to clarify the requisite experience needed to appraise FRPP-funded easements. The Real Property Appraiser Qualification Criteria, published by The Appraisal Foundation, states that Certified General appraisers have the training and experience enabling them to complete a variety of complex property type appraisals.

Conservation easement appraisals are complex because they involve using an income approach in calculating the value of the easement and the application of the Uniform Appraisal Standards for Federal Land Acquisitions in the valuation process. In addition, the size of the easements is larger than lots for residential housing. In contrast, licensed appraisers are defined as limited to appraising non-complex, one to four residential units having a transaction value less than $1,000,000, and complex one to four residential units having a transaction value of less than $250,000.

It is in the public interest to require the use of Certified General appraisers in the valuation of FRPP easements because utilizing the services of licensed appraisers dramatically increases the risk of overpayment for acquisitions due to inaccurate appraisals.

In addition, this rule amends the 7 CFR 1491.4(e) to provide that the appraisal must conform to both the Uniform Standards of Professional Appraisal Practices (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)

and any Supplemental Standards issued by NRCS. Requiring the use of both USPAP and the UASFLA is simply stating the professional standards for Federal appraisals.

USPAP and UASFLA contain different guidance that must be followed in concert to adequately appraise property. The foregoing change requiring that both the practices and standards are followed was made in order to: Ensure that easement prices are correctly determined by using established methodologies; foster consistent valuations across the Nation; and standardize the appraisal process so that supportable, defensible, and documented bases exist for the purchase of each conservation easement by USDA. In order for USDA to ensure that its financial contribution towards the purchase of the conservation easement is accurately determined, the Agency has amended paragraph (e) of § 1491.4 to state that the NRCS shall require specific appraisal instructions and appraiser and technical appraiser reviewer qualifications to be followed in determining the value of the conservation easement to be purchased.

Impervious Surface Limitations

As set forth in FRPP's authorizing legislation, the purpose of FRPP is to purchase conservation easements in order to protect topsoil by limiting nonagricultural uses of the land. The Agency's experience in implementing FRPP has been that its partners allow for varying degrees of development on the land covered by their conservation easements. This is, in part, a result of differing conservation purposes between the Agency and its partners. For example, some partners have set their goal of preserving agricultural viability and, therefore, are willing to allow more development including outbuildings, residences, and utilities. In contrast, FRPP is an agricultural soils protection program where conversion of the soils conflicts with the clear purpose of the statute. The Agency, using public dollars to protect farm and ranch lands, has a fiduciary responsibility to ensure that the public receives the full benefits of the soil resource protection rights for which it is paying. The Agency has been largely successful in finding common ground with its partners even when the partner's main goal may be wildlife or open space protection. However, in order to ensure the purpose of FRPP is met and to facilitate uniform program implementation, NRCS has had to develop an impervious surface policy for FRPP easements.

In developing the impervious limitation policy, NRCS analyzed information from internal reviews of conservation easements proposed by its partners, an external audit review, and numerous studies about the impacts of impervious surfaces on the Nation's waterways. NRCS further took into consideration the documented negative effects that impervious surfaces have on ground water recharge, water quality, and changes in hydrology that result in downstream flooding. In June 2003, NRCS issued the FRPP Manual (CPM Part 519) to FRPP State Managers based upon the above analysis. This guidance contained policy limiting the amount of impervious surface allowed within FRPP easements. The policy was as follows:

> Impervious surfaces, which includes residential buildings, agricultural buildings (with and without flooring), and paved areas, both within and outside the conservation easement's building envelope(s), shall not exceed two percent of the total easement acreage. For easements less than 50 acres, one acre of impervious surface area is permitted.

Following issuance of the policy, several NRCS FRPP State managers and partners, particularly State Departments of Agriculture in the northeast, raised concerns about the impervious surface limitation. In response to these concerns, NRCS adjusted the 2-percent policy by allowing limited waivers to be granted by State Conservationists based upon objective criteria developed in consultation with the State Technical Committee. NRCS also developed a model template for the field to use when developing criteria to waive the 2-percent limit. In order to provide for flexibility at the State level, the model allows for a sliding scale for impervious surface limit of up to six percent if certain criteria are met. Farms are allowed up to six percent impervious surface coverage if they are located in a densely populated area, contain a large amount of open prime and important soil, and are less than 50 acres in size. The impervious surface limit applies to existing and new construction, but not NRCS-approved conservation practices.

While this policy has been in place, NRCS' experience has been that these criteria have been successful in: limiting the geographic area where this waiver can occur, focusing on protecting farms that have a high ratio of protected open prime or important land versus covered lands; and ensuring that this waiver is instituted primarily for smaller, more intensive farms in specific geographic areas.

NRCS is amending this final rule to include this impervious surface policy by adding a new provision at paragraph 1491.22(i) to read:

> Impervious surfaces shall not exceed two percent of the FRPP easement area. However, the NRCS State Conservationist may waive the two percent impervious surface limitation on a parcel-by-parcel basis, provided no more than six percent of the easement area is covered by impervious surfaces. To waive this limitation, the NRCS State Conservationist must examine, at a minimum, population density, the ratio of open prime and important soil versus impervious surfaces on the easement area, and parcel size. All FRPP easements must contain language limiting the amount of impervious surfaces within the easement area.

For example, the typical easement in the northeast is 100 acres which, under this policy, would provide up to 6 acres of impervious surface. Likewise, in the west, a 1000 acre easement could have up to 60 acres of impervious surface. Without this impervious surface policy, which provides reasonable flexibility for infrastructure while still protecting the bulk of agricultural soils, the Agency would have no flexibility to allow for impervious surfaces. The Agency is particularly interested in receiving comments on this policy.

Indemnification

NRCS is amending paragraph 1491.30(e) to clarify the nature of the indemnification required in all FRPP funded easements. Given the fact that the United States is only holding title to a conservation easement, the United States is requiring, as is standard practice in the land trust community, an indemnification clause that addresses liability, whether arising from hazardous materials or otherwise, related to the property under easement. The indemnification clause ensures that the landowner continues to be responsible for liabilities arising from their property. To effectuate this clarification, paragraph 1491.30(e) is being amended to read as follows:

> The conservation easement must include an indemnification clause requiring landowners to indemnify and hold harmless the United States from any liability arising from or related to property enrolled in FRPP.

The specific indemnification language required in FRPP easement will be set forth in the FRPP cooperative agreement.

Regulatory Certifications

Executive Order 12866

This Interim Final Rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this final rule is not a significant rulemaking action.

Therefore, no benefit/cost assessment of potential impacts is necessary.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(c) of the Regulatory Flexibility Act, this Interim Final Rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this final rule. This Interim Final Rule implements FRPP, which involves the voluntary acquisition of interests in property by NRCS in partnership with State, local, and tribal governments and nonprofit entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This Interim Final Rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Interim Final Rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based companies to compete in domestic and export markets.

Environmental Analysis

In May of 2003, an Environmental Assessment (EA) was prepared to assist NRCS in determining whether the final rule for FRPP would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the draft EA, NRCS issued a Finding of No Significant Impact (FONSI). That EA has been reviewed for adequacy and was found to still adequately reflect the environmental impacts of FRPP, as amended by this Interim Final Rule. Copies of the EA and FONSI may be obtained from Robert Glennon, FRPP, NRCS, Post Office Box 2890, Washington, DC 20013–2890. The FRPP EA and FONSI are also available at the following Internet address: *http://www.nrcs.usda.gov/programs/Env_Assess/FPP/FPP.html.*

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 provides that the promulgation of this Interim Final Rule is carried out without regard to Chapter 35 of Title 44, United States Code (commonly known as the Paperwork Reduction Act).

Executive Order 12988, Civil Justice Reform

This Interim Final Rule has been reviewed in accordance with Executive Order 12988. NRCS has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict was to be identified, the Interim Final Rule would preempt the State or local laws or regulations found to be in conflict. The provisions of this Interim Final Rule are not retroactive.

Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Executive Order 13132, Federalism

This Interim Final Rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, NRCS has assessed the effects of this rulemaking action of State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal government, or anyone in the private sector; therefore, a statement under Section 202 of the Act is not required.

List of Subjects in 7 CFR Part 1491

Administrative practice and procedure, Agriculture, Soil conservation.

Text of Rule Amendments

■ For the reasons stated in the preamble, Title 7, Chapter XIV of the Code of Federal Regulations is amended as follows:

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

■ 1. The authority for part 1491 continues to read as follows:

Authority: 16 U.S.C. 3838h–3838i.

■ 2. Section 1491.3 is amended by removing the definition of ''contingent right'' and revising the definition for the term ''fair market value,'' and adding the definitions for ''forest land,'' ''Imminent harm,'' and ''United States'' rights'' to read as follows:

§ 1491.3 Definitions.

* * * * *

Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller, to a willing and reasonably knowledgeable buyer with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. Easement price will be determined by completing an appraisal for market value of the whole property (larger parcel) before the easement (before value) and an appraisal for market value of the whole property (larger parcel) after the easement (after value) is placed. The difference between the before value and the after value is deemed the value of the conservation easement.

* * * * *

Forest land means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide. Exceptions may be made by the Chief for land primarily managed through a low-input system for food, fiber, or other agricultural products.

* * * * *

Imminent harm means those easement violations or threatened violations that, in the opinion of the Agency, would likely cause immediate and significant degradation to the conservation values; for example, those violations which would adversely impact soil structure or result in the erosion of topsoil beyond acceptable levels as established by NRCS.

* * * * *

United States' rights means rights in real property including the right to enforce the terms of the conservation easement deed and take sole title to the conservation easement deed.

■ 3. Section 1491.4 is amended by revising paragraph (a), redesignating paragraphs (d)(4) and (d)(5) as (d)(5) and (d)(6), adding new paragraph (d)(4), and revising paragraph (e) to read as follows:

§ 1491.4 Program Requirements.

(a) Under FRPP, the Secretary, on behalf of CCC, shall purchase conservation easements, in partnership with eligible entities, from landowners who voluntarily wish to protect their farm and ranch lands from conversion to nonagricultural uses. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the appraised market value for the easement purchase. In return, the entity agrees to acquire, hold, manage, and enforce the easement. A United States' rights clause must also be included in each FRPP funded easement deed for the protection of the Federal investment, and the United States must be named as a grantee on each FRPP funded easement deed.

* * * * *

(d) * * *

(4) For a farm to be considered eligible, the forest land of a farm cannot exceed two-thirds of the easement area.

* * * * *

(e) Prior to FRPP fund disbursement, the value of the conservation easement must be appraised. Appraisals must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices and the Uniform Appraisal Standards for Federal Land Acquisitions. In addition, NRCS may require an eligible entity to obtain an appraisal using NRCS appraisal instructions in order to ensure the accuracy of the conservation easement appraisal upon which the NRCS contribution towards fair market value is based.

* * * * *

■ 4. Section 1491.22 is amended by revising paragraph (d) and adding a new paragraph (i) to read as follows:

§ 1491.22 Conservation easement deeds.

* * * * *

(d) The conservation easement deed must identify the United States as a grantee with rights as set forth in the deed. Among the rights that the United States acquires in each conservation easement is the right to enforce the terms of the easement under specified conditions and the right to assume sole title to the conservation easement should the grantee abandon or attempt to terminate the conservation easement.

* * * * *

(i) Impervious surfaces shall not exceed 2 percent of the FRPP easement area, excluding NRCS-approved conservation practices. However, the NRCS State Conservationist may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided no more than six percent of the easement area is covered by impervious surfaces. The NRCS State Conservationist must consider, at a minimum, population density, the ratio of open prime and important soil versus impervious surfaces on the easement area, and parcel size when deciding whether to waive the two percent limitation. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

■ 5. Section 1491.30 is amended by adding a new paragraph (g) and by revising paragraphs (b) and (e) to read as follows:

§ 1491.30 Violations and remedies.

* * * * *

(b) In the event that the grantee/partner fails to enforce any of the terms of the conservation easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of the conservation easement through any and all authorities available under Federal or State law. In the event that the grantee/partner attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests in the conservation easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in the conservation easement shall become vested solely in the United States of America.

* * * * *

(e) The conservation easement deed must include an indemnification clause requiring the landowner (grantor) to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in FRPP.

* * * * *

(g) In the event NRCS determines it must exercise the United States' right to enforce the terms of or take title to the conservation easement, NRCS will provide written notice by certified mail to the grantee at the grantee's last known address. The notice will set forth the nature of the noncompliance by the grantee and a 60-day period to cure. If the grantee fails to cure within the 60-day period, the United States will take the action specified under the notice. The United States reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation easement deed or the conservation values it seeks to protect.

Signed in Washington, DC, on July 19, 2006.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. E6–11959 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 2902

RIN 0503–AA26

Office of Energy Policy and New Uses; Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Interim final rule with comment period.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to be consistent with the statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Energy Policy Act of 2005 was signed into law on August 8, 2005. In addition, USDA amends part 2902 in order to clarify that biobased products from certain designated countries must be treated by procuring agencies as eligible for the procurement preference under FSRIA. Finally, this rule amends part 2902 to clarify the USDA intent to exclude from the preferred procurement program biobased products that are merely incidental to Federal funding. The amendment is issued as an immediately effective interim rule, with opportunity for public comment.

DATES: This rule is effective July 27, 2006.

Comment Date: Submit comments on or before August 28, 2006.

ADDRESSES: Please submit any comments, or a notice of intent to submit comments, identified by ''Amendments to Guidelines'' or Regulatory Information Number (RIN) 0503–AA26, by any of the following methods:

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

• Agency Web site: *http://www.biobased.oce.usda.gov.* Follow the instructions for submitting comments.

• E-mail: *fb4p@oce.usda.gov.* Include RIN number 0503–AA26 and ''Amendments to Guidelines'' on the subject line. Please include your name and address in your message.

• Mail/commercial/hand delivery: Mail or deliver your comments to: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815.

• Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 401–4133 (TDD).

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov*; phone (202) 401–0461.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority

The Guidelines for Designating Biobased Products for Federal Procurement (the Guidelines) are established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002''), as amended by the Energy Policy Act of 2005 (Pub. L. 109–58).

II. Background

As originally enacted, section 9002 provides for the preferred procurement of biobased products by Federal agencies. USDA proposed guidelines for implementing this preferred procurement program on December 19, 2003 (68 FR 70730–70746). The Guidelines were promulgated on January 11, 2005 (70 FR 1792), and are contained in 7 CFR part 2902, ''Guidelines for Designating Biobased Products for Federal Procurement.''

The Guidelines identify various procedures Federal agencies are required to follow in implementing the requirements of section 9002. They were modeled in part on the ''Comprehensive Procurement Guidelines for Products Containing Recovered Materials (40 CFR part 247), which the Environmental Protection Agency (EPA) issued pursuant to the Resource Conservation Recovery Act (''RCRA''), 40 U.S.C. 6962. The RCRA guideline states that it does not apply to purchases of designated items that are merely incidental to Federal funding. A similar statement relating to the purchase of biobased products was inadvertently omitted from part 2902, although it is USDA 's intent to follow the same policy of removing incidental purchases from the scope of the biobased preferred procurement program.

On August 8, 2005, the Energy Policy Act of 2005 was signed into law. Sections 205 and 943 of the Energy Policy Act revised section 9002 of FSRIA, as follows: Section 205 provides that, in addition to biobased products with the highest available biobased content, procuring agencies are to give procurement preference to products that comply with regulations issued under 42 U.S.C. 6914b–1, which addresses plastic ring beverage containers made of naturally degradable material. Section 943 of the Energy Policy Act of 2005 adds to the definitions section of FSRIA, 7 U.S.C. 8101, a definition of ''procuring agency,'' which includes both Federal agencies and ''any person contracting with any Federal agency with respect to work performed under that contract.'' In addition, section 943 of the Energy Policy Act of 2005 amends subsections within section 9002 of FSRIA by replacing the term ''Federal agencies'' with ''procuring agencies.'' These changes have the effect of making Federal contractors expressly subject to the procurement preference provisions of section 9002 of FSRIA.

On March 16, 2006, USDA published a final rule (71 FR 13686) designating six items within which biobased products will be afforded the procurement preference, as required by section 9002 of FSRIA. In the final rule, USDA responded to a comment that questioned how USDA intends to implement the preference program consistent with the United States' international trade obligations. The response in the final rule stated that ''biobased products from any designated country [as defined in Federal Acquisition Regulation section 25.003] would receive the same preference extended to U.S.-sourced biobased products. In order to clarify and make this policy applicable to all biobased designations, USDA plans to propose a broad-based revision to the USDA biobased procurement guidelines (7 CFR part 2902).'' 71 FR 13690.

The purpose of this interim final rule, therefore, is three-fold: (1) To revise the Guidelines (i.e., 7 CFR part 2902) to make them consistent with the changes to section 9002 of FSRIA as the result of the Energy Policy Act of 2005, (2) to ensure the Guidelines are consistent with existing policy concerning incidental purchases, and (3) to clarify existing USDA policy regarding the equal treatment by procuring agencies of certain non-domestic biobased products. Because the interim final rule responds to a statutory amendment that became effective August 8, 2005, and because it codifies USDA policy as already stated in the first final rule designating biobased products, the interim final rule is effective immediately.

III. Summary of Changes

USDA is amending five sections of 7 CFR part 2902, as described below.

A. 7 CFR 2902.1—Purpose

As promulgated, the Guidelines applied to Federal agencies. In response to section 943(a)(2) of the Energy Policy Act, USDA is amending 7 CFR 2902.1(a) and (b) to replace the term ''Federal agencies'' with ''procuring agencies.'' The effect of these changes is to broaden the purpose and scope of the procurement program to include ''procuring agencies;'' that is, to include contractors of Federal agencies as well as Federal agencies.

B. 7 CFR 2902.2—Definitions

USDA is amending the definitions section by adding the definition for ''procuring agency,'' as stated in section 943(a)(1)(B) of the Energy Policy Act. The definition of ''procuring agency'' covers both Federal agencies and ''any person contracting with any Federal agency with respect to work performed under the contract.''

C. 7 CFR 2902.3—Applicability to Federal Procurement

In response to section 943(a)(2) of the Energy Policy Act, USDA is amending 7 CFR 2902.3(a) by replacing the first two occurrences of ''Federal agencies'' with ''procuring agencies'' in the first sentence of the paragraph. In the first instance, this change makes the guidelines applicable to ''all procurement actions by procuring agencies involving items designated by USDA in this part,'' not just to Federal agencies. In the second instance, the change broadens the applicability of the $10,000 threshold value to both Federal agencies and their contractors. Both of these changes are the result of revisions to section 9002 as contained in the Energy Policy Act.

USDA is not changing the other occurrence of ''Federal agencies'' and ''Federal agency'' in the last sentence in 7 CFR 2902.3(a) because the sentence is applicable only at the Federal agency level; that is, the $10,000 threshold value applies to Federal agencies as a whole rather than to agency subgroups, such as regional offices of subagencies of a larger Federal department or agency. Similarly, purchases made by contractors under contract with a Federal agency would be included in the total value of products purchased by the Federal agency.

In response to section 943(a)(2) of the Energy Policy Act, USDA is amending 7 CFR 2902.3(b) to apply to ''procuring agencies'' rather than to ''Federal agencies.'' This paragraph states that these guidelines do not apply for any procurement that is subject to section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation Recovery Act of 1976. The non-applicability of these guidelines applies equally to procurements made by Federal contractors and by Federal agencies. Therefore, USDA is changing the term ''Federal agencies'' to ''procuring agencies.''

In response to section 943(a)(2) of the Energy Policy Act, USDA is amending 7 CFR 2902.3(c) to apply to ''procuring agencies'' rather than to ''Federal agencies.'' This paragraph addresses the requirement to purchase products within designated items with the highest biobased contents unless such products are not reasonably priced, are not readily available, or do not meet specified or reasonable performance standards. This requirement and the exceptions to the purchase of biobased products are equally applicable to Federal contractors and to Federal agencies. Therefore, USDA is revising this paragraph to make it applicable to ''procuring agencies.''

In response to section 205 of the Energy Policy Act of 2005, USDA is amending 7 CFR 2902.3(c) to require procuring agencies to also give a preference to items that comply with regulations issued under 42 U.S.C. 6914b–1 (section 103 of Pub. L. 100–556). (Section 6914b–1 requires the Administrator of the U.S. Environmental Protection Agency to require, by regulation, that any plastic ring beverage container ''intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation.'')

Finally, USDA is amending section 2902.3 to add paragraph (d), in order to ensure that the preferred procurement program will be implemented consistent with similar guidelines issued under RCRA by the EPA. Specifically, the new paragraph will clarify that the Guidelines do not apply to purchases of biobased items that are not the direct result of contracts with procuring agencies (i.e., incidental purchases).

D. 7 CFR 2902.4—Procurement Programs

In the final rule designating six items under the biobased preferred procurement program (71 FR 13686), USDA proposed a broad-based revision to the Guidelines that would clarify its policy of implementing the program consistent with the United States' international trade obligations. USDA now carries out that proposal by adding to section 2902.4 a new subparagraph (b)(3), which requires Federal agencies to give equal consideration under the preferred procurement program to biobased products from ''designated countries.'' As defined in the Federal Acquisition Regulation section 25.003, ''designated countries'' include, for example, countries that have entered into specific trade agreements with the United States or offer reciprocal equal treatment to U.S.-sourced goods.

E. 7 CFR 2902.8—Determining Life Cycle Costs, Environmental And Health Benefits, And Performance

In response to section 943(a)(2) of the Energy Policy Act, USDA is amending 7 CFR 2302.8(b) to refer to ''procuring agencies'' rather than to ''Federal agencies.'' The subject paragraph requires agencies to rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards when assessing the performance of qualifying biobased products. The reliance on these results is equally applicable to Federal contractors making procurement decisions under contracts to a Federal agency and to the procuring agents within a Federal agency. Therefore, USDA is changing the term ''Federal agencies'' to ''procuring agencies'' in 7 CFR 2302.8(b).

IV. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This rule has been reviewed under Executive Order 12866. It has been determined that this interim final rule, which amends the Guidelines, is not a ''significant regulatory action'' under the terms of Executive Order 12866, because its purpose is only to implement the statutory amendments to FSRIA. Therefore, this interim final rule has not been reviewed by the Office of Management and Budget (OMB).

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

This interim final rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

C. Executive Order 12988: Civil Justice Reform

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

D. Executive Order 13132: Federalism

This interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This interim final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's interim final rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

■ For the reasons set forth in the preamble, the Department amends 7 CFR part 2902 as follows:

Department of Agriculture

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Section 2902.1 is revised to read as follows:

§ 2902.1 Purpose and scope.

(a) *Purpose.* The purpose of the guidelines in this part is to assist procuring agencies in complying with the requirements of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, 116 Stat. 476 (7 U.S.C. 8102), as they apply to the procurement of the items designated in subpart B of this part.

(b) *Scope.* The guidelines in this part designate items that are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of section 9002 of FSRIA.

■ 3. Section 2902.2 is amended by adding, in alphabetical order, the definition of ''procuring agency'' to read as follows:

§ 2902.2 Definitions.

* * * * *

''*Procuring agency*'' means any Federal agency that is using Federal funds for procurement or any person contracting with any Federal agency with respect to work performed under the contract.

* * * * *

■ 4. Section 2902.3 is revised to read as follows:

§ 2902.3 Applicability to Federal procurements

(a) *Applicability to procurement actions.* The guidelines in this part apply to all procurement actions by procuring agencies involving items designated by USDA in this part, where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. The $10,000 threshold applies to Federal agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger Federal department or agency.

(b) *Exception for procurements subject to EPA regulations under the Solid Waste Disposal Act.* For any procurement by any procuring agency that is subject to regulations of the Administrator of the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation Act of 1976 (40 CFR part 247), these guidelines do not apply to the extent that the requirements of this part are inconsistent with such regulations.

(c) *Procuring items composed of highest percentage of biobased products.* FSRIA section 9002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of biobased products practicable or such items that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1), consistent with maintaining a satisfactory level of competition, considering these guidelines. Procuring agencies may decide not to procure such items if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(d) This guideline does not apply to purchases of designated items that are unrelated to or incidental to Federal funding; *i.e.*, not the direct result of a contract or agreement with persons supplying items to a procuring agency or providing support services that include the supply or use of items.

■ 5. Section 2902.4 is amended by adding paragraph (b)(3) to read as follows:

§ 2902.4 Procurement programs.

* * * * *

(b) * * *

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from ''designated countries,'' as that term is defined in section 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

* * * * *

■ 6. Section 2902.8 is amended by revising paragraph (b) to read as follows:

§ 2902.8 Determining life cycle costs, environmental and health benefits, and performance.

* * * * *

(b) *Performance test information.* In assessing performance of qualifying biobased products, USDA requires that procuring agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by an ASTM/ISO compliant laboratory. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

* * * * *

Dated: July 21, 2006.

Joseph Glauber,

Deputy Chief Economist, U.S. Department of Agriculture.

[FR Doc. E6–12018 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24632; Directorate Identifier 2005–SW–31–AD; Amendment 39–14695; AD 2006–15–14]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Canada Limited Model BO 105 LS A–3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter Canada Limited (Eurocopter) Model BO 105 LS A–3 helicopters that requires replacing certain fixed bolts and nuts, re-identifying certain main rotor nuts, and revising the Airworthiness Limitations—Time Change Items (TCI) list to reflect the new life limits and new part numbers. This amendment is prompted by a re-evaluation of certain fatigue-critical parts, which resulted in establishing new life limits for certain like-numbered parts and re-identifying a certain existing part with a different part number, or in some cases, replacing them with new parts. The actions specified by this AD are intended to prevent fatigue failure of the fixed bolts and nuts, and subsequent loss of control of the helicopter.

DATES: Effective August 31, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 2006.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

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: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

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 May 2, 2006 (71 FR 25787). That action proposed to require, within 30 days, incorporating revised life limits and part numbers into the list of life-limited parts, or TCI list, which is contained in the helicopter delivery file, and within 150 hours time-in-service (TIS), replacing 4 fixed bolts, part number (P/N) LN 9038 K08018, with fixed bolts, P/N 105–101021.17. It also proposed to require replacing 4 main rotor nuts, P/N 105–142241.01, within 30 days if they have less than 150 hours TIS remaining, or re-identifying those main rotor nuts within 150 hours TIS if they have 150 or more hours TIS remaining.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Eurocopter Model BO 105 LS A–3 helicopters. Transport Canada advises that changes to the TCI list must be incorporated, and affected parts must be replaced and re-identified in accordance with the manufacturer's service information.

Eurocopter has issued Alert Service Bulletin No. ASB BO 105 LS 10–11, dated May 11, 2005, which specifies changes to and introduction of life limits, and re-identification of certain life-limited parts. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2005–17, dated June 6, 2005, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design 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 7 helicopters of U.S. registry, and the required actions will take approximately:

- 1 work hour per helicopter to remove and replace 4 fixed bolts;
- 16 work hours per helicopter to remove, replace, and re-identify four nuts; and
- 1 work hour per helicopter to create component history cards at an average labor rate of $65 per work hour.

Required parts will cost approximately $3.80 for each fixed bolt, P/N 105–101021.17, and $882.67 for each nut, P/N 105–142241.01. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $33,011, assuming all nuts and bolts on the entire fleet are replaced.

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:

2006–15–14 Eurocopter Canada Limited: Amendment 39–14695. Docket No. FAA–2006–24632; Directorate Identifier 2005–SW–31–AD.

Applicability: Model BO 105 LS A–3 helicopters certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of a fixed bolt and main rotor nut, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 30 days:

(1) Modify the Airworthiness Limitation section, Time Change Items (TCI) list, or table of life-limited components, with their revised life limits by adding part number (P/N) 105–142241.01 and by changing P/N LN 9038 K08018 to P/N 105–101021.17, as shown in the following table.

Part name	P/N	Life limit
Fixed Bolt (Bolt)	105–101021.17 (Formerly P/N LN 9038–K08018)	6,000 hours time-in-service (TIS).
Main Rotor Nut (Nut)	105–142241.01	122,850 flights or 18,900 hours TIS, whichever occurs first.

The number of flights equals the number of landings (i.e., ground contacts).

(2) Create a historical or equivalent record for each of the parts listed in the preceding table.

(3) Review the aircraft records and determine the TIS and landings on each nut, P/N 105–142241.01. If the number of flights (*i.e.*, landings) is unknown, the initial life limit is 18,900 hours TIS. Thereafter, record the number of flights for use when determining the retirement life.

(b) Before further flight, replace any nut that has less than 150 hours TIS remaining before reaching its life limit. Unless accomplished previously, prior to replacing a nut, re-identify the nut in accordance with paragraph (c)(2) of this AD.

(c) Within 150 hours TIS:

(1) Replace the 4 bolts, P/N LN 9038 K08018, with bolts, P/N 105–101021.17, as shown in Figure 1 of Eurocopter Alert Service Bulletin No. ASB BO 105 LS 10–11, dated May 11, 2005 (ASB).

(2) For those nuts with 150 or more hours TIS remaining on their life, remove and re-identify those nuts, P/N 105–142241.01, by adding the serial number of the main rotor head, followed by a dash and a consecutive number, in accordance with the procedures stated in Figure 2 of the ASB.

(d) Before further flight, remove any life-limited part on which the life limit has been equaled or exceeded.

(e) 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, Regulations and Policy Group, Rotorcraft Directorate, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(f) The replacements shall be done in accordance with the specified portion of Eurocopter Alert Service Bulletin No. ASB BO 105 LS 10–11, dated May 11, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. 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*.

(g) This amendment becomes effective on August 31, 2006.

Note: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2005–17, dated June 6, 2005.

Issued in Fort Worth, Texas, on July 18, 2006.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E6–11909 Filed 7–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30496; Amdt. No. 462]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create

the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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 operational 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. For the same reason, the FAA certifies that this amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC on July 21, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective on 0901 UTC, February 16, 2006.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 US.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 462, effective date August 03, 2006]

From	To	MEA	MAA
§ 95.4000 High Altitude RNAV Routes § 95.4243 RNAV Route T243 Is Added to Read			
Pungo, NC FIX *1500–MOCA	Zolmn, NC FIX	*4000	17000

From	To	MEA
§ 95.6001 Victor Routes-U.S. § 95.6023 VOR Federal Airway V23 Is Amended to Read in Part		
Mourn, OR FIX *7000–MRA **6500–MOCA	*Curti, OR FIX	**8000
*Curti, OR FIX *7000–MRA **4000–MOCA	Eugene, OR VORTAC SE BND NW BND	 **6000 **4000
§ 95.6448 VOR Federal Airway V448 Is Amended to Read in Part		
Roseburg, OR VOR/DME *6000–MRA	*Drain, OR FIX	5000
*Drain, OR FIX *6000–MRA **3900–MOCA	Eugene, OR VORTAC N BND S BND	 **4000 **5000
§ 95.6623 VOR Federal Airway V623 Is Added to Read		
Sparta, NJ VORTAC	Carmel, NY VOR/DME	3000

[FR Doc. 06–6509 Filed 7–26–06; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 33

[Docket No. RM05–34–002; Order No. 669–B]

Transactions Subject to FPA Section 203

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on Rehearing of Order No. 669–A.

SUMMARY: The Federal Energy Regulatory Commission (Commission) affirms, with certain clarifications, its determinations in Order Nos. 669 and 669–A. Order Nos. 669 and 669–A revised 18 CFR 2.26 and 18 CFR part 33 to implement amended section 203 of the Federal Power Act.

DATES: This order on rehearing will be effective on August 28, 2006.

FOR FURTHER INFORMATION CONTACT:

Roshini Thayaparan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6857.

Phillip Nicholson (Technical Information), Office of Energy, Markets, and Reliability—West, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8240.

Andrew P. Mosier, Jr. (Technical Information), Office of Energy, Markets, and Reliability—West, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6274.

Jan Macpherson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8921.

James Akers (Technical Information), Office of Energy, Markets, and Reliability—West, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8101.

SUPPLEMENTARY INFORMATION:

Table of Contents

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Order on Rehearing and Clarification

1. In this order we affirm, with certain clarifications, the determinations made in Order Nos. 669 [1] and 669–A.[2]

I. Introduction

2. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [3] was signed into law. Section 1289 (Merger Review Reform) of Title XII, Subtitle G (Market Transparency, Enforcement, and Consumer Protection),[4] of EPAct 2005 amends section 203 of the Federal Power Act (FPA).[5]

3. On October 3, 2005, the Commission issued a notice of proposed rulemaking (NOPR) requesting comment on its proposal to amend its regulations to implement amended section 203.[6] On December 23, 2005, the Commission issued a final rule (Order No. 669) adopting certain modifications to 18 CFR 2.26 and 18 CFR part 33 to implement amended section 203.[7] Generally, Order No. 669:

(1) Established regulations implementing amended section 203;

(2) Granted blanket authorizations, in some instances with conditions, for certain types of transactions, including acquisitions of foreign utilities by holding companies, intra-holding company system financing and cash management arrangements, certain internal corporate reorganizations, and certain acquisitions of securities of transmitting utilities and electric utility companies;

(3) Defined terms, including ''electric utility company,'' ''holding company,'' and ''non-utility associate company;''

(4) Defined ''existing generation facility;''

(5) Adopted rules on the determination of ''value'' as it applies to various section 203 transactions;

(6) Set forth a section 203 applicant's obligation to demonstrate that a proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company; and

(7) Provided for expeditious consideration of completed applications for the approval of transactions that are not contested, do not involve mergers, and are consistent with Commission precedent.

4. In Order No. 669, the Commission also announced that, at a technical conference on the Public Utility Holding Company Act of 2005 (PUHCA 2005),[8] to be held within the next year,[9] we would reevaluate certain issues raised in this proceeding. These issues include whether the blanket authorizations granted in Order No. 669 should be revised, and whether additional protection against cross-subsidization and pledges or encumbrances of utility

[1] *Transactions Subject to FPA Section 203*, Order No. 669, 71 FR 1348 (January 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005). On January 10, 2006, the Commission issued an errata notice to Order No. 669 revising parts of the regulatory text to conform to the version of the order that was issued in the **Federal Register**. *Transactions Subject to FPA Section 203*, Docket No. RM05–34–000 (January 10, 2006) (unpublished errata notice).

[2] *Transactions Subject to FPA Section 203*, Order No. 669–A, Order on Rehearing, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214 (2006).

[3] Energy Policy Act of 2005, Public Law No. 109–58, 119 Stat. 594 (2005).

[4] EPAct 2005 at 1281 *et seq.*

[5] 16 U.S.C. 824b (2000).

[6] *Transactions Subject to FPA Section 203*, 70 FR 58636 (October 7, 2005), FERC Stats. & Regs. ¶ 32,589 (2005).

[7] A full background to Order Nos. 669 and 669–A is set forth in detail in those orders and will not be repeated in full here.

[8] EPAct 2005 at 1261 *et seq. Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005) (PUHCA 2005 Final Rule), *order on reh'g*, Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006) (PUHCA 2005 Order on Rehearing), *reh'g pending*.

[9] PUHCA 2005 Final Rule at P 17. The Commission stated that we intend to hold a technical conference no later than one year after PUHCA 2005 became effective to evaluate whether additional exemptions, different reporting requirements, or other regulatory actions need to be considered. The PUHCA 2005 Final Rule took effect on February 8, 2006.

assets is needed.[10] Order No. 669 became effective on February 8, 2006.

5. On April 24, 2006, the Commission issued an order on rehearing (Order No. 669–A), reaffirming in part and granting rehearing in part of Order No. 669. Order No. 669–A addressed certain inconsistencies between Order No. 669 and the PUHCA 2005 Final Rule, expanded the focus on protection of captive customers, revised certain blanket authorizations, and provided new blanket authorizations. Among its holdings, the Commission:

(1) affirmed its determination that persons that own only Exempt Wholesale Generators (EWGs), Qualifying Facilities (QFs), or Foreign Utility Companies (FUCOs) are holding companies subject to section 203(a)(2);

(2) found that while EWGs, QFs and FUCOs are ''electric utility companies'' for purposes of PUHCA and for purposes of section 203, persons that are holding companies solely by virtue of owning EWGs, QFs or FUCOs should be granted a new blanket authorization to acquire additional EWGs, QFs and FUCOs without Commission pre-approval under section 203(a)(2);

(3) modified the regulatory text to clarify that public utilities have blanket authorization under section 203(a)(1) to acquire securities of other public utilities in the context of intra-system cash management transactions, subject to protections against cross-subsidization and encumbrances of utility assets;

(4) modified the regulatory text to provide, similar to the previously granted blanket authorization under section 203(a)(2) for certain holding company transactions involving internal corporate reorganizations, a blanket authorization under section 203(a)(1) for internal corporate reorganizations within the holding company, as long as the restructuring does not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over Commission-jurisdictional transmission facilities;

(5) granted additional blanket authorizations to certain holding companies and their subsidiaries regulated by the Bank Holding Company Act of 1956 [11] to acquire securities in the normal course of business, as a fiduciary, for derivatives hedging purposes incidental to the business of banking, as collateral for a loan or other limited purposes, but subject to certain restrictions and reporting requirements; and

(6) established a blanket authorization for certain acquisitions of utility securities for purposes of underwriting and hedging transactions, but subject to conditions and reporting requirements.

6. The Commission on rehearing also added several important customer protection changes, including clarifying that ''captive customers'' include wholesale and retail electric energy customers served under cost-based regulation with respect to exemptions, and providing that certain blanket authorizations do not apply if a public utility owns or provides transmission service over Commission-jurisdictional transmission facilities. Regarding blanket authorization for holding companies to acquire securities of intrastate-only, local distribution-only and/or retail-only utilities, if there is any public utility within the holding company with captive customers or that owns or provides transmission service over jurisdictional facilities, Order No. 669–A also included a new condition that such company report the acquisition to the Commission, including any state actions or conditions related to the transaction, and provide an explanation of why the transaction does not result in cross-subsidization.

7. With respect to all section 203 transactions that do not receive a blanket authorization, the Commission on rehearing added to the regulatory text a specific requirement that an applicant disclose existing pledges and/or encumbrances of utility assets and provide four specific detailed showings that the proposed transaction will not result in cross-subsidization or pledges or encumbrances of utility assets or, if assurances cannot be provided that cross-subsidization, pledges or encumbrances will not occur, an explanation of how such cross-subsidization, pledge or encumbrance will be consistent with the public interest.

8. The Commission also reiterated that it will hold a technical conference this year to reevaluate numerous issues raised in both this proceeding and the PUHCA 2005 rulemaking proceeding. In Order No. 669–A, the Commission committed to consider additional issues raised in this proceeding, including whether the Commission should codify specific safeguards that must be adopted for money pool transactions, and whether our current merger policy should be revised.[12]

9. Order No. 669–A became effective on June 15, 2006. The aspects of Order No. 669–A for which requests for rehearing and clarification were filed are described in more detail below.[13]

II. Discussion

10. The requests for rehearing and/or clarification collectively address five categories of issues discussed in Order No. 669–A. As discussed below, we deny rehearing, and grant in part and deny in part requests for clarification on each of these issues.

A. 18 CFR Section 33.1(b)(4)—Definition of ''Electric Utility Company'' and 18 CFR Section 33.1(c)(1)(i) and (ii)—Blanket Authorizations for Intrastate Commerce and Local Distribution

11. Section 203(a)(2) provides:

> No holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of $10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

12. The definition of the term ''electric utility company'' is important because it affects whether an entity is a holding company subject to section 203(a)(2). In Order Nos. 669 and 669–A, the Commission concluded that the most reasonable interpretation of the term, as used in amended section 203(a)(2), is the definition in PUHCA 2005—''any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.'' [14] The definition thus is broader than the definition of ''public utility'' under the FPA; it is not limited to entities that engage in wholesale or interstate transactions.

13. However, while Order Nos. 669 and 669–A found that it was not reasonable to interpret section 203(a)(2) as being limited solely to holding company acquisitions and mergers involving utilities making wholesale sales or providing transmission in interstate commerce, the Commission concluded that there would be no benefit from the Commission's case-by-case evaluation of certain transactions under section 203(a)(2).[15] The Commission explained that our core jurisdiction under Part II of the FPA continues to be transmission and sales for resale of electric energy in interstate commerce. Accordingly, we concluded that it is consistent with the public interest to grant blanket authorizations

[10] Order No. 669 at P 4.

[11] 12 U.S.C. 1843 (2000).

[12] Order No. 669–A at P 91, 162.

[13] The entities that filed requests for rehearing and/or clarification are listed in an appendix to this order.

[14] EPAct 2005 at 1262(5).

[15] An acquisition or merger involving ''any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale'' is not on its face limited to interstate facilities. Order No. 669 at P 55 n.51; Order No. 669–A at P 56 n.56.

for the following: (1) Section 203(a)(2) purchases or acquisitions by holding companies of companies that own, operate, or control only facilities used solely for transmission or sales of electric energy in *intrastate* commerce; and (2) section 203(a)(2) purchases or acquisitions by holding companies of only facilities used solely for local distribution and/or sales at retail regulated by a state commission.[16]

14. In Order No. 669–A, the Commission clarified that it was not asserting jurisdiction over intrastate facilities, local distribution facilities, or retail-only companies under the blanket authorizations. Rather, it was asserting jurisdiction over holding company acquisitions of such companies or facilities for the purpose of ensuring that interstate interests are not adversely affected. The Commission also stated that it would eliminate these blanket authorizations if necessary to protect customers.[17]

1. Requests for Rehearing and Clarification

15. NARUC reiterates the arguments raised in its initial comments and request for rehearing of Order No. 669, asserting that Congress did not intend for the term ''electric utility company,'' as used in PUHCA 2005, to be incorporated into the Commission's regulations implementing FPA section 203. First, NARUC argues that this interpretation violates the fundamental rule of statutory construction, *expressio unius est exlusio alterius* (express mention of one thing implies the exclusion of another). NARUC argues that the absence of an explicit expansion of the Commission's jurisdiction over entities in the PUHCA 2005 definition of ''electric utility company'' ''fatally undermines'' the Commission's justification of the result reached on rehearing.[18] Second, NARUC argues that adoption of the term ''electric utility company'' improperly extends the Commission's authority under amended section 203 to include facilities used for the transmission or sales of electric energy in intrastate commerce, facilities used for local distribution, and facilities used for making retail sales. NARUC states that such facilities fall under the exclusive jurisdiction of state commissions.[19] Moreover, NARUC asserts that, based on the Commission's overreach in jurisdiction over such entities, the Commission erred in granting a blanket authorization for holding company acquisitions of facilities used solely in intrastate commerce or used solely for local distribution and/or sales at retail regulated by a state commission. NARUC argues that the Commission's justifications for these blanket exemptions are valid, but the Commission's stated rationale provides further evidence that the Commission lacks jurisdiction over such entities.[20]

2. Commission Determination

16. NARUC's request for rehearing is denied. NARUC's request for rehearing reiterates arguments made in its rehearing request of Order No. 669. The Commission addressed those arguments fully in Order No. 669–A.[21]

17. NARUC also argues that the Commission erred in Order No. 669–A in granting blanket authorizations of holding company acquisitions of facilities that NARUC asserts are outside the Commission's statutory authority. NARUC notes that the Commission gave three reasons for granting these blanket authorizations and argues that these reasons actually highlight why the Commission does not have jurisdiction over these matters. As the basis for this error, NARUC repeats the same argument made on rehearing of Order No. 669. The Commission responded fully to that argument as well in Order No. 669–A.[22]

B. 18 CFR Section 33.1(c)(7)—Blanket Authorization for Cash Management Programs

18. In Order No. 669, the Commission stated that cash management programs, money pools, and other intra-holding company financing arrangements[23] are a routine and important tool used by many large companies to lower the cost of capital for their regulated subsidiaries and to improve the rate of return the holding company and its subsidiaries can receive on their money.[24] The Commission found that it was consistent with the public interest to grant blanket authorization under section 203(a)(2) for holding companies and their subsidiaries to take part in intra-system cash management programs.[25]

19. In Order No. 669–A, the Commission granted clarifications regarding this blanket authorization. The Commission clarified that the blanket authorization granted for money pool transactions is intended to authorize ''horizontal'' transactions between public utility company subsidiaries as well as ''downward'' loans from the holding company to its public utility company subsidiaries. However, the blanket authorization does not cover acquisitions of securities issued by entities outside the established intra-system cash management program[26] or money pool.[27]

1. Requests for Rehearing and Clarification

20. In the time between the issuance of Order No. 669 and the issuance of Order No. 669–A, several entities sought explicit Commission approvals for certain of their subsidiary-to-subsidiary transactions, transactions in their money pools and other such cash management programs. EEI notes that, in several of these cases, the Commission granted such approval, subject to limits and reporting requirements imposed under the authorizations previously issued by the Securities and Exchange Commission (SEC).[28] The limits and reporting requirements put in place by the SEC differ from those in Order No. 669–A. EEI seeks clarification that the companies with Intervening Orders do not have to comply with the restrictions of their former SEC financing orders, as of the effective date of Order No. 669–A.[29]

21. Second, EEI notes that the preamble to Order No. 669–A describes the blanket authorization as covering transactions only within a ''money pool,''[30] while the regulatory text uses the broader term, ''intra-system cash management program.''[31] EEI argues that the Commission should not distinguish between formal money pools and other, less formal intra-system lending arrangements. It asks the Commission to clarify that subsidiary-

[16] Order No. 669 at P 56; Order No. 669–A at P 62–63.

[17] Order No. 669–A at P 63.

[18] NARUC Rehearing Request at 4–5.

[19] *Id.* at 5–6.

[20] *Id.* at 6–7.

[21] *See* Order No. 669–A at P 41–54.

[22] *See id.* P 62–63.

[23] Order No. 669 at P 142; *see also* Order No. 669–A at P 84 (citing *Regulation of Cash Management Practices*, Order No. 634, 68 FR 40500 (July 8, 2003), FERC Stats. & Regs. ¶ 31,145 (2003) (Cash Management Rule), Order No. 634–A, 68 FR 61993 (October 31, 2003), FERC Stats. & Regs. ¶ 31,152 (2003) (Cash Management Rule II)).

[24] Order No. 669 at P 142.

[25] *Id.*

[26] 18 CFR 33.1(c)(7).

[27] Order No. 669–A at P 89.

[28] EEI Rehearing Request at 5–6 (citing *Exelon Corporation*, 114 FERC ¶ 61,116 (2006) (*Exelon*)). EEI identifies only one of the orders in a group that it calls the ''Intervening Orders''—*Exelon.* Two similar orders, issued the same day, are *Entergy Services, Inc.*, 114 FERC ¶ 61,120 (2006) (*Entergy*) and *National Grid plc and National Grid USA*, 114 FERC ¶ 61,115 (2006) (*National Grid*). The group of three will be referred to as the ''Intervening Orders.''

[29] EEI Rehearing Request at 4–8.

[30] *Id.* at 6 (citing Order No. 669–A at P 89).

[31] *Id.* (citing 18 CFR 33.1(c)(7)).

to-subsidiary loans are authorized as part of cash management programs even if such loans are not under formal money pool arrangements.[32]

2. Commission Determination

22. We will grant in part EEI's request for clarification on the first issue. To the extent companies with Intervening Orders engage in activities within Order No. 669–A's blanket authorizations, those activities are not subject to the SEC limits and reporting requirements incorporated by the Intervening Orders. However, activities exceeding Order No. 669–A's blanket authorizations remain subject to the SEC limits and reporting requirements incorporated by the Intervening Orders.[33] Activities authorized by the Intervening Orders were conditioned on compliance with the prior SEC limits and reporting requirements. Thus, we will waive those conditions only for activities subsequently authorized generally in Order No. 669–A. Those activities will be subject to the restrictions and requirements of Order No. 669–A, instead of the Intervening Orders.

23. EEI's second request for clarification, regarding whether subsidiary-to-subsidiary loans are authorized as part of cash management programs even if such loans are not under formal money pool arrangements, is granted. Order No. 669–A's preamble inadvertently suggested a narrower authorization than its regulatory text. However, the blanket authorization granted under Order No. 669–A for a public utility subsidiary within a holding company system to acquire the security of another public utility within the system (horizontal transactions) specifically depends on the transaction occurring within the system's cash management program, subject to safeguards to prevent cross-subsidization or pledges or encumbrances of utility assets.[34] Further, we note that the Commission's Cash Management Rule prescribes certain documentation requirements for entities participating in cash management programs. For example, Cash Management Rule II requires that cash management agreements be filed with the Commission on a public basis.[35] Neither rule prohibits participation by a holding company in a cash management program in which the holding company's Commission-regulated public utility subsidiary also participates, nor do they dictate the content of or terms for participating in a cash management program.[36] Both rules, however, were issued under a broad array of statutory authority reaching many Commission-regulated entities, including public utilities under sections 203 and 204 of the FPA, in order to provide greater transparency of cash management activities.[37] With this background, we clarify that the blanket authorization in Order No. 669–A applies to activities that are part of cash management programs, even if they are not part of a formal money pool. Finally, we will reevaluate whether any changes need to be made to our Cash Management Rule in the technical conference to be held later this year.

C. Section 33.1(c)(2)—Blanket Authorizations for Purchases of Securities

24. In Order Nos. 669 and 669–A, the Commission provided a blanket authorization *under section 203(a)(2)* for holding companies to purchase, acquire, or take: (i) Any non-voting security (that does not convey sufficient veto rights over management actions so as to convey control) in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company; (ii) any voting security in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company if, after the acquisition, the holding company will own less than 10 percent of the outstanding voting securities; or (iii) any security of a subsidiary company within the holding company system.[38]

25. On rehearing, the Commission declined to extend to public utilities under section 203(a)(1) the blanket authorizations for dispositions of utility securities of less than 10 percent that we granted to public utility holding companies under section 203(a)(2). The Commission decided that it would continue to review dispositions of jurisdictional facilities by public utilities under FPA section 203(a)(1) on a case-by-case basis, finding that ''[c]oncerns with control, markets and protection of captive customers or customers receiving transmission service over jurisdictional transmission facilities are closely linked with assets directly controlled by the public utilities.'' [39]

1. Requests for Rehearing and Clarification

26. EEI reiterates arguments, previously denied on rehearing, that the Commission should grant a blanket authorization under section 203(a)(1) for a public utility to dispose of up to 9.99 percent of its voting securities. Such authority, it argues, would parallel the blanket authorization granted in Order No. 669–A for holding companies to acquire up to 9.99 percent of voting securities of a transmitting utility or electric utility company and therefore, would be appropriate. EEI does not formally seek rehearing on this issue and, indeed, a second rehearing on the issue does *not* lie. However, in light of EEI's concerns that lack of a section 203(a)(1) parallel blanket authorization could thwart investment, we will include this issue in the technical conference to be held within one year of the effective date of amended section 203 and PUHCA 2005. EEI also seeks clarification on transactions that involve securities with a value below $10 million. EEI does not believe such transactions require authorization under section 203(a)(1) even if 10 percent or more voting securities are involved. It asks the Commission to confirm that the $10 million threshold is a minimum jurisdictional amount, regardless of the percentage of voting stocks involved.

27. EEI also asks that the Commission clarify that dispositions of less than 10 percent or more of voting securities, and of any amount of non-voting securities, do not require section 203(a)(1) review.[40]

2. Commission Determination

28. The Commission clarifies that, if a section 203(a)(1)(C) transaction involves securities with a value below $10 million, the transaction does not require authorization under section 203(a)(1)(C) even if 10 percent or more of voting securities are involved. Section 203(a)(1) addresses four types of transactions in separate parts. Under parts (A), (C) and (D), a value in excess of $10 million is indeed the threshold below which section 203(a)(1) does not apply, unless a public utility is disposing of the whole of its facilities under section 203(a)(1)(A).[41]

[32] *Id.* at 8–9.

[33] *See Exelon*, 114 FERC ¶ 61,116 at P 9; *Entergy*, 114 FERC ¶ 61,120 at P 10; *National Grid*, 114 FERC ¶ 61,115 at P 10.

[34] 18 CFR 33.1(c)(7).

[35] Cash Management Rule II at P 43.

[36] Cash Management Rule at P 45; Cash Management Rule II at P 31, 36.

[37] Cash Management Rule II at P 19.

[38] 18 CFR 33.1(c)(2). *See also* Order No. 669 at P 144–45; Order No. 669–A at P 97, 101–03.

[39] Order No. 669–A at P 103.

[40] 40 EEI Rehearing Request at 10–12.

[41] Section 203(a)(1)(A) provides that no public utility shall, without having secured an order authorizing it to do so: ''sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10,000,000.'' Because of the

29. On the question of the 10 percent limitation, EEI relies on *Goldman Sachs*[42] as support for its suggestion that the Commission adopt a jurisdictional threshold of 10 percent of voting securities before a public utility must seek authorization for transactions under section 203(a)(1). As noted, rehearing was already denied on this issue. EEI asks for blanket authorization under section 203(a)(1) for public utilities to engage in transactions involving non-voting securities in any amount. EEI cites to paragraph 15 of *Goldman Sachs*, but that paragraph does not support EEI's contention. The Commission provided there an example of how a group of non-utility companies under common control might each purchase just under 10 percent of a public utility, but stop at that point in order to avoid becoming holding companies under section 1262(8) of EPAct 2005 and, therefore, potentially subject to section 203(a)(2). The Commission explained that authorization for such transactions may nevertheless require approval under other provisions of section 203, and specifically mentioned sections 203(a)(1)(A) and (B). This was not a suggestion that acquisitions of voting securities in an amount less than 10 percent or that acquisitions of non-voting securities in any amount cannot trigger the requirement for prior authorization by the Commission. Accordingly, EEI's request for clarification on this issue is denied.

D. 18 CFR Section 33.1(c)(8)—Blanket Authorization for a Holding Company Owning Only EWGs, QFs or FUCOs To Acquire Additional EWGs, QFs or FUCOs

30. In Order No. 669, the Commission rejected requests that we determine that only companies that own traditional utilities, not those that own solely FUCOs, EWGs and/or QFs, are ''holding companies'' under amended section 203.[43] The Commission noted that ''holding company'' in PUHCA 2005 means ''any company that directly or indirectly owns, controls, or holds, with the power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; * * *''[44] PUHCA 2005 defines ''public-utility company'' to include an ''electric utility company.''[45]

31. The Commission found that while Congress expressly excluded from the definition of holding company certain banks and other institutions, it did not similarly exclude from the definition of holding company entities that only own QFs, EWGs or FUCOs. Rather, section 1266(a) of PUHCA 2005 specifically directs the Commission to exempt QF/EWG/FUCO holding companies from the federal access to books and records provision; thus, the very language of the provision recognizes that such entities are holding companies. It directs the Commission to issue a final rule to exempt ''any person that is a holding company, solely with respect to one or more [QFs, EWGs, or FUCOs].'' Therefore, consistent with the concurrent determination in the PUHCA 2005 rehearing order, the Commission concluded that companies that acquire 10 percent or more of an EWG, FUCO or QF are holding companies as that term is used in PUHCA 2005 as well as FPA section 203(a)(2).[46]

32. However, to ensure that investment in the electric industry is not hampered and that encouragement of QFs is not undermined, the Commission granted a blanket authorization under FPA section 203(a)(2) for holding companies that own or control *only* EWGs, QFs or FUCOs to acquire the securities of additional EWGs, FUCOs or QFs.[47]

1. Requests for Rehearing and Clarification

33. TAPSG states that the Commission erred in creating a new blanket authorization under section 203(a)(2) for holding companies that own or control only EWGs, QFs, or FUCOs to acquire the securities of additional EWGs, QFs, or FUCOs.[48] TAPSG asserts that the blanket authorization overlooks Congressional concern about the competitive effects of transfers of generation facilities and creates confusion that would discourage, rather than encourage, new investment. It contends that a holding company's acquisition of additional EWGs and QFs in the same geographic market could raise competitive concerns, particularly if the holding company owns other EWGs or QFs in the same geographic market that is a load pocket. TAPSG also argues that the confusion created by the blanket authorization under section 203(a)(2), in conjunction with section 203(a)(1) review of certain EWG and QF transactions, will create uncertainty that could chill, rather than encourage investment. TAPSG further argues that, if the Commission does not rescind the blanket authorization in 18 CFR section 33.1(c)(8), it should clarify which transactions remain subject to section 203(a)(1) review.

34. In this regard, TAPSG and APPA/NRECA ask the Commission to affirm the conclusion in Order No. 669 that a holding company's acquisition of securities of an EWG that is a public utility, by which the holding company acquires control of the EWG, is a disposition of jurisdictional assets by the EWG and requires a filing with Commission under FPA section 203(a)(1) by the EWG.[49] APPA/NRECA argue that this clarification is important because a single holding company could gain market power by acquiring a number of EWGs in a relevant geographic market.

35. TAPSG and APPA/NRECA request clarification that the blanket authorization does not override the Commission's conclusion regarding the scope of section 203(a)(1)(D), concerning the acquisition of an existing generation facility with a value of $10 million that is used for interstate wholesale sales and over which the Commission has jurisdiction, and that if a public utility acquires an existing generation facility used for Commission-jurisdictional sales, whether a QF or any other type of generation facility, the transaction is subject to section 203 review. TAPSG argues that the plain language of section 203(a)(1)(D) requires the review of acquisitions of generators, such as EWGs.[50]

36. Moreover, TAPSG requests that the Commission clarify that a transaction will trigger section 203(a)(1)(D) review when a holding company that controls an EWG that is a public utility acquires another EWG or QF. They maintain that this is required by *Enova Corporation and Pacific Enterprises* (*Enova*).[51] In addition, TAPSG argues that under *Enova*, section 203(a)(1)(D) review is required: (1) For the acquisition of another EWG or QF where the holding company itself is not

placement of the comma in this sentence, we do not interpret the $10,000,000 threshold as applying to dispositions of the whole of a utility's jurisdictional facilities.

[42] EEI Rehearing Request at 10 (citing *The Goldman Sachs Group, Inc.*, 114 FERC ¶ 61,118, at P 15 (*Goldman Sachs*), *order on reh'g*, 115 FERC ¶ 61,303 (2006)).

[43] Order No. 669 at P 70.

[44] *Id.* (citing EPAct 2005 at 1262(8)).

[45] EPAct 2005 at 1262(14).

[46] Order No. 669–A at P 49–51.

[47] *Id.* at P 52; 18 CFR 33.1(c)(8).

[48] TAPSG Rehearing Request at 2–5.

[49] *Id.* at 5–6 (citing Order No. 669 at P 60 n.55); APPA/NRECA Rehearing Request at 9–12 (same).

[50] TAPSG Rehearing Request at 6–7 (citing Order No. 669 at P 87); APPA/NRECA Rehearing Request at 11–12.

[51] TAPSG Rehearing Request at 7–8 (citing *Enova*, 79 FERC ¶ 61,107, at 61,494 (1997)); APPA/NRECA Rehearing Request at 11 (citing *Enova*, 79 FERC ¶ 61,107 at 61,491–94 and *Central Vermont Public Service Corporation*, 39 FERC ¶ 61,295, at 61,960 (1987)).

a public utility but owns or controls a public utility (such as an EWG), and (2) for the acquisition by a holding company that is not a public utility of a holding company that is not itself a public utility but that owns a public utility.[52]

37. In summary, TAPSG asks the Commission to clarify that the section 203(a)(2) blanket authorization applies only to: (1) ''a holding company owning/controlling only EWGs, QFs, or FUCOs that (a) is not a public utility, (b) does not yet own or control a public utility (such as an EWG), and (c) is acquiring its first EWG or QF''; or (2) ''a holding company owning/controlling only EWGs, QFs, or FUCOs that acquires a FUCO.'' [53]

38. In comparison, Occidental requests that the Commission clarify (or, in the alternative, grant rehearing) that the section 203(a)(2) blanket authorization in section 33.1(c)(8) applies to an acquisition of securities of holding companies that are holding companies solely with respect to holding EWGs, QFs, or FUCOs.[54] Occidental argues that it would be inconsistent with the intent of Order No. 669–A for the acquisition of securities of such holding companies not to also be covered by this blanket authorization.[55] In addition, Occidental argues that it would be arbitrary and capricious to provide blanket authorization for holding companies that own or control only EWGs, QFs, or FUCOs only when they acquire directly the securities of additional EWGs, QFs or FUCOs and not where the acquisition is structured as acquisition of securities of a holding company that holds only EWGs, QFs, or FUCOs. Occidental argues that what it requests would not undermine any Commission policy or efforts to prevent cross-subsidization. Occidental argues that not granting blanket authority for the acquisition of securities of such holding companies will create unnecessary burdens on transactions and discourage investment in the electric industry.

2. Commission Determination

39. We reject TAPSG's request to rescind the blanket authorization in section 33.1(c)(8), granted under section 203(a)(2) for holding companies that own or control *only* EWGs, QFs, or FUCOs to acquire the securities of additional EWGs, FUCOs, or QFs. The concerns raised in TAPSG's rehearing petition are focused on the competitive effects of generation transfers involving EWGs and QFs if this section 203(a)(2) blanket authorization is retained. As an initial matter (and as discussed further below), we note that this blanket authorization in no way affects any section 203(a)(1) authorizations required by EWGs themselves. The vast majority of EWGs located in the United States are public utilities and, to the extent such EWGs seek to sell or transfer control of their jurisdictional facilities to a holding company, such EWGs will be subject to a competitive review of the transaction under section 203(a)(1)(A), irrespective of the holding company's blanket exemption.[56] Thus, TAPSG's concerns that EWG acquisitions will escape competitive review are misplaced.

40. With respect to QFs, many QFs (cogeneration QFs, non-geothermal small power production QFs with capacity of 30 MWs or less, and geothermal small power production) are exempt from section 203 of the FPA and thus are not treated as public utilities subject to section 203(a)(1)(A); thus, unlike the situation with EWGs, if such QFs were to sell or transfer control of their jurisdictional facilities to a holding company, there would be no competitive review by the Commission under section 203(a)(1).[57] However, what TAPSG ignores is that there was no Federal review of such transactions by this Commission or by the SEC prior to EPAct 2005. QFs were largely exempted from PUHCA 1935 regulation by virtue of the Commission's exemption authority under the Public Utility Regulatory Policies Act of 1978 (PURPA), and companies that owned QFs (or EWGs, for that matter) were not considered holding companies by virtue of owning an EWG or QF under PUHCA 1935. Accordingly, our blanket exemption here does nothing more than maintain the status quo with respect to any regulatory review required of holding company acquisitions of QF facilities.[58] While we recognize the possibility that market power issues associated with QF ownership could become a concern in the future, even where the ownership is by a holding company that owns only QFs, EWG and FUCOs and there are no captive customers in the entire holding company system, TAPSG has not convinced us that there is a problem to remedy at this time or that our decision in any way undermines Congressional intent. Further, if in the future problems become apparent with respect to holding company acquisitions of QFs, the Commission may revisit the exemption from section 203 provided to QFs under PURPA and/or revisit the section 203(a)(2) blanket authorization at issue here.[59] We also disagree with TAPSG that the blanket authority creates any confusion that would discourage investment, and no other commenter argues that this is the case. At this time, we see no added benefit from the Commission's case-by-case evaluation of these transactions under section 203(a)(2).[60]

41. Moreover, TAPSG does not explain why we should limit the applicability of the blanket authority in 18 CFR 33.1(c)(8) to situations where: (1) The holding company is not and does not own a public utility, and is acquiring its first EWG or QF; or (2) the holding company is acquiring a FUCO. As noted, it is likely that section 203(a)(1) would be triggered in any event for EWGs and, in many instances, QFs. Therefore, TAPSG's request that this restriction be placed on the applicability of the blanket authority is denied.

42. We grant APPA/NRECA's request to clarify that a holding company's acquisition of the securities of an EWG public utility, by which the holding company acquires control of the public utility EWG, may be a jurisdictional disposition of assets by the EWG, which

[52] TAPSG Rehearing Request at 8.

[53] *Id.*

[54] Occidental Rehearing Request at 3–5.

[55] *Id.* (citing Order No. 669–A at P 52).

[56] Further, although most holding companies are not public utilities, to the extent a holding company is also a public utility, a transaction in which it acquired an EWG's or QF's generation facilities (if such facilities are used for jurisdictional wholesale sales) may trigger the requirements of section 203(a)(1)(D).

[57] However, if a transaction involved a public utility and a QF, section 203 review, including a competitive review, may be required. If a public utility acquires all or part of a QF's jurisdictional facilities, the transaction may be subject to FPA section 203(a)(1)(A). Similarly, if a public utility proposes to merge or consolidate its facilities with those of a QF, the transaction would be subject to section 203(a)(1)(B), which applies when a public utility merges or consolidates its facilities with those of ''any other person.'' ''Person'' would include a QF. Further, a transaction in which a public utility seeks to acquire a QF's existing generation facility (if the QF facility is used for jurisdictional wholesale sales) may trigger section 203(a)(1)(D).

[58] We also have weighed the fact that to require new case-by-case review of holding company acquisitions of QFs could impose a substantial burden on QFs.

[59] We note that in the Commission's recent rulemaking implementing revised section 210(n) of PURPA, the Commission proposed to eliminate certain QF exemptions from FPA sections 205 and 206 and sought comment on whether it should eliminate other exemptions. In the final rule, however, the Commission retained the FPA section 203 exemption. *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 FR 7,852 at P 102 (February 15, 2006), FERC Stats. & Regs. P 31,203 (2006), *order on reh'g*, Order No. 671–A, 71 FR 30,585 (May 30, 2006), FERC Stats. & Regs. P 31,219 (2006).

[60] *See* Order No. 669 at P 55; Order No. 669–A at P 56, 62.

requires approval under section 203(a)(1) even if the holding company has blanket authority under section 203(a)(2). The blanket authority under section 203(a)(2) in no way affects whether separate authorization for a particular transaction is required under section 203(a)(1). We reaffirm the statements made in Order No. 669 regarding section 203(a)(1) review regarding EWGs [61] and QFs.[62] Granting blanket authority in section 33.1(c)(8) under section 203(a)(2) does not affect authorizations required under section 203(a)(1). Thus, TAPSG and APPA/NRECA's requests for clarification to this effect are granted.

43. We will continue to review dispositions of jurisdictional facilities by public utilities under section 203(a)(1) on a case-by-case basis and we will also review public utility acquisitions of generating facilities under the new section 203(a)(1)(D) on a case-by-case basis.[63] TAPSG requests other clarifications interpreting section 203(a)(1) in light of the blanket authority granted in section 33.1(c)(8). In effect, it asks us to modify the section 203(a)(2) blanket authority and we decline to do so. TAPSG's requests for clarification to this effect are denied.

44. Finally, we agree with Occidental that Order No. 669–A should be interpreted to provide blanket authorization for holding companies that own or control only EWGs, QFs, or FUCOs to acquire securities of a holding company that holds only EWGs, QFs, or FUCOs. We do so, however, consistent with our prior holding in Order No. 669 that such acquisitions will trigger review under section 203(a)(1) if the transaction results in a change of control of an EWG that is a public utility owned by the holding company whose securities are being acquired.

E. Section 33.2(j)—General Information Requirements Regarding Cross-Subsidization

45. As modified by Order No. 669–A, section 33.2(j)(1) requires that a section 203 applicant must explain, with appropriate evidentiary support (Exhibit M to the application), how it is assuring that the proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. This explanation must disclose all existing pledges or encumbrances of utility assets and include a detailed showing that the transaction will not result in: (A) Transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (B) new issuances of securities by traditional public utility associate companies that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (C) new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (D) new affiliate contracts between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.[64] Section 33.2(j)(2) states that if no such assurance can be provided, the applicant must explain how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.[65]

1. Requests for Rehearing and Clarification

46. APPA/NRECA argue that the Commission should amend 18 CFR 33.2(j)(1) to require that the explanation in Exhibit M address ''how applicants are providing assurance *that it is not reasonably foreseeable* that the proposed transaction will result in, *at the time of the transaction or in the future,* cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.'' [66] APPA/NRECA argue that the omission of the phrase ''at the time of the transaction or in the future'' from section 33.2(j)(1), a phrase found in the parallel regulation at section 33.1(c)(5) (the blanket authorization for holding companies that include a transmitting utility or an electric utility to acquire a FUCO), creates conflicting requirements and will ''create confusion and invite abuse.'' [67] APPA/NRECA assert that section 33.2(j)(1) is inconsistent with Congressional intent that the Commission have broad authority to ensure that section 203 transactions do not result in cross-subsidization or asset pledges or encumbrances, even after the transaction is consummated, unless the Commission has found that they are consistent with the public interest.

47. APPA/NRECA also ask that the Commission clarify or amend section 33.2(j) to state that Exhibit M must be verified by a duly authorized corporate official of the holding company under 18 CFR 385.2005 (Subscription and verification). APPA/NRECA argue this requirement is consistent with section 33.1(c)(5) and the Commission's existing regulations for section 203 applications.[68]

48. Moreover, APPA/NRECA request the Commission clarify that if the Commission later finds that an approved transaction has resulted in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, the Commission may find that such cross-subsidization, pledge, or encumbrance violates the Commission order and the relevant entities can be penalized. APPA/NRECA maintain that this will help to ensure that the holding company and its senior corporate officials are held responsible for the statements made in a section 203 application and to provide them notice of the consequences of a violation.[69]

[61] Order No. 669 at P 60 n.55 stating:

[A] holding company acquisition of securities of an EWG would in some circumstances trigger section 203 review in any event by virtue of section 203(a)(1). This is because the EWG could well be a public utility and, to the extent the holding company acquired ''control'' of the EWG, we would construe the EWG to be ''disposing'' of its jurisdictional facilities and thus required to file for approval under section 203(a). A similar situation involving acquisition of securities of a QF would not trigger section 203 review, since QFs currently are exempted from FPA section 203 filing requirements by the Commission's PURPA regulations.

[62] *Id.* P 87 stating:

[I]f a public utility acquires an existing generation facility used for Commission-jurisdictional sales, whether a QF or any other type of generation facility, the transaction is subject to section 203. Although certain QFs themselves are exempted from any filing requirements under section 203 by virtue of our PURPA regulations, this does not mean that public utilities that acquire QFs are exempt. Additionally, there is no limitation in amended section 203(a)(1)(D) on the type of generation facilities that trigger section 203 review, if they are used for interstate wholesale sales and the Commission has jurisdiction over them for ratemaking purposes. Further, even if the Commission had the discretion to exempt QF acquisitions from section 203 review, we do not think it would be necessarily consistent with the public interest to do so in light of EPAct 2005's elimination of QF ownership restrictions.

[63] Order No. 669–A at P 103.

[64] 18 CFR 33.2(j)(1)(i) and (ii).

[65] *Id.* at 33.2(j)(2).

[66] APPA/NRECA Rehearing Request at 2 (emphasis in the original).

[67] *Id.* at 4.

[68] *Id.* at 6–7.

[69] *Id.* at 7–8.

2. Commission Determination

49. We will grant APPA/NRECA's request in part. The Commission does not accept APPA/NRECA's assertion that section 33.2(j)(1), as revised in Order No. 669–A, creates confusion and invites abuse simply because it contains different requirements than the regulation against which APPA/NRECA chose to compare it or that it is inconsistent with Congressional intent. We agree, however, that adding to the regulations a verification requirement regarding the contents of the application and a requirement for the exercise of reasonable foresight in providing the explanation required under Exhibit M will help make the regulation more effective. With respect to reasonable foresight, we will modify the regulatory text of 18 CFR 33.2(j)(1) as follows:

Of how applicants are providing assurance*, based on facts and circumstances known to them or that are reasonably foreseeable,* that the proposed transaction will not result in*, at the time of the transaction or in the future,* cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.* * *

50. These changes will not create an undue burden on the applicants. Our rules already require that the information in the application be verified by one having knowledge of the matters contained in the application and exhibits.[70]

51. In response to APPA/NRECA's request, the Commission clarifies that, if the Commission later finds that an approved transaction has resulted in cross-subsidization or a pledge or encumbrance, the Commission may find that it constitutes a violation of a Commission order and is subject to consequent penalties. Whether particular facts violate a Commission order is a matter for determination in an individual proceeding. If a violation is found, the appropriate remedy or penalty is also a matter properly addressed in that proceeding. Accordingly, a blanket statement in the regulations is not necessary.

III. Information Collection Statement

52. The regulations of the Office of Management and Budget (OMB)[71] require that OMB approve certain information requirements imposed by an agency. OMB has approved the information requirements contained in Order Nos. 669 and 669–A. Specifically, OMB approved the following information collection and assigned the corresponding OMB control numbers: ''Application under Federal Power Act Section 203'' (FERC–519) (1902–0082). This order denies rehearing requests and only clarifies the provisions of Order Nos. 669 and 669–A. This order does not make substantive modifications to the Commission's information collection requirements and, accordingly, OMB approval for this order is not necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

53. Interested persons may obtain information on the information requirements by contacting the following: The Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED–34], Phone: (202) 502–8415, Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*.

54. To submit comments concerning the collection(s) of information and provide estimates on the associated burden of these requirements, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], Phone: (202) 395–4650. Comments should be e-mailed to *oira_submission@omb.eop.gov* and reference the OMB Control number listed above.

IV. Document Availability

55. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

56. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM05–34'' in the docket number field.

57. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

V. Effective Date

58. The revisions in this order on rehearing will become effective on August 28, 2006.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

The Commission Orders

Requests for rehearing are hereby denied and requests for clarification are hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, under the authority of EPAct 2005, the Commission is amending part 33 of Chapter I, Title 18, *Code of Federal Regulations,* as set forth:

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

■ 1. Section 33.2 amended by revising (j)(1) introductory text to read as follows:

§ 33.2 Contents of application—general information requirements.

* * * * *

(j) An explanation, with appropriate evidentiary support for such explanation (to be identified as Exhibit M to this application):

(1) Of how applicants are providing assurance, *based on facts and circumstances known to them or that are reasonably foreseeable*, that the proposed transaction will not result in*, at the time of the transactions or in the future,* cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

* * * * *

[70] A specific verification requirement applicable to Exhibit M, as requested by APPA/NRECA, is unnecessary since, under section 33.7, the original application, of which Exhibit M is a part, must be ''signed by a person or persons having authority with respect thereto and having knowledge of the matters therein set forth, and must be verified under oath.''

[71] 5 CFR 1320.12 (2005).

Appendix A

Note: The following Appendix will not be published in the *Code of Federal Regulations.*

LIST OF PETITIONERS REQUESTING REHEARING AND/OR CLARIFICATION

[Petitioner acronyms]

Acronym	Name
APPA/NRECA	American Public Power Association and the National Rural Electric Cooperative Association.
EEI	Edison Electric Institute.
NARUC	National Association of Regulatory Utility Commissioners.
Occidental	Occidental Chemical Corporation.
TAPSG	Transmission Access Policy Study Group.

[FR Doc. E6–12047 Filed 7–26–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–002; Order No. 2006–B]

Standardization of Small Generator Interconnection Agreements and Procedures

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on clarification.

SUMMARY: The Federal Energy Regulatory Commission clarifies one issue regarding Order No. 2006–A. Order Nos. 2006–A and 2006 require all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs containing standard small generator interconnection procedures and a standard small generator interconnection agreement, and to provide interconnection service under them to small generating facilities of no more than 20 megawatts.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8532.

Kirk F. Randall, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8092.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Order on Clarification

I. Introduction

1. This order grants a request for clarification of Order No. 2006–A submitted by Southern California Edison (SoCal Edison).[1] Order Nos. 2006 and 2006–A require that all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce [2] have on file with the Commission standard generator interconnection procedures (*pro forma* SGIP) and a standard small generator interconnection agreement (*pro forma* SGIA) for interconnecting with the Transmission Provider's Transmission System any Small Generating Facility capable of producing no more than 20 megawatts of power.[3] Order No. 2006 requires that all public utilities subject to it modify their open access transmission tariffs (OATTs) to include the *pro forma* SGIP and *pro forma* SGIA. On November 22, 2005, the Commission issued Order No. 2006–A, which modified portions of Order No. 2006.[4]

II. Background

2. Under Order No. 2006, if the proposed interconnection of the Interconnection Customer's Small Generating Facility with the Transmission Provider's Transmission System does not qualify for review under the accelerated Fast Track Process or the 10 kW Inverter Process, it is evaluated using industry-standard interconnection studies. These studies—the Feasibility Study, the System Impact Study, and the Facilities Study—are performed by the Transmission Provider under the *pro forma* study agreements in the *pro forma* SGIP. These study agreements, to be signed by the Transmission Provider and Interconnection Customer, are similar to, but less complex than, similar agreements for Large Generators contained in Order No. 2003. The Commission developed the *pro forma* SGIP and SGIA to offer a simple process for interconnecting Small Generating Facilities with the nation's electric grid.[5] To this end, the three *pro forma* SGIP study agreements did not include boilerplate contract provisions

[1] Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 FR 34189 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005) (Order No. 2006), *order on reh'g*, Order No. 2006A, 70 FR 71760 (November 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005).

[2] A public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined in section 201(e) of the Federal Power Act (FPA). 16 U.S.C. 824(e) (2000). A non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy that condition by adopting these procedures and agreement, or by filing interconnection rules that substantially conform with, or are superior to, the *pro forma* SGIP and *pro forma* SGIA.

[3] Capitalized terms used in this order have the meanings specified in the Glossaries of Terms or the text of the *pro forma* SGIP or the *pro forma* SGIA. Small Generating Facility means the device for which the Interconnection Customer (the owner or operator of the Small Generating Facility) has requested interconnection. The utility with which the Small Generating Facility is interconnecting is the Transmission Provider. A Small Generating Facility is a device used for the production of electricity having a capacity of no more than 20 megawatts. The interconnection process begins when the Interconnection Customer submits an application for interconnection (Interconnection Request) to the Transmission Provider.

[4] Comparable documents for generators larger than 20 megawatts in size are set forth in Order No. 2003 and are referred to as the LGIP and LGIA. *See* Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003–A, 69 FR 15932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003–A), *order on reh'g*, Order No. 2003–B, 70 FR 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003–B), *order on reh'g*, Order No. 2003–C, 70 FR 37661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005) (Order No. 2003–C); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

[5] *See* Order No. 2006 at P 1, 509.

addressing issues such as waiver, amendment, and governing law.

III. Request for Clarification

3. Previously, in its request for rehearing of Order No. 2006, SoCal Edison urged the Commission to adopt miscellaneous boilerplate contract provisions in the *pro forma* study agreements. It proposed that the Commission include in the *pro forma* study agreements the miscellaneous provisions contained in article 12 of the *pro forma* SGIA. The Commission did not address this issue in Order No. 2006–A, and on rehearing of that order, SoCal Edison repeats its request.

Commission Conclusion

4. We agree with SoCal Edison that the *pro forma* SGIP study agreements should contain standard legal terms and conditions. Although these added provisions will lengthen the study agreements, we conclude that their inclusion will benefit both generators and Transmission Providers. Since the period of time between when the study agreements are signed and when the studies are complete is short, we expect that including standard legal protections will clarify each party's legal rights under the study agreements and minimize disputes.

5. We agree with SoCal Edison that certain of the provisions in article 12 of the SGIA provide the necessary clarity and legal protections to the parties, and will therefore adopt several of those provisions, with some minor editorial revisions, into each study agreement. Specifically, we will add to each study agreement articles 12.1 through 12.4 and 12.6 through 12.8 (including provisions on governing law, amendment, third-party beneficiaries, waiver, multiple counterparts, partnership, and severability); as well as articles 12.11 and 12.12 (subcontractors and reservation of rights).[6] We will not include article 12.9 (security arrangements) or article 12.10 (environmental releases) since neither of these provisions is relevant during the study phase of an interconnection project. Nor do we include article 12.5 (entirety of agreement), since it suggests that the SGIP may not be used to interpret the parties' obligations under the study agreements. The new provisions will become articles 13 through 21 of the Feasibility Study Agreement and the System Impact Study Agreement; and articles 11 through 19 of the Facilities Study Agreement. While this will increase the length of each study agreement, the increase in certainty justifies the inclusion of additional legal boilerplate.

6. We also clarify that section 4 of the *pro forma* SGIP (dealing with matters such as dispute resolution, confidentiality, record retention, etc.) also applies to the interconnection study process. These provisions, along with the contractual provisions being added to the study agreements themselves, provide the parties with a way to resolve disputes and the necessary legal protections should a dispute arise.

IV. Additional Changes to the SGIA

7. Finally, we note that articles 1.1 through 1.4 of the *pro forma* SGIA are not listed in the *pro forma* SGIA's Table of Contents. We will correct that here. The corrections to article 1 of the Table of Contents are included as Appendix 4 of this order.

V. Compliance

8. As in Order No. 2006, the tariffs of non-independent Transmission Providers will be deemed to have been modified to include the revised *pro forma* SGIP study agreements and SGIA on the effective date of this order. The non-independent Transmission Provider is not required to make any additional filing before it is otherwise required to do so by Order No. 2006.[7] If a non-independent Transmission Provider seeks to modify the *pro forma* study agreements it must make an FPA section 205 filing explaining why its changes are ''consistent with or superior to'' the Commission's *pro forma* study agreements.[8]

9. Independent Transmission Providers will be given an additional 60 days after the effective date of this order to make conforming changes. If the Commission has already acted on the independent Transmission Provider's Order Nos. 2006 and 2006–A compliance filing by the effective date of this order, the independent Transmission Provider must make a new compliance filing to incorporate the new provisions (or request variation). If the Commission has not yet acted on the independent Transmission Provider's Order Nos. 2006 or 2006–A compliance filings, the independent Transmission Provider must submit an amendment to its pending filing. Independent Transmission Providers that have been given an extension of time to make Order Nos. 2006 and 2006–A compliance filings beyond the effective date of this order must include the changes to their study agreements in that filing.

10. Any study agreements signed before the effective date of this order are grandfathered and need not be revised to include the revisions set forth in this order. All study agreements signed on or after the effective date of this order must include the revisions set forth in this order.

VI. Information Collection Statement

11. Order Nos. 2006 and 2006–A contain information collection requirements for which the Commission obtained approval from the Office of Management and Budget (OMB). The OMB Control Number for this collection of information is 1902–0203. By clarifying the provisions of Order Nos. 2006 and 2006–A, this order does not make substantive modifications to the Commission's information collection requirements and, accordingly, OMB approval for this order is not necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

VII. Document Availability

12. The Commission will publish the full text of this document in the **Federal Register**. Interested persons also may obtain this document from the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time) at 888 First Street, NE., Room 2A, Washington, DC. This document is also available electronically from the Commission's eLibrary system (*http://www.ferc.gov/docs-filing/elibrary.asp*) in PDF and Microsoft Word format. To access this document in eLibrary, type ''RM02–12'' in the docket number field and specify a date range that includes this document's issuance date. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Help Line at 202–502–8222 or the Public Reference Room at 202–502–8371 Press 0, TTY 202–502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date

13. Changes to Order Nos. 2006 and 2006–A made in this Order on Rehearing will become effective on August 28, 2006.

[6] The revised study agreements (not including unchanged attachments) are included as Appendices 1–3 to this order.

[7] *See* Order No. 2006 at P 544 (stating that a non-independent Transmission Provider wishing to adopt the *pro forma* SGIP and *pro forma* SGIA without modification may wait until it complies with the Commission's Electronic Tariff Filings rulemaking); *see also* Electronic Tariff Filings, Notice of Proposed Rulemaking, 69 FR 43929 (Jul. 23, 2004), FERC Stats. & Regs. ¶ 32,575 (2004).

[8] *See* Order No. 2006 at P 546.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1: Revised Feasibility Study Agreement

Attachment 6

Feasibility Study Agreement

THIS AGREEMENT is made and entered into this _____day of_____ 20____ by and between_____, a _____organized and existing under the laws of the State of_____, (''Interconnection Customer,'') and_____, a _____; existing under the laws of the State of_____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

WHEREAS, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on _____; and

WHEREAS, Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System; and

WHEREAS, Interconnection Customer has requested the Transmission Provider to perform a feasibility study to assess the feasibility of interconnecting the proposed Small Generating Facility with the Transmission Provider's Transmission System, and of any Affected Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause to be performed an interconnection feasibility study consistent the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of the feasibility study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The feasibility study shall be based on the technical information provided by the Interconnection Customer in the Interconnection Request, as may be modified as the result of the scoping meeting. The Transmission Provider reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard Small Generator Interconnection Procedures. If the Interconnection Customer modifies its Interconnection Request, the time to complete the feasibility study may be extended by agreement of the Parties.

5.0 In performing the study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing studies of recent vintage. The Interconnection Customer shall not be charged for such existing studies; however, the Interconnection Customer shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

6.0 The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the Small Generating Facility as proposed:

6.1 Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

6.2 Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

6.3 Initial review of grounding requirements and electric system protection; and

6.4 Description and non-binding estimated cost of facilities required to interconnect the proposed Small Generating Facility and to address the identified short circuit and power flow issues.

7.0 The feasibility study shall model the impact of the Small Generating Facility regardless of purpose in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the Interconnection Customer later changes the purpose for which the Small Generating Facility is being installed.

8.0 The study shall include the feasibility of any interconnection at a proposed project site where there could be multiple potential Points of Interconnection, as requested by the Interconnection Customer and at the Interconnection Customer's cost.

9.0 A deposit of the lesser of 50 percent of good faith estimated feasibility study costs or earnest money of $1,000 may be required from the Interconnection Customer.

10.0 Once the feasibility study is completed, a feasibility study report shall be prepared and transmitted to the Interconnection Customer. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a feasibility study.

11.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

13.0 *Governing Law, Regulatory Authority, and Rules:* The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

14.0 *Amendment:* The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 *No Third-Party Beneficiaries:* This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 *Waiver*

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 *Multiple Counterparts:* This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

18.0 *No Partnership:* This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.0 *Severability:* If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or

provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

20.0 *Subcontractors:* Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

21.0 *Reservation of Rights:* The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]

_____

Signed: _____

Name (Printed): _____

Title: _____

[Insert name of Interconnection Customer]

_____

Signed: _____

Name (Printed): _____

Title: _____

Appendix 2: Revised System Impact Study Agreement

Attachment 7

System Impact Study Agreement

THIS AGREEMENT is made and entered into this _____ day of _____ 20____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____, a _____ existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

WHEREAS, the Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by the Interconnection Customer on _____; and

WHEREAS, the Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System;

WHEREAS, the Transmission Provider has completed a feasibility study and provided the results of said study to the Interconnection Customer (This recital to be omitted if the Parties have agreed to forego the feasibility study.); and

WHEREAS, the Interconnection Customer has requested the Transmission Provider to perform a system impact study(s) to assess the impact of interconnecting the Small Generating Facility with the Transmission Provider's Transmission System, and of any Affected Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause to be performed a system impact study(s) consistent with the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of a system impact study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 A system impact study will be based upon the results of the feasibility study and the technical information provided by Interconnection Customer in the Interconnection Request. The Transmission Provider reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the system impact study may be extended.

5.0 A system impact study shall consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities that are required as a result of the Interconnection Request and non-binding good faith estimates of cost responsibility and time to construct.

6.0 A distribution system impact study shall incorporate a distribution load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, grounding reviews, and the impact on electric system operation, as necessary.

7.0 Affected Systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All Affected Systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the Transmission Provider has 20 additional Business Days to complete a system impact study requiring review by Affected Systems.

8.0 If the Transmission Provider uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required Network Upgrades, the system impact study shall consider all generating facilities (and with respect to paragraph 8.3 below, any identified Upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced—

8.1 Are directly interconnected with the Transmission Provider's electric system; or

8.2 Are interconnected with Affected Systems and may have an impact on the proposed interconnection; and

8.3 Have a pending higher queued Interconnection Request to interconnect with the Transmission Provider's electric system.

9.0 A distribution system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 30 Business Days after this Agreement is signed by the Parties. A transmission system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 45 Business Days after this Agreement is signed by the Parties, or in accordance with the Transmission Provider's queuing procedures.

10.0 A deposit of the equivalent of the good faith estimated cost of a distribution

system impact study and the one half the good faith estimated cost of a transmission system impact study may be required from the Interconnection Customer.

11.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

13.0 *Governing Law, Regulatory Authority, and Rules:* The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of __(where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

14.0 *Amendment:* The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 *No Third-Party Beneficiaries:* This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 *Waiver*

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 *Multiple Counterparts:* This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

18.0 *No Partnership:* This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.0 *Severability:* If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

20.0 *Subcontractors:* Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

21.0 *Reservation of Rights:* The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]

_____

Signed: _____

Name (Printed): _____

Title: _____

[Insert name of Interconnection Customer]

_____

Signed: _____

Name (Printed): _____

Title: _____

Appendix 3: Revised Facilities Study Agreement

Attachment 8

Facilities Study Agreement

THIS AGREEMENT is made and entered into this _____ day of _____ 20 ____ by and between _____ , a _____ organized and existing under the laws of the State of _____ , (''Interconnection Customer,'') and _____ , a _____ existing under the laws of the State of _____ , (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

WHEREAS, the Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by the Interconnection Customer on _____ ; and

WHEREAS, the Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System;

WHEREAS, the Transmission Provider has completed a system impact study and provided the results of said study to the Interconnection Customer; and

WHEREAS, the Interconnection Customer has requested the Transmission Provider to perform a facilities study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the system impact study in accordance with Good Utility Practice to physically and electrically connect the Small Generating Facility with the Transmission Provider's Transmission System.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause a facilities study consistent with the standard Small Generator Interconnection Procedures to be performed in accordance with the Open Access Transmission Tariff.

3.0 The scope of the facilities study shall be subject to data provided in Attachment A to this Agreement.

4.0 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to

implement the conclusions of the system impact study(s). The facilities study shall also identify (1) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of the Transmission Provider's Interconnection Facilities and Upgrades necessary to accomplish the interconnection, and (3) an estimate of the time required to complete the construction and installation of such facilities.

5.0 The Transmission Provider may propose to group facilities required for more than one Interconnection Customer in order to minimize facilities costs through economies of scale, but any Interconnection Customer may require the installation of facilities required for its own Small Generating Facility if it is willing to pay the costs of those facilities.

6.0 A deposit of the good faith estimated facilities study costs may be required from the Interconnection Customer.

7.0 In cases where Upgrades are required, the facilities study must be completed within 45 Business Days of the receipt of this Agreement. In cases where no Upgrades are necessary, and the required facilities are limited to Interconnection Facilities, the facilities study must be completed within 30 Business Days.

8.0 Once the facilities study is completed, a facilities study report shall be prepared and transmitted to the Interconnection Customer. Barring unusual circumstances, the facilities study must be completed and the facilities study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a facilities study.

9.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

10.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

11.0 *Governing Law, Regulatory Authority, and Rules:* The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.0 *Amendment:* The Parties may amend this Agreement by a written instrument duly executed by both Parties.

13.0 *No Third-Party Beneficiaries:* This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

14.0 *Waiver*

14.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

14.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

15.0 *Multiple Counterparts:* This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

16.0 *No Partnership:* This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

17.0 *Severability:* If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

18.0 *Subcontractors:* Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

18.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

18.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

19.0 *Reservation of Rights:* The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]

_____

Signed: _____

Name (Printed): _____

Title: _____

[Insert name of Interconnection Customer] __

_____

Signed: _____

Name (Printed): _____

Title: _____

Appendix 4: Revised Table of Contents for Article 1 of the SGIA

Table of Contents

[FR Doc. E6–11989 Filed 7–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 376

[Docket No. RM06–19–000, Order No. 680]

Commission Procedures During Periods of Emergency Requiring Activation of Continuity of Operations Plan

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this rule the Commission establishes procedures with regard to filing and other requirements if the Commission is required to implement its Continuity of Operations Plan in response to an emergency situation that disrupts communications to or from the Commission's headquarters or which otherwise impairs headquarters operations. The rule temporarily suspends filing requirements and ensures that deadlines for Commission actions that fall during the period the plan is in operation are met, thereby providing continuity in the conduct of the Commission's business and certainty to parties with business before the Commission.

EFFECTIVE DATE: The rule will become effective July 20, 2006.

FOR FURTHER INFORMATION CONTACT: John Clements, Office of the General Counsel, Federal Energy Regulatory Commission, Room 101–57, 888 First St., NE., Washington, DC 20426, 202–502–8070.

SUPPLEMENTARY INFORMATION: Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations to modify certain filing requirements and establish procedures to be effective during emergencies affecting the Commission that require it to implement its Continuity of Operations Plan (COOP Plan). The COOP Plan was developed to address emergency conditions lasting up to 30 days during which Commission headquarters operations may be temporarily disrupted or communications may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements.[1] The COOP Plan is designed to ensure that the Commission is able to quickly restore its ability to perform essential functions should such conditions occur.[2] The rule temporarily suspends filing requirements and ensures that deadlines for Commission actions that fall during the period the plan is in operation are met, thereby providing continuity in the conduct of the Commission's business and certainty to parties with business before the Commission.[3]

II. Discussion

A. Acceptance and Suspension of Pending Filings Requiring Commission Action by a Date Certain

2. The rule provides for the acceptance and suspension, during emergencies that disrupt normal operations and communications and require activation of the COOP Plan,[4] of pending filings upon which the Commission would be required to act by a date certain during the period of emergency. The effective date(s) of such filings shall be the date(s) requested, to be effective subject to refund and further order of the Commission. These include filings made pursuant to:

- Section 4 of the Natural Gas Act;
- Section 205 of the Federal Power Act; and
- Section 6(3) of the Interstate Commerce Act.

B. Electric Reliability Organization Penalties

3. If the date on which a penalty imposed by an Electric Reliability Organization pursuant to FPA § 215 would take effect falls during a period when the COOP Plan is activated, review of such penalty by the Commission will be deemed to be initiated and the penalty shall be stayed pending further action by the Commission.

C. Consistency of State Action With Reliability Standard

4. If the date by which a Commission determination under FPA § 215 as to whether a State action is inconsistent with a reliability standard is required to be made falls during a period when the COOP Plan is activated, the effectiveness of the State action will be deemed to be stayed pending further action by the Commission.

D. Tolling of Time Periods for Commission Action

5. The rule also tolls for purposes of further consideration the time periods for certain Commission actions that will be required during the emergency. These include the:

- 60-day period for acting on requests for Exempt Wholesale Generator or Foreign Utility Company status;
- 60-day period for acting on interlocking directorate applications;
- 90-day period for acting on requests for certification of qualifying facility status;
- 60-day period for acting on holding company and transaction exemptions and waivers;
- 180-day period for acting on public utility and holding company applications for dispositions, considerations, or acquisitions;
- 150-day period for acting on intrastate pipeline applications for approval of proposed rates;
- Period ending 60 days prior to the Electric Reliability Organization's (ERO) fiscal year for acting on the ERO's budget;
- 60-day period for acting on notifications that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule or agreement;
- 60-day period for acting on applications for review of a penalty imposed by the ERO for violation of a reliability standard;
- 45-day Protest period for protesting Prior Notice Filings, and the 30-day period for resolving and filing to withdraw such Protests; [5]
- 30-day period for acting on requests for rehearing;
- Time periods prescribed in 18 CFR 385.714–715 for acting on interlocutory appeals and certified questions.

E. Suspension of Certain Requirements

6. Disruptions to normal operations and communications during an

[1] The emergency conditions which might trigger activation of the COOP Plan are not identical to ''emergency conditions'' as heretofore defined in 18 CFR 376.201. One of the revisions discussed below modifies that section to cover the emergency conditions that would trigger activation of the COOP Plan.

[2] More information concerning the COOP Plan can be found on the Commission's Web site at *www.ferc.gov/coop.asp.*

[3] Activation of the COOP Plan affects communications with headquarters only, and does not affect communications required to be made directly to the Commission's Regional Offices.

[4] Not all disruptions of communications with the Commission's headquarters will require activation of the COOP Plan and the triggering of these regulations. For instance, a brief outage of eLibrary that prevents entities from making electronic filings would not trigger activation of the COOP Plan.

[5] The result of these suspensions is that no facilities subject to the prior notice provisions of the Commission's blanket certificate regulations not finally authorized prior to the activation of the COOP Plan shall be constructed during its activation in the absence of specific authorization by the Commission.

emergency that require activation of the COOP Plan could make compliance with some Commission statutes, regulations, or orders difficult or impossible. This rule suspends those requirements during the emergency. The affected regulatory requirements include mandatory filings, submissions, and notifications, as well as voluntary notices, contacts, or reports to the Commission. They include:

- Filings to comply with Commission orders, including orders issued by administrative law judges;
- Filings required to be made by a date certain under the Commission's regulations or orders;
- Motions to intervene and protests, and notices of intervention;
- Comments responding to proposed rulemakings or technical conferences;
- Responses to data requests;
- Self-reports of violations;
- Responses to staff audit reports;
- Contacts with the Commission's Enforcement Hotline;
- Accounting filings required by the Commission's Uniform Systems of Accounts; and
- Forms, reports, and submissions required to be filed by a date certain.

7. The rule also grants certain relief with respect to the Commission's Standards of Conduct for Transmission Providers that are also affected by the emergency affecting the Commission. Specifically, such Transmission Providers may, for 30 days, delay compliance with the requirement of § 358.4(a)(2) of the regulations [6] to report to the Commission each emergency that resulted in any deviation from the Standards of Conduct within 24 hours of such deviation. Unless the emergency prevents the Transmission Provider from posting information on the OASIS or Internet Web site, the Transmission Provider must comply with those posting requirements. The 30-day period may be extended as necessary.

F. Intention Not To Act

8. The rule provides that, during the emergency conditions that require activation of the COOP Plan, the Commission will not initiate an enforcement action under § 210(h)(2) of the Public Utility Regulatory Policies Act of 1978.[7] Applicants may, as a consequence, bring their own enforcement actions in the appropriate courts.

G. Suspension of Proceedings Before Administrative Law Judges

9. The rule also suspends all hearings, prehearing conferences, settlement conferences, and meetings before administrative law judges while the COOP Plan is activated.

H. Delegations of Authority

10. This rulemaking also revises the Commission's rules regarding emergency operations to ensure that delegations of authority will remain effective in the event the COOP Plan is activated. The revisions clarify § 376.206 of the Commission's regulations to specify with more particularity what persons will be authorized to exercise delegated authority in the event the officials to whom delegations are made under Part 375 are unavailable. Section 376.204(b)(2) also is being revised to update the list of officials designated to act on behalf of the Commission in the event of an emergency. Finally, the definition of ''emergency condition'' contained in § 376.201 is being revised to include specifically any condition that necessitates activation of the COOP Plan.

I. Related Matters

11. The COOP Plan includes procedures to inform the public when the COOP Plan is activated, when alternate channels of communication are established, when normal operations and communications are resumed, and the length of any grace period to comply with requirements that were suspended during the emergency. A press release will be sent to major wire services, industry press, and appropriate metropolitan area radio stations announcing that the Commission has activated the COOP Plan. The Commission's alternative Web site (*http://www.fercalt.gov*) will be activated and a notice that the COOP Plan has been activated will be prominently displayed thereon. The alternative Web site will act as a resource for the press, industry, and general public. An additional press release will be sent to appropriate media outlets when the COOP Plan is deactivated and the Commission's headquarters constituted, and appropriate modifications made to the alternative Web site.

12. Finally, during periods when the COOP is activated, the Commission will continue to act on requests to ensure continued construction of essential natural gas facilities with sensitive construction timelines, on Commencement of Service requests, and on completion of dam safety work, in a manner consistent with the maintenance of environmental protections. The Commission will further ensure that its personnel are available to respond to and address: Plant accidents or reportable incidents at LNG facilities; dam safety, public safety, and security incidents at jurisdictional hydropower projects; and regional and interregional bulk power systems incidents and emergencies, including blackouts. Alternate channels of communication will include measures to ensure that these activities can go forward unhindered.

Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980 (RFA) [8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[9] The Commission is not required to make such an analysis if a rule would not have such an effect. This Final Rule merely temporarily suspends or waives certain filings and other requirements. Therefore, this Final Rule will not have a significant economic impact on a substantial number of small entities and no regulatory flexibility analysis is required.

Information Collection Statement

14. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[10] This Final Rule contains no new information collections. Therefore, OMB review of this Final Rule is not required.

Environmental Analysis

15. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the

[6] 18 CFR 358.4(a)(2).

[7] 16 U.S.C. 824a–3(h)(2).

[8] 5 U.S.C. 601–12.

[9] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201.

[10] 5 CFR 1320.12.

regulations being amended.[11] This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Document Availability

16. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

17. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact Online Support at 1–866–208–3676 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at (202) 502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Effective Date and Congressional Notification

19. These regulations are effective on July 20, 2006. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties. The Commission finds that notice and public procedure are unnecessary because no new burden or regulatory requirement is imposed on regulated entities or the general public. For the same reason, the Commission finds good cause to waive the customary 30-day notice period before the effective date of this Final Rule.

List of Subjects in 18 CFR Part 376

Civil defense, Organization and functions (Government agencies).

[11] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 376, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; OPERATIONS DURING EMERGENCY CONDITIONS

■ 1. The authority citation for part 376 continues to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 2. In § 376.201, paragraph (a)(3) is revised and paragraph (a)(4) is added to read as follows:

§ 376.201 Emergency condition defined.

* * * * *

(a) * * *

(3) At a time specified by the authority of the President; or

(4) At such time that the Commission's Continuity of Operations Plan is activated; and

* * * * *

■ 3. In § 376.204, paragraphs (b)(2)(ii), (b)(2)(v), (b)(2)(vi), (b)(2)(viii), (b)(2)(ix) and (b)(2)(x) are revised to read as follows:

§ 376.204 Delegation of Commission's authority during emergency conditions.

* * * * *

(b) * * *

(2) * * *

(ii) Director of the Office of Energy Markets and Reliability;

* * * * *

(v) Director of the Office of Enforcement;

(vi) Deputy Directors, Office of Energy Markets and Reliability, in order of seniority;

* * * * *

(viii) Deputy General Counsels, in order of seniority;

(ix) Associate General Counsels and Solicitor, in order of seniority;

(x) Assistant Directors and Division heads, Office of Energy Markets and Reliability; Assistant Directors and Division heads, Office of Energy Projects; Assistant General Counsels; and Assistant Directors and Division heads, Office of Enforcement; in order of seniority.

* * * * *

■ 4. Section 376.206 is revised to read as follows:

§ 376.206 Delegation of functions of certain Commission staff members.

When, by reason of emergency conditions, the Secretary, Director of any Office or Division, or officer in charge of a regional office, is not available and capable of carrying out his or her functions, such functions are delegated to staff members designated by the Chairman to perform such functions. If no staff member so designated is available and capable of carrying out their functions, such functions are delegated to the next subordinate employee in the Office or Division of the highest grade and longest period of service in that grade. If no subordinate employee of the Office or Division is available and capable of carrying out their functions, such functions are delegated to the Commission employee of the highest grade and longest period of service in that grade who is available and capable of carrying out their functions.

■ 5. Section 376.209 is added to read as follows:

§ 376.209 Procedures during periods of emergency requiring activation of the Continuity of Operations Plan.

(a)(1) The Commission's Continuity of Operations Plan is activated during emergency conditions lasting up to 30 days during which Commission headquarters operations may be temporarily disrupted or communications with the Commission's headquarters may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements. The provisions of this paragraph are effective upon activation of the Plan. The Commission will notify the public that the Plan has been activated by sending a press release announcing that fact to major wire services, industry press, and appropriate metropolitan area radio stations announcing that the Commission has activated the Plan. The Commission's alternative Web site (*http://www.fercalt.gov*) will be activated and a notice that the Plan has been activated will be prominently displayed thereon. The alternative Web site will act as a resource for the press, industry, and general public. An additional press release will be sent to appropriate media outlets when the Plan is deactivated and the Commission's headquarters constituted, and appropriate modifications made to the alternative Web site.

(2) During periods when the Continuity of Operations Plan is activated, the Commission will continue to act on requests to ensure continued construction of essential natural gas facilities with sensitive construction timelines, on Commencement of Service requests, and on completion of dam

safety work, in a manner consistent with the maintenance of environmental protections. The Commission will further ensure that its personnel are available to respond to plant accidents or reportable incidents at LNG facilities, and address dam safety, public safety, and security incidents at jurisdictional hydropower projects. Alternate channels of communication will include measures to ensure that these activities can go forward unhindered.

(b) *Standards of conduct for transmission service providers.* During periods when the Commission's Continuity of Operations Plan is activated, a Transmission Provider affected by the same emergency affecting the Commission may, for 30 days, delay compliance with the requirement to report to the Commission each emergency that resulted in any deviation from the standards of conduct within 24 hours of such deviation. If the emergency prevents a Transmission Provider from posting information on the OASIS or Internet Web site, the Transmission Provide may, for 30 days, also delay compliance with the requirements of § 358.4(a)(2) of this chapter to post this information on the OASIS or Internet Web site, as applicable. Upon application by any such Transmission Provider, the Commission may extend these periods.

(c) *Tolling of time periods for Commission action.* The Commission tolls, for purposes of further consideration, the time period in which the Commission must act on the following matters if the time period during which the Commission would ordinarily be required to act closes during the period when the Continuity of Operations Plan is activated:

(1) 60-day period to act on requests for Exempt Wholesale Generator or Foreign Utility Company status;

(2) 90-day period for acting on requests for certification of qualifying facility status;

(3) 60-day period for acting on interlocking directorate applications;

(4) 60-day period for acting on Public Utility Holding Company Act exemptions and waivers;

(5) 180-period for acting on applications under § 203 of the FPA;

(6) 150-day period for acting on intrastate pipeline applications for approval of proposed rates;

(7) Period ending 60 days prior to the Electric Reliability Organization's (ERO) fiscal year for acting on the ERO's budget;

(8) 60-day period for acting on notifications that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule or agreement;

(9) 60-day period for acting on applications for review of a penalty imposed by the ERO for violation of a reliability standard;

(10) 45-day Protest period for protesting Prior Notice Filings, and the 30-day period for resolving and filing to withdraw such Protests;

(11) 30-day period for acting on requests for rehearing; and

(12) Time periods for acting on interlocutory appeals and certified questions.

(d) *Suspension of certain requirements.* During periods when the Commission's Continuity of Operations Plan is activated, requirements for the following filings, submissions, and notifications are suspended.

(1) Filings to comply with Commission orders, including orders issued by administrative law judges;

(2) Filings required to be made by a date certain under the Commission's regulations or orders;

(3) Motions to intervene and protests, and notices of intervention;

(4) Comments responding to proposed rulemakings or technical conferences;

(5) Responses to data requests;

(6) Self-reports of violations;

(7) Responses to staff audit reports;

(8) Contacts with the Commission's Enforcement Hotline;

(9) Accounting filings required by the Commission's Uniform Systems of Accounts; and

(10) Forms required to be filed by a date certain.

(e) *Acceptance and Suspension of Rate Filings.* When the date by which the Commission is required to act on filings made pursuant to section 4 of the Natural Gas Act, sections 205 of the Federal Power Act, and section 6(e) of the Interstate Commerce Act falls during periods when the Continuity of Operations Plan is activated, such filings shall be deemed to be accepted and suspended and made effective on the requested effective date, subject to refund and further order of the Commission.

(f) *Electric Reliability Organization Penalties.* If the date on which an Electric Reliability Organization imposes a penalty under Federal Power Act § 215 would take effect falls during a period when the COOP Plan is activated, review of such penalty by the Commission shall be deemed to be initiated and the penalty shall be stayed pending further action of the Commission.

(g) *Consistency of State action with reliability standard.* If the date by which a Commission determination under FPA § 215 as to whether a State action is inconsistent with a reliability standard is required to be made falls during a period when the COOP Plan is activated, the effectiveness of the State action will be deemed to be stayed pending further action by the Commission.

(h) *Suspension of Evidentiary Hearings.* During periods when the Continuity of Operations Plan is activated, all hearings, prehearing conferences, settlement conferences, and meetings before administrative law judges are suspended.

(i) *Enforcement Actions.* During periods when the Continuity of Operations Plan is activated, the Commission will not initiate an enforcement action under section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978.

[FR Doc. E6–11990 Filed 7–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2006N–0276]

Medical Devices; Immunology and Microbiology Devices; Classification of Fecal Calprotectin Immunological Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying fecal calprotectin immunological test systems into class II (special controls). The special control that will apply to these devices is the guidance document entitled, ''Class II Special Controls Guidance Document: Fecal Calprotectin Immunological Test Systems.'' The agency is classifying these devices into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of these devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for these devices.

DATES: This rule is effective August 28, 2006. The classification was effective April 26, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Moore, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither

Rd., Rockville, MD 20850, 240–276–0493.

SUPPLEMENTARY INFORMATION:

I. What is the Background of this Rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless the device is classified or reclassified into class I or class II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

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

In accordance with section 513(f)(1) of the act, FDA issued an order on March 21, 2006, classifying the Genova Diagnostics, Inc. PhiCal™ Fecal Calprotectin Immunoassay in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On March 23, 2006, Genova Diagnostics, Inc. submitted a petition requesting classification of the PhiCal™ Fecal Calprotectin Immunoassay under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Genova Diagnostics, Inc. PhiCal™ Fecal Calprotectin Immunoassay can be classified into class II with the establishment of special controls. FDA believes that special controls, in addition to general controls, are adequate to provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish special controls to provide such assurance.

The device is assigned the generic name ''fecal calprotectin immunological test system,'' and it is identified as an *in vitro* diagnostic device that consists of reagents used to quantitatively measure, by immunochemical techniques, fecal calprotectin in human stool specimens. The device is intended for *in vitro* diagnostic use as an aid in the diagnosis of inflammatory bowel diseases (IBD), specifically Crohn's disease and ulcerative colitis, and as an aid in differentiation of IBD from irritable bowel syndrome.

FDA has identified the risks to health associated with this type of device as inaccurate risk assessment and improper patient management. Failure of the system to perform as indicated, or error in interpretation of results, could lead to inaccurate risk assessment and improper management of patients with IBD. Specifically, a falsely low fecal calprotectin reading could result in a determination that the patient does not have IBD, which could delay appropriate treatment. A falsely high fecal calprotectin reading could result in a determination that the patient has IBD, which could lead to unnecessary evaluation and testing, or inappropriate treatment decisions. The use of assay results without consideration of other diagnostic testing and the total clinical picture could also pose a risk.

FDA believes that the class II special controls guidance document will aid in mitigating the potential risks to health by providing recommendations for the validation of performance characteristics, including software validation, control methods, reproducibility, and clinical studies. The guidance document also provides information on how to meet premarket [510(k)] submission requirements for the device. FDA believes that the special controls guidance document, in addition to general controls, addresses the risks to health identified in the previous paragraph and provides reasonable assurances of the safety and effectiveness of the device. Thus, on April, 26, 2006, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification at 21 CFR 866.5180.

Following the effective date of the final classification rule, manufacturers will need to address the issues covered in this special controls guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Thus, this type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, before marketing the device, which contains information about the fecal calprotectin immunological test system they intend to market.

II. What is the Environmental Impact of This Rule?

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

III. What is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action as defined by the Executive order.

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

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

IV. Does This Final Rule Have Federalism Implications?

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

V. How Does This Rule Comply with the Paperwork Reduction Act of 1995?

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

VI. What References are on Display?

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

1. Petition from Genova Diagnostics, Inc., for reclassification of the PhiCal™ Fecal Calprotectin Immunoassay submitted March 22, 2006.

List of Subjects in 21 CFR Part 866

Medical devices.

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

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

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

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

■ 2. Section 866.5180 is added to subpart F to read as follows:

§ 866.5180 Fecal calprotectin immunological test system.

(a) *Identification.* A fecal calprotectin immunological test system is an *in vitro* diagnostic device that consists of reagents used to quantitatively measure, by immunochemical techniques, fecal calprotectin in human stool specimens. The device is intended for*in vitro* diagnostic use as an aid in the diagnosis of inflammatory bowel diseases (IBD), specifically Crohn's disease and ulcerative colitis, and as an aid in differentiation of IBD from irritable bowel syndrome.

(b) *Classification.* Class II (special controls). The special control for these devices is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Fecal Calprotectin Immunological Test Systems.'' For the availability of this guidance document, see § 866.1(e).

Dated: July 19, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–11975 Filed 7–26–06; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–8202–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Arctic Surplus Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, is publishing a direct final notice of deletion of the Arctic Surplus Site (Site), located in Fairbanks, Alaska, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Alaska, through the Alaska Department of Environmental Conservation (ADEC) because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective September 25, 2006 unless EPA receives adverse comments by August 28, 2006. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1990–0011, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instruction for submitting comments.
- E-mail: *gusmano.jacques@epa.gov*.
- Fax: (907) 271–3424.

• Mail: Jacques L. Gusmano, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 222 West 7th Avenue, Suite 19, Anchorage, Alaska 99513.

• Hand Delivery: 222 West 7th Avenue, Suite 19, Anchorage, Alaska 99513. 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–SF–1990–0011. 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 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 in the Deletion Docket Bibliography. 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. Deletion Docket materials are available electronically or in hard copy at the EPA's Region 10 Superfund Records Center, 1200 Sixth Avenue, Seattle, Washington 98101 and the Defense Reutilization & Marketing Office (Administrative Records) Building 5001, Mile Badger Road, Fairbanks, AK 99703 at (907) 353–1143. The Region 10 Superfund Records Center is open from 8 a.m. to 4:30 p.m. by appointment, Monday through Friday, excluding legal holidays. The Superfund Records Center telephone number is (206) 553–4494.

FOR FURTHER INFORMATION CONTACT: Jacques L. Gusmano, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 222 West 7th Avenue, Suite 19, Anchorage, Alaska 99513, phone: (907) 271–1271, fax: (907) 271–3424, e-mail: *gusmano.jacques@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 10 is publishing this direct final notice of deletion of the Arctic Surplus Site, which is located in Fairbanks, Alaska from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 25, 2006 unless EPA receives adverse comments by August 28, 2006 on this document. If adverse comments are received within the 30-day public comment period for this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Arctic Surplus Salvage Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

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

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of this site, the selected remedy is protective of human health and the environment; however, because the remedy leaves waste on site above levels that allow for unlimited use and unrestricted exposure, a review of the selected remedy will be conducted at least every five years from initiation of the remedial action.

III. Deletion Procedures

The following procedures were used for the intended deletion of Arctic Surplus:

(1) EPA Region 10 issued a Record of Decision (ROD) and an Explanation of Significant Differences (ESD) which documented the remedial action goals.

(2) The Defense Logistics Agency (DLA) issued a Remedial Action Report and a Final Closeout Report indicating remedial activities completed was issued by EPA.

(3) The State of Alaska has concurred with the proposed deletion decision.

(4) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in the *Fairbanks Daily News-Miner* and is being distributed to appropriate Federal, State, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(5) All relevant documents have been compiled in the site deletion docket and made available in the local site information repositories. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date. EPA will prepare a response to comments, and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of the Site from the NPL does not in itself, create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, Sec. 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Arctic Surplus Site, which consists of several land parcels, occupies 24.5 acres and is located on the northeast corner of Badger Road and the Old Richardson Highway, approximately six miles southeast of Fairbanks, Alaska. The western portion of the site was owned by the Department of Defense (DOD) and, from 1944 to 1956, a landfill used by the military was located on the parcel. Following its sale by DOD in 1959, the entire site was used as a salvage yard, resulting in the accumulation of a large amount of both salvageable and non-salvageable materials. The salvage yard activities that have impacted the site include:

■ Lead battery recycling; batteries were stored and then cracked to collect lead for recycling;

■ Draining oil from transformers, some of which contained polychlorinated biphenyls (PCBs);

■ Burning spent transformer oils to fuel an incinerator used to reclaim copper from transformer coils and lead from batteries;

■ Salvaging mechanized equipment, which may have caused fluids to leak;

■ Accumulating spent ordnance and explosives-related scrap; and,

■ Storing oils, chemicals, containerized gases, and other hazardous materials improperly.

Arctic Surplus was the subject of a Preliminary Assessment Report under the CERCLA dated June 29, 1987, and a Site Inspection in August/September 1988. The Site was proposed for the NPL on October 26, 1989, and was listed on August 30, 1990.

Since its identification as a CERCLA site, numerous investigations and removal actions have been performed to characterize the Site and address potential Site risks. Removal actions were completed during 1989, 1990, and 1991 by EPA and by the Defense Logistics Agency (DLA) for DOD. During 1989, the site was fenced, approximately 22,000 pounds of asbestos were removed, and approximately 75 gallons of the pesticide, chlordane, were stabilized and removed. During 1990, more extensive removal actions included the dismantling of an incinerator and removal and offsite disposal of associated ash and contaminated soil, and the removal and offsite disposal of approximately 13 cubic yards of PCB-contaminated soil, 315 cubic yards of lead-contaminated soil from ''battery-cracking,'' and approximately 160 cubic yards of chlordane-contaminated soil. The removal actions also included bulking and removal of containerized waste, removal of battery casings, draining and disposal of transformer oils, and capping of specific areas of contaminated soil. In 1991, another removal action was completed to investigate alleged buried hazardous wastes and delineate the extent of localized contamination. To facilitate the investigation, approximately 300 non-PCB transformers were moved and staged for removal.

The Remedial Investigation (RI) began in 1992 and was completed in 1994. In the RI, several potential source areas were identified including on the western half of the Site:

■ Battery cracking areas;

■ Buried materials, including the old military landfill;

■ Incinerator area; and

■ Transformer processing areas.

Additional potential source areas in other parts of the site were drum storage areas, and salvage and debris piles scattered all around the property. The two primary contaminants of concern (COCs) identified were lead and PCBs. Lead was identified at concentrations greater than 500 milligrams per kilogram (mg/kg) in surface soils over much of the western portion of the Site. It was also found at elevated concentrations in a limited number of samples of off-property soils, presumably transported by traffic, filling, and grading, or particulate transport from wind. PCB transformer oils were found in old transformers, drums, and oil-stained soils in several areas of the Site. During the 1990 removal actions, free product in containers was removed and heavily contaminated soils were excavated and removed from the Site. Subsequent analyses of the surface soil throughout much of the western part of the Site detected elevated concentrations of PCBs in surface soils, locally in excess of 100 mg/kg. Groundwater quality was studied in the RI as a potential contaminant pathway. One on-site monitoring well contained trichloroethylene (TCE) ranging from 6–14 ug/l (drinking water standard for TCE, 5 ug/l); this on-site well was located in the center of the property. No wells down gradient of this well, or any area residential wells had TCE concentrations above MCLs.

Selected Remedy

On September 28, 1995, the Regional Administrator signed a Record of Decision (ROD) selecting the following remedy:

■ Relocation and sorting of salvage material and debris, which must be moved to provide access to the contaminated soil;

■ Excavation and stockpiling of soil exceeding cleanup standards for treatment or disposal;

■ Onsite treatment of soil exceeding 50 mg/kg PCBs by solvent extraction;

■ Onsite treatment of soil exceeding the lead industrial cleanup standard of 1,000 mg/kg by stabilization/solidification.

■ Offsite disposal of soil exceeding hot spot concentrations for pesticides of 21 mg/kg 4,4′-DDD, 15 mg/kg 4,4′-DDT, and 0.44 ug/kg 2,3,7,8-TCDD equivalence for dioxin/furans;

■ Consolidation of treated soils into a containment area over the old closed military landfill;

■ Capping of the containment area with a steep-sided cap to prevent future use; and

■ Implementation of institutional controls including long-term groundwater monitoring, and operation and maintenance of fences and the cap; restrictions to prevent use of groundwater, maintain industrial use, and prevent any unauthorized access or use of the capped area.

The design process to implement the ROD began in June 2002 with a reevaluation of the remedy selection. The design team consisted of representatives from EPA, ADEC, DLA, and DLA's consultants. The purpose of the reevaluation was to assess the current condition of the site relative to the ROD's goals and objectives, and to identify any improvements to the remediation process that could be implemented. The proposed treatment and cap design changes were evaluated by EPA and an Explanation of Significant Difference (ESD), signed on June 17, 2003, documented the changes to the original ROD. The changes to the ROD included in the ESD are:

■ Treatment of soil with PCB concentration between 10 and 50 mg/kg by solidification/stabilization and placement of the treated soil in the onsite containment area,

■ Offsite disposal of soil with PCBs greater than 50 mg/kg,

■ Capping the new waste containment area with a geosynthetic clay liner (GCL) instead of compacted silt,

■ Flattening the cap profile to allow for reuse of the land, and

■ Develop permanent institutional controls that will be attached to the property and transfer with the land.

Response Actions

EPA was negotiating an Agreement on Consent (AOC) with DOD when the remedial actions were begun. The final AOC was signed on December 11, 2003. The other PRPs did not participate in the cleanup actions. The cleanup activities that were conducted had two major objectives; to implement the ROD including the ESD changes; and to remove or demilitarize any ordnance or potentially explosive items. A Remedial Action Work Plan for the ROD which specified soil cleanup activities was issued in May 2003. Implementation of the soil remedy began in June 2003. The CERCLA remedial actions included:

■ Relocating, sorting, and decontamination of salvage material, ancillary scrap (transformers, compressed gas cylinders, etc.), and debris to access the contaminated soil beneath;

■ Excavation and stockpiling of contaminated soils with concentrations greater than 1,000 mg/kg lead or 10 mg/kg PCBs and off-property soils with concentrations greater than 400 mg/kg lead and/or 1 mg/kg PCBs;

■ Excavation and segregation of soil with concentrations of PCBs greater than 50 mg/kg; dioxin concentrations greater than 0.44 ug/kg; DDD concentrations greater than 21 mg/kg; and/or DDT concentrations greater than 15 mg/kg;

■ Shipment of dioxin-, DDT-, and DDD-contaminated soil and soil with greater than 50 mg/kg PCBs offsite for disposal;

■ Solidification/stabilization of contaminated soil containing lead at concentrations greater than 1,000 mg/kg, and soil with greater than 10 mg/kg but less than 50 mg/kg PCB;

■ Placement of stabilized soils into a containment area, which also encompasses the old existing landfill located in the southwestern section of the site; and

■ Capping the stabilized soil in the containment area and the existing landfill with a GCL cap.

Operation and Maintenance

Pursuant to the Administrative Order of Consent dated December 11, 2003, the long-term groundwater monitoring and the operations and maintenance (O&M) actions will be performed by DOD for the first five years, ending in September 2008. There are seven existing onsite groundwater monitoring wells that will be used for the long-term monitoring. There are three wells specifically downgradient of the new containment cell and one upgradient. The three other wells included in the long-term monitoring are along the northern property boundary. Provisions are included to extend this commitment as needed to maintain the site. The current O&M plan includes semi-annual groundwater monitoring and assessment of cap integrity.

Institutional Controls

The institutional controls relating to site access and land use restrictions were not part of the Administrative Order, but were made part of a State of Alaska action using a document called ''Conservation Easement,'' recorded on September 21, 2004. This type of enforceable document was used at Arctic Surplus because there was no Settlement Document, i.e., consent decree, signed by all of the PRPs, only an Administrative Order with DOD. The signatories to the Conservation Easement for Arctic Surplus are the property owners, who have agreed to the terms of the Conservation Easement. The administration and enforcement of this document for Arctic Surplus was delegated to ADEC by the Alaska Department of Natural Resources (ADNR) by a Management Right Assignment dated September 29, 2004. This Assignment has been filed by ADNR for the State of Alaska. This Conservation Easement document also includes EPA as a partner to ADEC for management and enforcement. ADEC has the responsibility to implement the Conservation Easement as an institutional control, and will provide EPA and the PRPs with a notice of any problems based on any site inspections.

Five-Year Review

Hazardous substances remain at the Site above levels that allow unlimited use and unrestricted exposure after the completion of the remedial action. Pursuant to CERCLA section 121(c) and as provided in the current guidance on Five-Year Reviews: OSWER Directive 9355.7–03B–P, Comprehensive Five-Year Review Guidance, dated June 2001, EPA must conduct a statutory Five-Year Review. The first Five-Year Review Report will be completed by December 22, 2008.

Community Involvement

EPA held nine public meetings, issued 13 fact sheets and published notices of three public comment periods in the **Federal Register** and in local newspapers. The meetings and fact sheets focused on CERCLA-required comment periods, informational meetings, enforcement actions, alternative analysis or schedule announcements, and public involvement sessions. Since completion of remedial actions there have been minimal public comments.

Applicable Deletion Criteria

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''responsible parties have implemented all appropriate response actions required.'' EPA, with the concurrence of the State of Alaska, believe that this criterion for deletion has been met. There is no significant threat to human health or the environment and, therefore, no further remedial action is necessary.

State Concurrence

In a letter dated May 23, 2006, from the Alaska Department of Environmental Conservation (ADEC), ADEC concurs with the proposed deletion of the Arctic Surplus Site from the NPL.

V. Deletion Action

The EPA, with concurrence of the State of Alaska, has determined that all appropriate responses under CERCLA have been completed, and that no

further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 25, 2006 unless EPA receives adverse comments by August 28, 2006. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. In this case, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: July 18, 2006.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for ''Arctic Surplus, Fairbanks, Alaska.''

[FR Doc. E6–11809 Filed 7–26–06; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 71, No. 144
Thursday, July 27, 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 HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2006–0035]

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Automated Biometric Identification System. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before August 28, 2006.

ADDRESSES: You may submit comments, identified by docket number DHS–2006–0035, by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: (202) 298–5201.
- Mail: Steve Yonkers, US–VISIT Privacy Officer, 245 Murray Lane, SW., Washington, DC 20538; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202–4220.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, US–VISIT Privacy Officer, 245 Murray Lane, SW., Washington, DC 20538, by telephone (202) 298–5200, or by facsimile (202) 298–5201.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) is publishing a revision to existing Privacy Act systems of records known as Enforcement Operational Immigration Records/Automated Biometric Identification System (ENFORCE/IDENT) in today's edition of the **Federal Register**. This proposed rule would exempt certain records from the access and amendment provisions of law as permitted by the Privacy Act.

ENFORCE is the primary administrative case management system for Immigration and Customs Enforcement (ICE). IDENT is the primary repository of biometric information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws (including the immigration law); investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. IDENT is a centralized and dynamic DHS-wide biometric database that also contains limited biographic and encounter history information needed to place the biometric information in proper context. The information is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies.

For business purposes these two systems were operated jointly. Now, as a part of operational and technical restructuring, these systems will be operated independently—IDENT under the management of US–VISIT and ENFORCE under the management of ICE. Consequently, the ENFORCE/IDENT system notice is being split into two system notices: One for ENFORCE and one for IDENT. The Privacy Act notice for ENFORCE/IDENT was last published in the **Federal Register** on March 20, 2006 (71 FR 13987). In this notice of proposed rulemaking, DHS now is proposing to exempt IDENT, in part, from certain provisions of the Privacy Act.

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, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of 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 recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemption from certain requirements of the Privacy Act for IDENT. Some information in IDENT relates to official DHS national security, immigration and border management, and law enforcement activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and of immigration and border management and law enforcement personnel; to ensure DHS's ability to obtain

information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived.

List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Amend Appendix C to part 5 by adding the following new paragraph 6:

Appendix C—DHS Systems of Records Exempt From the Privacy Act

* * * * *

6. The Department of Homeland Security Automated Biometric Identification System (IDENT) consists of electronic and paper records and will be used by DHS and its components. IDENT is the primary repository of biometric information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws (including the immigration law); investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. IDENT is a centralized and dynamic DHS-wide biometric database that also contains limited biographic and encounter history information needed to place the biometric information in proper context. The information is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies.

Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), and (e)(4)(H). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation; and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f)(2 through 5) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) and thereby would not require DHS to establish requirements or rules for records which are exempted from access.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 16, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. E6–11996 Filed 7–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AH41

Guaranteed Loan Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule; correction and extension of comment period.

SUMMARY: This document corrects the telephone number for the facsimile machine (''fax'') for submission of public comments on the proposed rule entitled Guaranteed Loan Fees published May 15, 2006 (71 FR 27978–27980) and extends the comment period. The original comment period for the proposed rule closed on July 14, 2006, and FSA is extending it until August 4, 2006. Respondents who sent comments to the earlier fax number are encouraged to contact the person named below to find out if their comments were received and re-submit them to fax number below if necessary.

FOR FURTHER INFORMATION CONTACT: Galen VanVleet at (202) 720–3889. All comments and supporting documents on this rule may be viewed by contacting the information contact. All comments received, including names and addresses, will become a matter of public record.

SUPPLEMENTARY INFORMATION:

(1) This document corrects the proposed rule entitled Guaranteed Loan Fees published May 15, 2006 (71 FR 27978–27980). Due to a drafting error the telephone number for the fax machine for submission of comments was incorrect. Although the machine of the person sending the comment would have indicated that the transmission failed, and a correct number could have been obtained by calling the agency contact, FSA has decided to correct the proposed rule and extend the comment period to ensure that all parties who wish to comment on the proposed rule are provided the maximum opportunity to do so. Accordingly, in the proposed rule, in the first column, in the **ADDRESSES** section, the fax number shown, ''202–690–6797'' is corrected to read ''202–720–6797.''

(2) As a result of the correction, this document also extends the comment period until August 4, 2006, in order to ensure that the public can submit timely comments.

Signed in Washington, DC, on July 21, 2006.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

[FR Doc. E6–11979 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

8 CFR Parts 215 and 235

[DHS 2005–0037]

RIN 1601–AA35

United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Enrollment of Additional Aliens in US–VISIT

AGENCY: Office of the Secretary, DHS.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Homeland Security established the United States Visitor and Immigrant Status Technology (US–VISIT) program in 2003 to verify the identities and travel documents of aliens. US–VISIT automates this verification by comparing biometric identifiers, and by comparing biometric identifiers with information drawn from intelligence and law enforcement watchlists and databases. Aliens subject to US–VISIT may be required to provide fingerscans, photographs, or other biometric identifiers upon arrival at, or departure from, the United States. Currently, aliens entering the United States pursuant to a nonimmigrant visa, or those traveling without a visa as part of the Visa Waiver Program, are subject to US–VISIT requirements, with certain limited exceptions. Under this proposed rule, the Department of Homeland Security will be extending US–VISIT requirements to all aliens with the exception of aliens who are specifically exempted and Canadian citizens applying for admission as B1/B2 visitors for business or pleasure.

DATE: Written comments must be submitted on or before August 28, 2006.

ADDRESSES: You may submit comments identified by Docket Number DHS–2005–0037 by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting the comments. All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- Written comments may be submitted to Michael Hardin or Craig Howie, Senior Policy Advisors, US–VISIT, Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Michael Hardin or Craig Howie, Senior Policy Advisors, US–VISIT, Department of Homeland Security, 1616 Fort Myer Drive, 18th Floor, Arlington, Virginia 22209, (202) 298–5200.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) in accordance with several statutory mandates that collectively require DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens; verifies the identities of aliens; and authenticates travel documents presented by such aliens through the comparison of biometric identifiers. Aliens subject to US–VISIT may be required to provide fingerscans, photographs, or other biometric identifiers upon arrival at, or departure from, the United States. DHS views US–VISIT as a biometrically-driven program designed to enhance the security of United States citizens and visitors while expediting legitimate travel and trade, ensuring the integrity of the immigration system, and protecting visitors' personal information.

The statutes that authorize DHS to establish US–VISIT include, but are not limited to:

- Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000, Public Law 106–215, 114 Stat. 337 (June 15, 2000);
- Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (October 30, 2000);
- Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 271, 353 (October 26, 2001);
- Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act) Public Law 107–173, 116 Stat. 543, 552 (May 14, 2002); and

• Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 (December 17, 2004).

DHS provided detailed abstracts of the particular sections of the statutes that established and authorized the US–VISIT program in two prior rulemakings. See 69 FR 468 (January 5, 2004); 69 FR 53318 (August 31, 2004).

On January 5, 2004, DHS implemented the first phase of the US–VISIT biometric component by publishing an interim final rule in the **Federal Register** providing that aliens seeking admission into the United States through nonimmigrant visas must provide fingerprints, photographs, or other biometric identifiers upon arrival in or departure from the United States at air and sea ports of entry. Effective September 30, 2004, nonimmigrants seeking to enter the United States without visas under the Visa Waiver Program (VWP) also are required to provide biometric information under US–VISIT. 69 FR 53318 (August 31, 2004). US–VISIT is now operational for entry at 115 airports, 15 sea ports, and at 154 land border ports of entry. The most up-to-date list of ports of entry where US–VISIT is operational can be found at: *http://www.dhs.gov/usvisit.*

The following categories of aliens currently are expressly exempt from US–VISIT requirements:

• Aliens admitted on an A–1, A–2, C–3, G–1, G–2, G–3, G–4, NATO–1, NATO–3, NATO–4, NATO–5, or NATO–6 visa;

• Children under the age of 14;

• Persons over the age of 79; and

• Certain officials of the Taipei Economic and Cultural Representative Office and members of their immediate families seeking admission on E–1 visas.

8 CFR 235.1(d)(1)(iv). In addition, the Secretary of State and Secretary of Homeland Security may jointly exempt classes of aliens from US–VISIT. The Secretaries of State and Homeland Security, as well as the Director of the Central Intelligence Agency, also may exempt any individual from US–VISIT. 8 CFR 235.1(d)(iv)(B).

In many cases, US–VISIT begins overseas, at United States consular offices issuing visas, where aliens' biometrics (digital finger scans and photographs) are collected and checked against a database of known criminals, suspected terrorists, and those who have previously violated immigration laws. When the alien arrives at the port of entry, US–VISIT compares the biometrics of the person (finger scans and a digital photograph) to verify that the person at the port of entry is the same person who received the visa. For those whose biometrics were not captured overseas, a Customs and Border Protection (CBP) officer at the port of entry collects digital finger scans and a digital photograph of the alien. These biometrics may be

• Checked against watchlists and previous uses of the document;

• Verified at the time of exit; and

• Compared during subsequent interactions, such as a future admission.

There are additional aliens that have not yet been subject to the requirements of US–VISIT, but who are not expressly exempt from US–VISIT requirements. Through this proposed rule, DHS proposes to amend its regulations to expand DHS biometric collection and processing through the US–VISIT program to all aliens except those specifically exempted. DHS will implement this rule in a way that minimizes risk of impact to travel and trade.[1]

DHS has determined that expanding US–VISIT to additional aliens will improve public safety, national security, and the integrity of the immigration process. Establishing and verifying the identity of an alien and whether that alien is admissible to the United States based on all relevant information is critical to the security of the United States and the enforcement of the United States immigration laws. Processing additional aliens in US–VISIT reduces the risk that an individual traveler's identity (and travel document) could be used by another individual to enter the United States. By linking the alien's biometric information with the alien's travel documents, DHS reduces the likelihood that another individual could later assume that identity or use that document to gain admission to the United States.

At present, US–VISIT biometrically screens alien arrivals at all air and sea ports of entry at primary inspection. US–VISIT also screens alien arrivals at land border ports of entry during secondary inspection rather than primary inspection because of the volume and facility limitations of the land border ports. Referral of aliens to secondary inspection at the land border ports of entry is premised on processes that already require secondary inspection (*e.g.*, Form I–94 issuance) or an officer's indication that further investigation of the alien's identity or admissibility is needed to properly determine that the alien is admissible.

Since US–VISIT biometric processing was initiated on January 5, 2004, the program has successfully identified a number of aliens with criminal or immigration violations that would not otherwise have been known. Between January 5, 2004, and May 25, 2006, DHS took adverse action against more than 1160 individuals based on information obtained through the US–VISIT biometric screening process. By ''adverse action,'' DHS means that the alien was:

• Arrested pursuant to a criminal arrest warrant;

• Denied admission, placed in expedited removal, and returned to the country of last departure; or

• Otherwise detained and denied admission to the United States.

Adding additional aliens to the US–VISIT program will likely result in DHS identifying additional aliens who are inadmissible or who otherwise present security and criminal threats, including those who may be traveling improperly on previously established identities and those who potentially pose a threat to the security interests of the United States.

II. Additional Aliens Subject to US–VISIT

A. Specific Groups of Aliens Proposed To Be Added

Under existing regulations, DHS has been collecting and storing biometric data on specific classes of aliens in US–VISIT. Nonimmigrant aliens seeking admission to the United States pursuant to a nonimmigrant visa, B–1/B–2 Visa and Border Crossing Card (Form DSP 150), or under the Visa Waiver Program, currently provide biometrics for processing in US–VISIT. 8 CFR 235.1(d)(1)(ii). This proposed change to the regulations would permit enrollment of any alien in US–VISIT, with the exception of those Canadian citizens applying for admission as B–1/B–2 visitors for business or pleasure, and those specifically exempted.

Several large classes of aliens will be affected by this change in the regulations, including:

• Lawful Permanent Residents (LPRs).

• Aliens seeking admission on immigrant visas.

• Refugees and asylees.

[1] Immediately following the introduction of US–VISIT in January 2004, CBP introduced a ''wait time mitigation strategy.'' In the event that wait times at air and sea primary inspection last longer than one hour, and if the threat level was at yellow, green, or blue, a port may incrementally relieve congestion by eliminating the fingerprinting requirement for successive classifications of people, for example, aliens aged 14–17 when accompanied by an adult, or aliens between the ages of 60–79. However, this mitigation strategy has rarely been needed even after the inclusion of Visa Waiver Program aliens. Nonetheless, the procedures remain in place and can be used following the inclusion of additional aliens, if necessary.

• Certain Canadian citizens who receive a Form I–94 at inspection or who require a waiver of inadmissibility.
• Aliens paroled into the United States.
• Aliens applying for admission under the Guam Visa Waiver Program.

The authorizing statutes, which all refer to ''aliens'' without differentiation, support the inclusion of lawful permanent residents (LPRs) into the US–VISIT program. See section 101(a)(3) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101(a)(3) (''The term 'alien' means any person not a citizen or national of the United States''). For an LPR, a Form I–551, permanent resident card, serves as a travel or entry document. Pursuant to 8 CFR 211.1(a)(2), a Form I–551 is a documentary substitute for an immigrant visa for readmission to the United States as a permanent resident. Accordingly, the US–VISIT biometric collection will now apply to LPRs.

DHS is not proposing that LPRs submit any additional information above and beyond that which is currently required. As part of the adjustment of status process, under current regulations, an alien between the ages of 14 and 79 (the same age parameters as applied to US–VISIT enrollment and verification) must submit a set of 10 fingerprints and photographs to DHS, Citizenship and Immigration Services (USCIS), as applicable. (See Form I–485, ''Application to Register Permanent Residence or Adjust Status''). As part of the immigrant visa BioVisa process, the Department of State has collected two index finger prints. Thus, many LPRs have already submitted fingerprints and, for US–VISIT purposes, taking finger scans at the time of admission will be a biometric verification of the LPR's identity against those prints previously collected. However, DHS does not have electronically-searchable fingerprints for all LPRs. When those LPRs are encountered, their finger scans will be collected for an initial electronic enrollment. The LPR will provide the same biometrics (finger scans, photograph), under either the ''verification'' or ''enrollment'' scenario. There is no difference in what information is collected from the perspective of the LPR or in how other aliens are processed.

Similarly, DHS already possesses biometric data through the USCIS application process for asylees and refugees. *See, e.g.*, Form I–589 (Application for Asylum). To the greatest extent practicable, DHS will use this existing information to initially ''enroll'' these aliens into US–VISIT. The US–VISIT process at ports of entry is generally therefore a verification against the biometric information previously submitted to DHS, to ensure that the alien is the person whom he or she claims to be.

The inclusion of aliens being admitted with an immigrant visa is to ensure parity with LPRs and because an immigrant visa is a United States-issued travel document. As noted above, these aliens submitted fingerprints as part of the immigrant visa application process. Aliens applying for admission with an immigrant visa are currently submitting fingerprints and photographs as part of the admission process.

Most Canadians traveling from within the Western Hemisphere do not require a visa or other documentation to enter the United States for short business or pleasure trips. This rule does not change 8 CFR 212.1(a)(1), which exempts those Canadian citizens from the requirement to present a passport or nonimmigrant visa prior to admission into the United States. This will be addressed in upcoming rulemakings involving the Western Hemisphere Travel Initiative. See 70 FR 52037 (September 1, 2005) (ANPRM). Canadians, other than those described below, will not be enrolled in, or verified against, US–VISIT at this time. Canadian citizens accustomed to border crossings for the purposes of shopping, visiting friends and family, or taking a holiday in the United States (typically activities encompassed by the nonimmigrant B–2, visitor for pleasure category) are not included in US–VISIT by the provisions of this proposed rule.

Canadians who would be included in US–VISIT as a result of adoption of this proposed rule will be those issued a Form I–94, including:

(1) Canadians applying for admission in the following nonimmigrant classifications:
• C, aliens in transit to or through the United States;
• D, alien crew members (Form I–95);
• F, all alien students and dependents;
• H, all alien specialty, nurse, temporary agricultural and nonagricultural workers, trainees and dependents;
• I, all representatives of foreign media and dependents;
• J, exchange visitors and dependents;
• L, intracompany transferees and dependents;
• M, vocational or nonacademic student and dependents;
• O, aliens of extraordinary ability or achievement, including assistants and dependents;
• P, aliens internationally recognized as athletes, entertainers or participants in a culturally unique program and dependents;
• Q–1 and Q–3, international cultural exchange program participant and dependents;
• R, religious workers and dependents;
• S, alien witnesses or informants and dependents;
• T, victims of trafficking and dependents;
• TN under the provisions of the North American Free Trade Agreement; and

(2) Canadians who are granted a waiver of inadmissibility in order to enter the United States.

Processing these Canadian citizens biometrically through US–VISIT will ensure parity with other aliens applying for admission to the United States, and it will increase security. Aliens who are currently required to present a valid nonimmigrant visa are required to provide biometrics as part of admission, including those Canadian citizens required to obtain either an E (Treaty Trader or Investor) nonimmigrant or K (fiancé/fiancée or spouse of a United States citizen) nonimmigrant visa. Canadians who require a waiver of inadmissibility are already required to provide biometric data in secondary inspection at the port of entry as part of the waiver application. This change in regulations will permit DHS to better verify identity and determine if new derogatory information exists on subsequent encounters.

DHS acknowledges that some Canadian citizens holding valid nonimmigrant status, such as an H–1B worker, commute into the United States daily for purposes of employment while continuing to reside in Canada. At northern land borders, CBP officers at ports of entry have existing protocols for this situation and will not refer Canadian commuter to secondary inspection for a biometric verification against the US–VISIT system. These Canadian citizens will be screened biometrically via US–VISIT when applying for a new multiple-entry Form I–94 which typically happens at approximately six month intervals or when referred to secondary inspection for other reasons.

All aliens paroled into the United States will provide biometrics and be processed through US–VISIT. Parolees are aliens who are permitted to enter the United States at a port of entry without being legally admitted, and may be subject to specific terms as a condition of the parole. Section 212(d) of the Act, 8 U.S.C. 1182(d). Because these aliens

are ultimately allowed physically into the United States, they should be subject to the same requirements as other aliens admitted to the United States.

B. Mechanism for Enrolling Additional Aliens

Operationally, these additional aliens will be processed through US–VISIT differently at the air and sea ports of entry than at the land ports of entry.

At air and sea ports of entry, the controlled environment—where all arriving aliens and United States citizens are interviewed by a CBP officer—currently allows for biometric collection and US–VISIT processing at primary inspection for the majority of the arriving aliens addressed in this rulemaking. Therefore, DHS expects to be able to include all non-exempt aliens into US–VISIT almost immediately at the air and sea ports.

At the land border ports of entry, where aliens arrive by vehicle and as pedestrians, the additional aliens will be processed through US–VISIT somewhat differently at the time of initial application for admission to the United States. LPRs will go through biometric collection if they are referred to secondary inspection by the primary inspecting officer. The officer has the discretion to send any person to secondary inspection if the officer has any question as to the true identity of person bearing the document or of person's admissibility to the United States. The remaining aliens will be processed through US–VISIT in secondary inspection the same way other aliens currently subject to US–VISIT (those that require a Form I–94) at the land ports of entry. This will not impose an additional imposition since these aliens are already processed in secondary since they generally require a Form I–94.

DHS is including additional aliens into the US–VISIT program in the same way it has included aliens with Form DSP–150 Border Crossing Cards (BCCs). To date, at land borders only holders of BCCs who use the BCC as a visa and thus require a Form I–94 are generally required to be processed through US–VISIT. US–VISIT currently does not process, on a regular basis, applicants for admission with BCCs who wish to use the document simply as a BCC, which authorizes them to stay in the United States for up to 30 days, within 25 miles of the United States-Mexican border (75 miles in parts of Arizona). This policy has allowed DHS to take a measured approach to implementing US–VISIT at the land borders and to ensure that US–VISIT processing does not have a negative impact on the land border communities. However, even under this current policy, an alien seeking admission with a BCC and not obtaining a Form I–94 can still be required to undergo US–VISIT processing at the discretion of the inspecting officer.

DHS requests public comment on all of these issues, but would regard as most helpful comments on the ramifications of adding additional classifications at land borders. DHS places a great deal of importance on input from the public concerning the performance and implementation of the US–VISIT program. In particular, DHS seeks input on specific steps or milestones that should take place prior to processing future additional classifications of aliens in US–VISIT at land borders.

III. Regulatory Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). There is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities and DHS does not believe that US–VISIT processing will impede the free flow of travel and trade, especially such travel and trade relating directly to small entities.

B. Executive Order 12866

Under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993) (as amended), DHS has determined that this proposed rule is a ''significant regulatory action'' because there is significant public interest in issues pertaining to national security, immigration policy, and international trade and travel relating to this proposed rule. Accordingly, this proposed rule has been submitted to the Office of Management and Budget (OMB) for review.

DHS currently processes through US–VISIT, using biometrics, all aliens entering the United States with a nonimmigrant visa or under the Visa Waiver Program at any air, sea, or land port of entry. As of May 25, 2006, US–VISIT biometric screening has resulted in DHS's ability to take adverse action against 1160 aliens whose prior criminal actions rendered the alien ineligible for admission or who pose a security threat to the United States. This proposed rule will strengthen the ability of CBP officers to identify and take action against persons whose conduct renders them security threat and therefore ineligible for admission. For example, DHS expects that, just as 1160 nonimmigrants have been intercepted by DHS using the biometric screening of US–VISIT, additional individuals applying for admission with permanent resident cards or reentry permits will be found, by the comparison of biometric identifiers, to have violated the terms of their permanent resident status. Such violations may be the result of the commission of various crimes, tampering with the actual permanent resident card, or attempting to gain entry by attempting to assume the identity of another LPR. Such violations could ultimately result in the LPR losing permanent resident status and possible removal from the United States, or the exclusion or removal of an individual from the United States for fraud. Based on the number of permanent resident cards that are seized by CBP officers at ports of entry (approximately 15,000 in FY 2005) and DHS Forensic Document Laboratory analyses each month (approximately 250), DHS estimates that US–VISIT biometric screening has the potential to identify a significant number of aliens each month in need of additional investigation prior to being admitted to the United States. In addition, based on the numbers of refugee travel documents (519) and immigrant visas (2,287) that CBP officers intercepted in attempts to use the documents fraudulently by aliens during FY2005, US–VISIT estimates that interception of fraudulently used documents will increase with the introduction of biometric verification of identity.

DHS expects similar results—an increase in the number of aliens identified with possible admission-related or immigration problems—by including the other groups of aliens highlighted in this proposed rule into the US–VISIT biometric screening protocol. For example, aliens holding immigrant visas have a six-month

validity window from the date the visa is issued to arrive in the United States. Events could occur during this time period that could result in the alien being found inadmissible to the United States that might only be discovered as the result of biometric comparisons. Over the last several years, over one million aliens have entered the United States annually on immigrant visas.

Refugees and asylees—appearing before Government officers in many instances without the benefit of even the most basic form of identity documentation—potentially pose a risk to public safety and security. In many instances, the United States Government is providing these individuals with a new identity. It is important to recognize that for refugees and asylees, US–VISIT will be verifying the identity of these aliens by comparing the biometrics collected at the time of an application for admission to the United States with the biometrics that were already collected during the initial refugee or asylee adjudication process.

Similarly, aliens paroled into the United States warrant the additional screening derived by using US–VISIT. While the majority of these aliens have been screened overseas in order to determine whether a parole should be granted, it is in the security interest of the United States to verify that the individuals who arrive at the border are the same individuals screened for parole. Approximately 150,000 aliens are granted parole into the United States each year.

The costs associated with implementation of this proposed rule for select travelers not otherwise exempt from US–VISIT requirements include an increase of approximately 15 seconds in initial inspection processing time (additional biometric collection) per applicant over the current average inspection time. No significant difference is anticipated in the processing of an alien traveling with a visa or under the VWP, as compared to any other alien who is exempted from the visa requirements. These ports of entry encompass over 99% of all air and sea border traffic and over 95% of all land border traffic for these alien classifications. DHS, through CBP, has carefully monitored the impact of US–VISIT biometric data collection on the inspection of applicants for admission at air, sea, and land borders. At air and sea ports, internal studies have established that the biometric collection adds no more than 15 seconds on average to the inspection processing time at primary inspection. At land border ports, internal studies have shown positive results, and in some POEs the amount of time to process an alien for admission using the US–VISIT process was actually shorter than it had been previously due to the automation of data collection and implementation of a standard process. A close examination of the first three land ports of entry to begin US–VISIT biometric collection as part of admission found that the average processing time for applicants requiring a Form I–94 or Form I–94W actually decreased and sometimes resulted in significantly reduced processing times.

Port of entry	Average form I–94 processing time before implementing US–VISIT	Average form I–94 processing time after implementing US–VISIT
Port Huron, MI	11 minutes, 42 seconds	9 minutes, 58 seconds.
Douglas, AZ	4 minutes, 16 seconds	3 minutes, 12 seconds.
Laredo, TX	12 minutes, 10 seconds	2 minutes, 18 seconds.

Accordingly, DHS does not believe that US–VISIT processing impedes the free flow of travel and trade.

In addition, over time, the efficiency with which the process is employed will increase, and the process can be expected to further improve. DHS will not apply this rule to all aliens crossing land borders until technological advancements are identified, tested, and implemented to ensure that the land border commerce and traffic concerns are significantly mitigated. DHS may choose to implement this rule in the air and sea environment before the land border environment. As mentioned in the August 31, 2004, rule, DHS has developed a number of mitigation strategies, not unlike those already available to CBP under other conditions to mitigate delays. DHS, while not anticipating significant delays for travelers, will nevertheless develop procedures and strategies to deal with any significant delays that may occur through unanticipated and unusually heavy travel periods.

C. Executive Order 13132

Executive Order 13132 requires DHS to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Such policies are defined in the Executive Order to include rules 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.''

DHS has analyzed this proposed rule in accordance with the principles and criteria in the Executive Order and has determined that this proposed rule 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. Therefore, DHS has determined that this proposed rule does not have federalism implications. This rule provides for the collection by the Federal Government of biometric identifiers from certain aliens seeking to enter or depart from the United States, for the purpose of improving the administration of federal immigration laws and for national security. States do not conduct activities with which the provisions of this specific rule would interfere.

D. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that the regulation clearly identifies preemptive effects, effects on existing federal laws and regulations, identifies any retroactive effects of the proposal, and other matters. DHS has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (March

22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year (adjusted for inflation with 1995 base year). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA requires DHS to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome option that achieves the objective of the rule. Section 205 allows DHS to adopt an alternative, other than the least costly, most cost-effective, or least burdensome option if DHS publishes an explanation with the final rule. This proposed rule will not result in the expenditure, by State, local or tribal governments, or by the private sector, of more than $100 million annually. Thus, DHS is not required to prepare a written assessment under UMRA.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, as this proposed rule will not result in an annual effect on the economy of $100 million or more.

G. Trade Impact Assessment

The Trade Impact Agreement Act of 1979, Public Law 96–39, tit IV, secs. 401–403, 93 Stat. 242 (July 26, 1979), as amended (19 U.S.C. 2531–2533), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for United States standards. DHS has determined that this proposed rule will not create unnecessary obstacles to the foreign commerce of the United States and that any minimal impact on trade that may occur is legitimate in light of this rule's benefits for the national security and public safety interests of the United States. In addition, DHS notes that this effort considers and utilizes international standards concerning biometrics, and will continue to consider these standards when monitoring and modifying the program.

H. National Environmental Policy Act of 1969

DHS will analyze the actions contained in this proposed rule for purposes of complying with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and Council on Environmental Quality (CEQ) regulations, 40 CFR parts 1501–1508. Depending upon the environmental impacts, DHS will conduct the appropriate level of analysis in accordance with NEPA.

I. Paperwork Reduction Act

This proposed rule establishes the process by which DHS will require certain aliens who cross the borders of the United States to provide fingerprints, photograph(s), and potentially other biometric identifiers upon their arrival and departure at designated ports. These requirements constitute an information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB Control Number for this collection is 1600–0006.

Since this rule provides a mechanism for the addition of new aliens by Notice in the **Federal Register** who may be photographed and fingerprinted, and who may be required to provide other biometric identifiers, DHS has submitted the required Paperwork Reduction Change Worksheet (OMB–83C) to the Office of Management and Budget (OMB) reflecting the increase in burden hours and OMB has approved the changes.

J. Public Privacy Interests

As discussed in the January 5, 2004, (69 FR 468) and August 31, 2004, (69 FR 53318) interim rules, US–VISIT records will be protected consistent with all applicable privacy laws and regulations. Personal information will be kept secure and confidential and will not be discussed with, nor disclosed to, any person within or outside US–VISIT other than as authorized by law and as required for the performance of official duties. In addition, careful safeguards, including appropriate security controls, will ensure that the data is not used or accessed improperly. The DHS Chief Privacy Officer will review pertinent aspects of the program to ensure that these proper safeguards and security controls are in place. The information will also be protected in accordance with the DHS published privacy policy for US–VISIT. Affected persons will have a three-stage process for redress if there is concern about the accuracy of information. An individual may request a review or change, or a DHS officer may determine that an inaccuracy exists in a record. A DHS officer can modify the record. If the individual remains dissatisfied with this response, he or she can request assistance from the US–VISIT Privacy Officer, and can ask that the Privacy Officer review the record and address any remaining concerns.

The DHS Privacy Office will advise US–VISIT to further ensure that the information collected and stored in IDENT and other systems associated with US–VISIT is being properly protected under the privacy laws and guidance. US–VISIT also has a program-dedicated Privacy Officer to handle specific inquiries and to provide additional advice concerning the program.

Finally, DHS will maintain secure computer systems that will ensure that the confidentiality of an individual's personal information is maintained. In doing so, the Department and its information technology personnel will comply with all laws and regulations applicable to government systems, such as the Federal Information Security Management Act of 2002, Title X, Public Law 107–296, 116 Stat. 2259–2273 (Nov. 25, 2002) (codified in scattered sections of titles 6, 10, 15, 40, and 44 U.S.C.); Information Management Technology Reform Act (Clinger-Cohen Act), 40 U.S.C. 11101 *et seq.*; Computer Security Act of 1987, 40 U.S.C. 1441 *et seq.* (as amended); Government Paperwork Elimination Act, 44 U.S.C. 101, 3504; and Electronic Freedom of Information Act of 1996, 5 U.S.C. 552.

List of Subjects

8 CFR Part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR Part 235

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 215—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

1. The authority citation for part 215 continues to read as follows:

Authority: 8 U.S.C. 1104; 1184; 1185 (pursuant to E.O. 13323, published January 2, 2004), 1365a and note, 1379, 1731–32.

2. Section 215.8 is proposed to be amended by revising paragraph (a)(1) as follows:

§ 215.8 Requirements for biometric identifiers from aliens on departure from the United States.

(a)(1) The Secretary of Homeland Security, or his designee, may establish pilot programs at land border ports of entry, and at up to fifteen air or sea ports of entry, designated through notice in the **Federal Register**, through which the Secretary or his delegate may require an alien admitted to or paroled into the United States, other than aliens exempted under paragraph (a)(2) of this section or Canadian citizens under section 101(a)(15)(B) of the Act who were not otherwise required to present a visa or have been issued Form I–94 or Form I–95 upon arrival at the United States, who departs the United States from a designated port of entry, to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

3. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323 published on January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32.

4. Sections 235.1 is proposed to be amended by revising paragraphs (d)(1)(ii) as follows:

§ 235.1 Scope of examination.

* * * * *

(d) * * *

(1) * * *

(ii) The Secretary of Homeland Security or his delegate may require any alien seeking admission to or parole into the United States, other than aliens exempted under paragraph (d)(1)(iv) of this section or Canadian citizens under section 101(a)(15)(B) of the Act who are not otherwise required to present a visa or be issued Form I–94 or Form I–95 for admission or parole into the United States, to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States. The failure of an applicant for admission to comply with any requirement to provide biometric identifiers may result in a determination that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act or any other law.

* * * * *

Dated: July 13, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6–11993 Filed 7–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771 and 774

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–05–22884]

RIN 2125–AF14 and 2132–AA83

Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This proposal would modify the procedures for granting approvals under 23 U.S.C. 138 and 49 U.S.C. 303 (hereafter referred to as ''Section 4(f)'' [1]) in several ways. First, this proposal clarifies the factors to be considered and the standards to be applied when determining if an alternative for avoiding the use of Section 4(f) property is feasible and prudent. Second, this NPRM proposes to clarify the factors to be considered when selecting a project alternative in situations where all alternatives use Section 4(f) property and no feasible and prudent avoidance alternative exists. Third, this proposal would establish procedures for determining that the use of a Section 4(f) property has *de minimis* impacts. Fourth, the proposal updates the regulation to recognize statutory and common-sense exceptions for uses that advance Section 4(f)'s preservationist goals; as well as the option of conducting certain Section 4(f) evaluations on a programmatic basis. Fifth, this proposal would move the Section 4(f) regulations out of the agencies' National Environmental Policy Act regulations (23 CFR part 771, ''Environmental Impact and Related Procedures''), into a separate part of 23 CFR, with a reorganized structure that is easier to use.

DATES: Comments must be received on or before September 25, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written Comments: Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

Comments. You may submit comments identified by the docket number (FHWA–05–22884) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2478.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Supplementary Information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: For FHWA, Diane Mobley, Office of the

[1] Section 4(f) of the Department of Transportation Act of 1966 was technically repealed in 1983 when it was codified without substantive change at 49 U.S.C. 303. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions. This regulation continues to refer to Section 4(f) as such because it would create needless confusion to do otherwise; the policies Section 4(f) engendered are widely referred to as ''Section 4(f)'' matters.

Chief Counsel, 202–366–1372, or Lamar Smith, Office of Project Development and Environmental Review, 202–366–8994. For FTA, Joseph Ossi, Office of Planning and Environment, 202–366–1613, or Christopher VanWyk, Office of Chief Counsel, 202–366–1733. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. for FHWA, and 9 a.m. to 5:30 p.m. for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

SAFETEA–LU. Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144) is the impetus for this rulemaking action. Section 6009(b) directs the Secretary of Transportation (Secretary) to promulgate regulations within 1 year (*i.e.*, by August 10, 2006). The rulemaking must clarify ''the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives, to using Section 4(f) properties for transportation projects. Section 4(f) properties are significant parks, recreation areas, refuges, and historic sites described in section 4(f) of the Department of Transportation Act of 1966, (Pub. L. 89–670, 80 Stat. 931) currently codified at 23 U.S.C. 138 and 49 U.S.C. 303. A joint FHWA–FTA regulation implementing Section 4(f) is currently located at 23 CFR 771.135. The regulation does not currently address what factors should be considered and what standards should be applied when determining if an avoidance alternative is feasible and prudent. This rulemaking proposes to establish those factors and standards as directed by SAFETEA–LU.

The rulemaking also includes a new, alternative method of compliance for uses with *de minimis* impacts to a Section 4(f) property. Prior to SAFETEA–LU, Section 4(f) prohibited all uses of Section 4(f) properties for transportation projects unless the agency determined there was no feasible and prudent avoidance alternative and all possible planning to minimize harm had occurred. Section 6009(a) of SAFETEA–LU amended the statute such that uses with *de minimis* impacts can be approved without an analysis of avoidance alternatives. This section does not need regulations to become effective. However, we propose to incorporate the procedures implementing this provision into this rule. These procedures reflect the statutory provisions, and guidance issued on December 13, 2005 and provided to the public via FHWA's Web site at *http://www.fhwa.dot.gov/hep/legreg.htm*.

History. Section 4(f) was enacted during the peak of the Interstate Highway construction program. At that time, many proposed Interstate Highways threatened major urban parks and historic districts. Much of the early case law on Section 4(f) was decided prior to the establishment of implementing regulations on cases involving these major new highways, prompting some courts to issue strict interpretations of Section 4(f). This began with the Supreme Court's seminal decision in *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971) (''*Overton Park*'').

In *Overton Park*, the Supreme Court considered a challenge to the Secretary's approval for the construction of a six-lane highway, mostly at-grade through Memphis, Tennessee's centerpiece, inner-city Overton Park. Much of the planning for the highway location occurred prior to the enactment of Section 4(f), and the reasons for FHWA's rejection of avoidance alternatives were not documented. The Court remanded the case to the district court on other grounds to answer several questions that could not be determined from the sparse administrative record. However, in its opinion, the Court articulated a high standard for compliance with Section 4(f), stating that Congress intended the protection of parkland to be of paramount importance. The Court further opined that an avoidance alternative to using Section 4(f) property must always be selected unless it would present ''uniquely difficult problems'' or require ''costs or community disruption of extraordinary magnitude.'' *Id.*, at 411–12, 416. The Court remanded the case back to the district court. This very stringent reading of Section 4(f) has guided courts ever since in applying Section 4(f) to specific decisions made by transportation agencies.

In the years following *Overton Park*, courts around the country applied the decision differently to essentially similar situations, reaching different conclusions as to how various factors may be considered and what weight may be attached to those factors when the agency determines if an avoidance alternative is or is not feasible and prudent. Some court decisions produced relatively strict and inflexible, almost mechanical, interpretations of Section 4(f) and resulted in an even more stringent interpretation of what is feasible and prudent than did *Overton Park.* Those decisions severely restricted the agencies' ability to make tradeoffs among societally important resources and forced the selection of alternatives that had other significant adverse economic, social, and environmental costs, even if the impact to the Section 4(f) property was minor or the property itself relatively unimportant. One early decision, for example, held that any harm to 4(f) property, no matter how small, would trigger the application of Section 4(f). *Louisiana Environmental Society* v. *Coleman*, 537 F.2d 79 (5th Cir. 1976). Further, an avoidance alternative with significant residential displacements (more than 1500 homes taken) could not be rejected as imprudent, regardless of the scale or degree of corresponding harm to the Section 4(f) property. *Id.*

Other later cases struggled to apply *Overton Park* to more factually complex projects, such as projects with multiple Section 4(f) properties and for which no total avoidance alternative is possible. At the same time, the highway program evolved from an emphasis on constructing the vast Interstate System to today's primary concerns of system preservation, congestion relief, and modernization of existing facilities. Regulations were implemented for Section 4(f) establishing a process for making and documenting decisions, including documenting the reasons for rejecting avoidance alternatives. See 23 CFR 771.135, 52 FR 32660, Aug. 28, 1987.

Planning rules evolved to require early attention to avoiding major Section 4(f) properties. Each State is now required to have a continual process for evaluating and updating its long range plan for transportation improvements. One element of the planning process is to ''consider, analyze as appropriate and reflect in the planning process products * * * access to * * * national parks, recreation and scenic areas, monuments and historic sites.'' 23 CFR 450.208(a)(4), 58 FR 58064, Oct. 28, 1993.[2] Innumerable new mitigation options and techniques have also been developed since Section 4(f) was enacted, including context sensitive design principles, new methods for mitigating noise and reducing adverse effects to historic properties, and new stormwater treatment options. The result of these developments is that the rigid interpretations from the early court decisions are often an awkward fit with the consequences to the Section 4(f)

[2] The statewide transportation planning process was also amended by SAFETEA–LU (sections 3006 and 6001); the agencies will likely implement these changes in a separate rulemaking.

property. In most instances, those consequences are not as extreme as what was considered in *Overton Park* and other early cases.

Over time, some courts reconciled these changes by interpreting the language of Section 4(f) and *Overton Park* in a way that balances the harm to the property with impacts to other resources. While those courts continued to insist on a heightened standard for protecting Section 4(f) sites, they did allow for consideration of mitigation opportunities, harm to other important resources, and the magnitude of impact to the Section 4(f) property. This balancing approach became the new case law standard in several areas of the country. An example of the balancing approach is a 1993 case involving the construction of a replacement road for one that had formerly traversed the top of a dam. The proposed road replacement alternative would travel through a 347 acre park, taking a total of 5.7 acres of the park. The FHWA found that there was no feasible and prudent alternative to this alignment. *Committee to Preserve Boomer Lake Park* v. *Skinner*, 4 F.3d 1543 (10th Cir. 1993).

In its review of FHWA's decision, the *Boomer Lake* court described the term ''prudent'' as involving a ''common sense balancing of practical concerns,'' although cautioning that the problems encountered by proposed avoidance alternatives must be ''truly unusual'' or reach ''extraordinary magnitude'' before parkland can be taken. The court found that the avoidance alternative had several problems when compared to the proposed route, including higher road user costs, substandard curves raising safety concerns, more traffic congestion due to failure to accommodate east-west traffic, more relocations, more intersection modifications, and higher construction costs. Additionally, the court found that the proposed alignment had beneficial impacts by providing better fishing access, improving water quality, and connecting the east and west sides of the park. The court concluded that, although none of these factors alone would be a basis for rejecting the avoidance alternative, their cumulative weight was sufficient to support FHWA's decision. *Id.*

General Discussion of the Proposed Rule

Feasible and Prudent Test. As directed by Congress, this NPRM proposes to clarify the factors to be considered and the standards to be applied in determining the feasibility and prudence of alternatives avoiding the use of Section 4(f) properties by transportation projects. In the SAFETEA–LU conference report, Congress noted that ''the fundamental legal standard contained in the *Overton Park* decision for evaluating the prudence and feasibility of avoidance alternatives will remain as the legal authority for these regulations, however, the Secretary will be able to provide more detailed guidance on applying these standards on a case-by-case basis.'' H.R. Rep. No. 109–203, at pp. 1057–1058 (2005).

This NPRM proposes a standard that is consistent with the fundamental legal standard of *Overton Park.* It would recognize the importance of protecting Section 4(f) properties and, when the impacts are more than *de minimis*, it would require the consideration and documentation of the severe problems associated with avoidance alternatives before the use of a Section 4(f) property could be approved. The agencies intend to adopt the reasoning of several U.S. Circuit Courts of Appeal that safety concerns, adverse impacts to non-Section 4(f) resources such as communities and natural environmental resources, and the costs of constructing and operating an alternative must be compared to the harm that would result to the features, activities, and attributes that qualify the Section 4(f) property for protection.

This balancing must be done with a ''thumb on the scale'' in favor of the Section 4(f) property because of the paramount importance Section 4(f) places on those properties. Thus, to support a finding that an avoidance alternative is not feasible and prudent, the problems associated with avoiding the Section 4(f) property would always have to be severe in nature and not easily mitigated. However, a sliding scale approach to the magnitude of harm is proposed, because it is appropriate to consider the value of the individual Section 4(f) property in context. For example, some historic sites are significant beyond doubt and are permanently protected. Such properties should be protected absent extraordinary problems with the avoidance alternatives. Other historic sites of less significance, or which are likely to be legally destroyed or developed by their owner in the near future, may be outweighed by relatively less severe problems with the avoidance alternatives.

A number of examples exist of a strict and inflexible interpretation of Section 4(f) causing the re-routing of a proposed transportation project at great cost in terms of money and other environmental impacts, only to see the historic property torn down soon after construction. The holistic approach proposed will provide the flexibility needed to make wise transportation decisions while still protecting Section 4(f) properties as well as other important resources. When Section 4(f) is applied without regard to other resources or without flexibility, it undermines support for Section 4(f).

This proposal does not require a finding that every factor mitigating against an avoidance alternative is ''unique,'' despite that term appearing several times in *Overton Park's* dicta. The Seventh Circuit has explained that the *Overton Park* Court ''was being emphatic, not substituting 'unique' for 'prudent' in the text of § 4(f).'' *Eagle Foundation* v. *Dole*, 813 F.2d 798, 804–05 (7th Cir. 1987). We agree that severe difficulties may justify the use of a Section 4(f) property even if the type of problem is not uncommonly encountered when constructing a transportation project. Therefore, we do not propose to require a finding in every instance that the problem rendering an avoidance alternative not feasible and prudent is a ''unique'' problem. Rather, in determining whether there are ''extraordinary circumstances'' that would lead to a conclusion that it is not feasible and prudent to avoid a Section 4(f) property, it is appropriate to consider the situation as a whole, taking into account the cumulative effects of avoiding the Section 4(f) property and the net harm to the property after incorporating available mitigation.

Standard for De Minimis Impacts. Section 6009(a) of SAFETEA–LU modified Section 4(f) to allow the agencies to approve a transportation use of Section 4(f) property with ''*de minimis*'' impacts, without an alternatives analysis and determination that no feasible and prudent avoidance alternative exists. The FHWA and the FTA issued guidance for implementing the *de minimis* impact provision on December 13, 2005. A copy of the guidance was placed in the docket for this NPRM and it is also available for review online at *http://www.fhwa.dot.gov/hep/legreg.htm.* This rulemaking includes a definition of *de minimis* impacts, and also proposes to include general standards and procedures for making findings of *de minimis* impacts.

Establishment of a New Part 774. This NPRM proposes to separate Section 4(f) from the agencies' National Environmental Policy Act (NEPA) regulations in 23 CFR 771. Years of applying Section 4(f) to new and unprecedented situations have led to a history of case experience that is reflected in the regulation. As a result,

the rules governing Section 4(f) have grown in length and complexity to the point that they warrant their own part in the CFR for ease of reference and citation. The new part was reorganized to make it more user-friendly, and consistent terminology was adopted where the current regulation uses inconsistent terms with the same meaning. For example, Section 4(f) properties would no longer be called Section 4(f) ''resources'' in some sections.

It should be noted that the proposed separation of the Section 4(f) and NEPA regulations is not intended to fragment compliance with Section 4(f) and NEPA. Our intent is to continue a fully integrated implementation under the unified and coordinated process provided by the NEPA procedures for compliance with the requirements of all applicable environmental laws. Placing the two regulations in close proximity within the Code of Federal Regulations, with cross-references between them, is intended to communicate the continued integration of Section 4(f) approvals with the NEPA process.

Section-by-Section Analysis

The following segment of this NPRM provides a section-by-section analysis of the proposed changes.

Title 23

Section 771.127 Record of Decision

Paragraph (a) of this section would be revised to refer to part 774 in place of 771.135.

Section 771.135 Section 4(f) (49 U.S.C. 303)

This section would be deleted in its entirety.

Part 774—Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))

We propose to move the current Section 4(f) regulations from the National Environmental Policy Act regulations (23 CFR part 771) into a new 23 CFR part 774. The title of the part is proposed to be revised from simply ''Section 4(f)'' to incorporate the descriptive language from the title of section 6009 of SAFETEA–LU; ''Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)).'' The authority is revised from part 771 to include only the citations relevant to Section 4(f) and a reference to SAFETEA–LU was added.

While the agencies propose to move the current Section 4(f) regulation from 23 CFR part 771 to 23 CFR part 774 without significant substantive changes other than those noted in this preamble, the existing provisions have been reorganized to make the requirements easier to understand. The proposed structure begins with the general framework of the process of Section 4(f) approvals, followed by coordination, format, and timing requirements for making approvals, and concluding with the many specific requirements applicable to Section 4(f) decisionmaking. Since a few of the definitions were quite lengthy and complex, the agencies propose to include the definitions section at the end, rather than the more typical location at the beginning, which the agencies believe would make the regulations easier to understand. Since most of the practitioners to whom this regulation would be directed are responsible for analyses under dozens of different environmental laws, the simplified structure will facilitate compliance. The proposed structure is:

Sec.
774.1 Purpose.
774.3 Section 4(f) approvals.
774.5 Coordination.
774.7 Format.
774.9 Timing.
774.11 Applicability.
774.13 Exceptions.
774.15 Constructive use determinations.
774.17 Definitions.

For ease of reference, a distribution table is provided tracking the current sections and proposed sections:

Current section in part 771	Proposed section
None	774.1 Purpose.
771.135(a)(1)	774.3 Section 4(f) approvals.
771.135(i) [in part]	774.5 Coordination.
771.135(a)(2), (i) [in part], (j), (k), and (o)	774.7 Format.
771.135(b) [in part], (g)(1), (l), (m) and (n)	774.9 Timing.
771.135(b) [in part], (c), (d), (e), (g)(1) and p(5)(v)	774.11 Applicability.
771.135(f), (g)(2), (h), (p)(5) [in part], and (p)(7)	774.13 Exceptions.
771.135(p)(3), (p)(4) and (p)(6)	774.15 Constructive use determinations.
771.107(d) and (a)(2), and 771.135(p)(1) and (p)(2)	774.17 Definitions.

Section 774.1 Purpose

This section is new. It was added to clarify the purpose of the regulations, which is to implement 49 U.S.C. 303 and 23 U.S.C. 138 (Section 4(f)).

Section 774.3 Section 4(f) Approvals

This section describes the general requirements for approving the use of Section 4(f) property. Current section 771.135(a)(1) provided the basis for the part of this section concerning traditional Section 4(f) approvals. The new provision in section 6009(a) of SAFETEA–LU for making *de minimis* impact determinations in lieu of the traditional analysis is implemented with language that largely follows the statute. There are cross-references to the definitions for ''use,'' ''feasible and prudent,'' and ''all possible planning,'' and to the sections of the regulation governing the coordination, format, and timing of approvals as a road map for the practitioner.

This section would also provide new regulatory direction for how to analyze and select an alternative when all feasible and prudent project alternatives use some Section 4(f) property, with a list of factors that should be considered. The factors were drawn from case law experience and FHWA's Section 4(f) Policy Paper.[3] It should be kept in mind that the weight given each factor would necessarily depend on the facts in each particular case, and not every factor would be relevant to every decision. Our intent is to provide the tools that will allow wise transportation decisions that minimize overall harm in these situations, while still providing the special protection afforded by Section 4(f) by requiring the problems to be severe and not easily mitigated. We encourage commenters to provide actual or hypothetical project examples of how these factors can help arrive at a better overall decision.

[3] The Section 4(f) Policy Paper, issued March 1, 2005, is available for review online at *http://environment.fhwa.dot.gov/projdev/4fpolicy.htm.* A copy was also placed in the docket for this rulemaking.

Section 774.5 Coordination

This section would set forth the coordination required prior to making Section 4(f) approvals. With respect to the coordination for traditional Section 4(f) evaluations, part of current section 771.135(i) was included without significant substantive change. For *de minimis* impact determinations, section 6009(a) of SAFETEA–LU includes several specific coordination requirements, and those were included as well.

Section 774.7 Format

This section would contain the requirements related to the format for the various types of Section 4(f) analyses and approvals. Current sections 771.135(j), (k), (o), and part of (i) were the basis for this section, without significant substantive change except as discussed below. New text was added describing the format for making the *de minimis* impact determinations and for making approvals when all feasible and prudent project alternatives use some Section 4(f) property. The section also provides a clear regulatory basis for programmatic Section 4(f) evaluations and approvals, a practice which the FHWA uses from time to time,[4] and which FTA may also use in the future. Finally, we propose to clarify that a preliminary Section 4(f) determination made as part of the Administration's approval of a first-tier Environmental Impact Statement (EIS) is final with respect to those issues addressed in the preliminary determination and are not to be revisited after a final section 4(f) approval is granted during the second-tier NEPA study, which may or may not be an EIS.

Section 774.9 Timing

This section would contain the requirements for the timing of Section 4(f) approvals. Current sections 771.135(l), and part of (b), and (g)(1) were incorporated into this section without significant substantive change. Current sections 771.135(m) and (n) were simplified and incorporated.

Section 774.11 Applicability

This section answers many common questions about when Section 4(f) is applicable (additional guidance for certain resource situations can be found in FHWA's Section 4(f) Policy Paper). The section incorporates current sections 771.135(c), (d), (e), and parts of (b) and (g)(1) without significant substantive change. New text was added clarifying that when recreational activities are permitted on rights-of-way formally reserved for future transportation use, Section 4(f) does not apply to the property. The purpose of this clarification is to encourage State and local transportation agencies to permit public recreation on reserved transportation corridors. Current text from section 771.135(p)(5)(v), regarding constructive use of parks adjacent to reserved corridors where the transportation use and the park were jointly planned, was also incorporated here without significant substantive change.

Section 774.13 Exceptions

This section would list exceptions to Section 4(f). Many of these situations are exceptions because the application of Section 4(f) would be contrary to the preservationist goals of the statute. Others are exceptions created by Congress in various statutes. Five of the exceptions, sections 771.135(f), (g)(2), (h), part of (p)(5), and (p)(7), are incorporated from the current regulations without significant substantive change. Five of the exceptions are new: (1) Park road and parkway projects constructed under the Federal Lands Highway Program; [5] (2) trail projects under the Recreational Trails Program; [6] (3) enhancement and mitigation projects solely for the purpose of enhancing the activities, features, or attributes of a Section 4(f) property; [7] (4) alternative transportation projects in parks and public lands; [8] and (5) the Interstate System and certain elements of the Interstate System.[9]

Section 774.15 Constructive Use Determinations

This section would set forth the standards and procedures for deciding if a proximity impact caused by a project would be so severe as to constitute a use under Section 4(f) where there is no physical taking of property. This section incorporates current sections 771.135(p)(3), (p)(4), and (p)(6) without significant substantive change. It also includes two new examples of constructive use of wildlife and waterfowl refuges.

Section 774.17 Definitions

This section incorporates the definitions contained in 23 U.S.C. 101(a), and also provides definitions for: Administration; All Possible Planning; Applicant; Constructive Use; *De Minimis* Impact; Environmental Assessment (EA); Environmental Impact Statement (EIS); Feasible and Prudent Alternative; Finding of No Significant Impact (FONSI); Official(s) with Jurisdiction; Record of Decision; and Use. The definitions of ''use'' and ''constructive use'' were incorporated from current sections 771.135(p)(1) and (2) without significant substantive change. The definition of ''Administration'' was incorporated from section 771.107(d) without substantive change. The other definitions are new.

The definition of ''Feasible and Prudent Alternative'' was required by section 6009(b) of SAFETEA–LU. The proposal includes the factors to consider when deciding if an avoidance alternative is a feasible and prudent alternative to the use of a Section 4(f) property. The list of factors would promote consistent decisionmaking nationwide. The factors are based on case law and the agencies' experience assessing the environmental impacts of transportation projects. An avoidance alternative may be found not feasible and prudent based on a single factor or a combination of factors; however, we intend that these factors would only render the alternative imprudent if the problem is severe in nature and not easily mitigated.

The feasible and prudent determination should include a comparison of the problems associated

[4] FHWA has issued the following five programmatic Section 4(f) Evaluations: (1) Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property, 70 Fed. Reg. 20618 (April 20, 2005); (2) Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Public Parks, Recreational Lands, and Wildlife and Waterfowl Refuges, 52 Fed. Reg. 31111 (August 19, 1987); (3) Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites, 52 Fed. Reg. 31118 (August 19, 1987); (4) Department of Transportation, Federal Highway Administration-Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges, 48 Fed. Reg. 38135 (August 22, 1983); and (5) Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects, FHWA Memorandum, May 23, 1977, can be found at *http://www.environment.fhwa.dot.gov/projdev/4fbikeways.htm.*

[5] 23 U.S.C. 204. Projects under this program are expressly excepted from Section 4(f) requirements within the Section 4(f) statute itself.

[6] These projects are expressly excepted from Section 4(f) requirements by 23 U.S.C. 206(h)(2).

[7] This exception is proposed as a common-sense addition to the regulations.

[8] This is a new transit program that was created by Congress in section 3021 of SAFETEA–LU ''to enhance the protection of national parks and public lands and increase the enjoyment of those visiting the parks and public lands.'' It is proposed as a common-sense addition to the regulations.

[9] These projects were expressly excepted from Section 4(f) requirements by section 6007 of SAFETEA–LU.

with the avoidance alternative and the magnitude of harm that would befall the activities, features, and attributes qualifying the property for protection under Section 4(f). As the magnitude of harm to the Section 4(f) property increases, the severity of the problems that would have to exist before the alternative could be deemed not feasible and prudent would also increase. For example, where the avoidance alternative being evaluated would cause only minor harm to an important feature of a Section 4(f) property, but would divide an established, cohesive community and relocate a substantial percent of the homes, the community impact might be considered severe enough to render the alternative not feasible and prudent. However, if the alternative would devastate the Section 4(f) property, the alternative might be deemed feasible and prudent despite the community impact. These will not always be easy decisions on which all parties will agree, and it will be crucial in such cases that the agencies thoroughly explain the reasons for their decisions.

Title 49

Section 622.101 Cross-Reference to Procedures

This section, which contains FTA's cross-reference to 23 CFR part 771 for FTA's NEPA regulations, would be revised to include a cross-reference to the new 23 CFR part 774, which would contain the proposed joint FHWA/FTA Section 4(f) regulations.

Rulemaking Analyses and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA and the FTA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined preliminarily that this action would be a significant regulatory action within the meaning of Executive Order 12866 and would be significant within the meaning of Department of Transportation regulatory policies and procedures because of substantial congressional, State and local government, and public interest. Those interests include the receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. We anticipate that the direct economic impact of this rulemaking would be minimal. The clarification of current regulatory requirements is mandated in SAFETEA–LU. We also consider this proposal a means to clarify and reorganize the existing regulatory requirements. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the agencies have evaluated the effects of this proposed action on small entities and have determined that the proposed action would not have a significant economic impact on a substantial number of small entities. This proposed action does not include any new regulatory requirements; it simply clarifies and reorganizes existing requirements. For this reason, the FHWA and the FTA certify that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA and the FTA have determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction; 20.500 et seq., Federal Transit Capital Investment Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs and were carried out in the development of this rule. The FHWA and FTA solicit comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA and the FTA have determined that this proposal does not contain new collection of information requirements for the purposes of the PRA.

The information collected in Section 4(f) evaluations is not requested of non-Federal agencies or private parties. The State and local governments and transit agencies compiling information are voluntarily serving as consultants to FHWA and FTA for their own convenience. As the proposers of the actions subject to Section 4(f), and the owners, operators, and maintainers of the resulting transportation facility, and key decision makers regarding the choices involved in project development, it is easier for them to prepare the Section 4(f) evaluations. Information is not requested of outside entities except within the PRA exception relating to ''facts or opinions submitted in response to general solicitations of comments from the public.'' (5 CFR 1320.3(h)(4)).

National Environmental Policy Act

This proposed action would not have any effect on the quality of the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and is categorically excluded under 23 CFR 771.117(c)(20). The proposed action is intended to

lessen adverse environmental impacts by standardizing and clarifying compliance for Section 4(f), including the incorporation of clear direction to take into account the overall harm of each alternative.

Executive Order 12630 (Taking of Private Property)

We have analyzed this proposed rule under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights. We do not anticipate that this proposed rule would effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 13175 (Tribal Consultation)

We have analyzed this proposed rule under Executive Order 13175, dated November 6, 2000, and believe that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and to public transit agencies for capital transit projects and would not impose any direct compliance requirements on Indian tribal governments. While some historic Section 4(f) properties are eligible for Section 4(f) protection because of their cultural significance to a tribe, the proposed rule does not impose any new consultation or compliance requirements on tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order because, although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Regulation Identification Number

A regulation identification 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 RINs contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Environmental protection, Grant program—transportation, Highways and roads, Historic preservation, Mass transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

23 CFR Part 774

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mass transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Issued on: July 18, 2006.

Sandra K. Bushue,

Deputy Administrator, Federal Transit Administration.

J. Richard Capka,

Federal Highway Administrator.

For the reasons set forth in the preamble, and under the authority of 23 U.S.C. 103(c), 109, 138, and 49 U.S.C. 303, and the delegations of authority at 49 CFR 1.48(b) and 1.51, it is proposed to amend Chapter I of Title 23 and Chapter VI of Title 49, Code of Federal Regulations, by revising part 771, adding part 774, and revising part 622, respectively as set forth below.

Title 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES [AMENDED]

1. The authority citation for part 771 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 109, 110, 128, 138 and 315; 49 U.S.C. 303, 5301(e), 5323(b), and 5324; 40 CFR parts 1500 *et seq.*; 49 CFR 1.48(b) and 1.51.

2. Revise § 771.127(a) to read as follows:

§ 771.127 Record of decision.

(a) The Administration will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the final EIS notice in the **Federal Register** or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project and document any required Section 4(f) approval in accordance with part 774 of this title. Until any required ROD has been signed, no further approvals may be given except for administrative activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1.

§ 771.135 [Removed]

3. Remove § 771.135 in its entirety.

4. Add part 774 to read as follows:

PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(F))

Sec.

Authority: 23 U.S.C. 103(c), 109(h), 138 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.48 and 1.51.

§ 774.1 Purpose.

The purpose of this part is to implement 23 U.S.C. 138 and 49 U.S.C. 303 which were originally enacted as Section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as ''Section 4(f).''

§ 774.3 Section 4(f) approvals.

(a) The Administration may not approve the use, as defined in § 774.17(l), of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

(1) There is no feasible and prudent alternative, as defined in § 774.17(h), to the use of land from the property; and the action includes all possible planning, as defined in § 774.17(b), to minimize harm to the property resulting from such use; or

(2) The use of the property, including any avoidance, minimization, mitigation, or enhancement measures committed to by the applicant, will have a *de minimis* impact, as defined in § 774.17(e), on the property.

(b) If the analysis in paragraph (a)(1) of this section concludes that all of the feasible and prudent project alternatives use some Section 4(f) property, then the Administration may approve the most prudent alternative that minimizes overall harm by considering the following factors:

(1) The relative severity of the harm to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;

(2) The relative significance of each Section 4(f) property;

(3) The views of the official(s) with jurisdiction over each Section 4(f) property;

(4) The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);

(5) The degree to which each alternative meets the purpose and need for the project;

(6) The magnitude of any adverse impacts to resources not protected by Section 4(f);

(7) Extraordinary differences in costs among the alternatives; and

(8) Any history of concurrent planning or development of the proposed transportation project and the Section 4(f) property.

(c) The coordination requirements in § 774.5 must be completed before the Administration may make Section 4(f) approvals under this section. Requirements for the format and timing of Section 4(f) approvals are located in §§ 774.7 and 774.9, respectively.

§ 774.5 Coordination.

(a) Prior to making Section 4(f) approvals under § 774.3(a)(1), the Section 4(f) evaluation shall be provided for coordination and comment to the official(s) with jurisdiction over the property and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. A minimum of 45 days shall be established by the Administration for receipt of comments.

(b) Prior to making *de minimis* impact findings under § 774.3(a)(2), the following coordination shall be undertaken:

(1) For historic properties, the consulting parties identified in accordance with 36 CFR part 800 must be consulted; and the official(s) with jurisdiction over the property must concur, in writing, in a finding of ''no adverse effect'' or ''no historic properties affected'' in accordance with 36 CFR part 800. The Administration shall inform the official(s) with jurisdiction of its intent to make a *de minimis* impact finding based on their concurrence in the finding of ''no adverse effect'' or ''no historic properties affected.'' Public notice and comment other than the consultation with consulting parties in accordance with 36 CFR part 800 is not required.

(2) For parks, recreation areas, and refuges, public notice and an opportunity for public review and comment concerning the effects on the protected activities, features, or attributes of the property must be provided. Following the opportunity for public review and comment, the Administration shall inform the official(s) with jurisdiction of its intent to make a *de minimis* impact finding; and the official(s) with jurisdiction over the property must concur in writing that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection.

(c) Uses of Section 4(f) property covered by a programmatic Section 4(f) evaluation under § 774.7(g) shall be documented and coordinated as specified in the programmatic Section 4(f) evaluation.

§ 774.7 Format.

(a) A Section 4(f) evaluation prepared under § 774.3(a)(1) must include sufficient supporting documentation to demonstrate why there is no feasible and prudent alternative, as defined in § 774.17(h), that would avoid using the Section 4(f) property; and the evaluation must summarize all possible planning, as defined in § 774.17(b), that occurred to minimize harm to the Section 4(f) property.

(b) The documentation supporting a Section 4(f) approval should be presented in the NEPA document for the project in accordance with §§ 771.105(a) and 771.133 of this title. If the Section 4(f) documentation cannot be included in the NEPA document, then it shall be presented in a separate document. The Section 4(f) documentation shall be developed by the applicant in cooperation with the Administration.

(c) If all feasible and prudent alternatives use some Section 4(f) property, the applicant must select the most prudent alternative that minimizes overall harm by considering the factors listed in § 774.3(b). This information must be documented in the Section 4(f) approval document.

(d) All Section 4(f) approvals under § 774.3(a)(1) must be reviewed for legal sufficiency.

(e) A Section 4(f) approval may involve different levels of detail where the Section 4(f) involvement is addressed in a tiered Environmental Impact Statement (EIS) under § 771.111(g) of this title.

(1) When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the Section 4(f) approval may not be available at that stage in the development of the action. In such cases, the evaluation should be made on the potential impacts that a proposed action will have on Section 4(f) property and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of Section 4(f) property. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary determination is then incorporated into the first-tier EIS.

(2) A preliminary Section 4(f) determination made in the first-tier stage shall be considered final and need not be revisited as part of a final Section 4(f) approval granted during the second-tier stage.

(3) The final Section 4(f) approval shall be made in the second-tier categorical exclusion (CE), environmental assessment (EA), or final EIS or in the record of decision (ROD) or finding of no significant impact (FONSI). Where the Section 4(f) approval is made in a second-tier final EIS or EA, the Administration will summarize the basis for its Section 4(f) approval in the ROD or FONSI.

(f) A *de minimis* impact finding under § 774.3(a)(2) must include sufficient supporting documentation to demonstrate that the impacts, after avoidance, minimization, mitigation, or enhancement measures are taken into account, are *de minimis* as defined in § 774.17(e); and that the coordination required in § 774.5(b) has been completed.

(g) The Administration may develop additional programmatic Section 4(f) determinations. Programmatic Section 4(f) determinations shall be reviewed for legal sufficiency and approved by the Headquarters Office of the Administration.

§ 774.9 Timing.

(a) Any use of lands from a Section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(b) For actions processed with EISs, the Administration will make the Section 4(f) approval either in its approval of the final EIS or in the ROD. Where the Section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its Section 4(f) approval in the ROD. Actions requiring the use of Section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notification by the Administration of Section 4(f) approval.

(c) If the Administration determines that Section 4(f) is applicable after the CE, FONSI, or final EIS has been processed, a separate Section 4(f) approval will be required when:

(1) A proposed modification of the alignment or design would require the use of Section 4(f) property;

(2) The Administration determines that Section 4(f) applies to a property; or

(3) A proposed modification of the alignment, design, or measures to minimize harm (after the original Section 4(f) approval) would result in a substantial increase in the amount of Section 4(f) property used, a substantial increase in the adverse impacts to Section 4(f) property, or a substantial reduction in mitigation measures.

(d) A separate Section 4(f) approval required under paragraph (c) of this section will not necessarily require the preparation of a new or supplemental environmental document. Where a separate Section 4(f) approval is required, any activity not directly affected by the separate Section 4(f) approval can proceed during the analysis, consistent with § 771.130(f) of this title.

(e) Section 4(f) may apply to archeological sites discovered during construction, as set forth in §§ 774.11(f) and 774.13(b) of this part. In such cases, the Section 4(f) process will be expedited and any required evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

§ 774.11 Applicability.

(a) The Administration will determine the applicability of Section 4(f) in accordance with this part.

(b) When another agency is the lead agency for the NEPA process, the Administration shall make any required Section 4(f) approvals unless the lead agency is another U.S. DOT agency.

(c) Consideration under Section 4(f) is not required when the official(s) with jurisdiction over a park, recreation area or refuge determine that the property, considered in its entirety, is not significant. In the absence of such a determination, the Section 4(f) property will be presumed to be significant. The Administration will review a determination that a park, recreation area, or refuge is not significant to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, Section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or refuge purposes. The determination of which lands so function or are so designated, and the significance of those lands, shall be made by the official(s) with jurisdiction over the property. The Administration will review this determination to assure its reasonableness.

(e) In determining the application of Section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the official(s) with jurisdiction to identify all properties on or eligible for the National Register of Historic Places (National Register). The Section 4(f) requirements apply only to sites on or eligible for the National Register unless the Administration determines that the application of Section 4(f) is otherwise appropriate.

(f) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction, except as set forth in § 774.13(b).

(g) Temporary recreational activity on property formally reserved for future transportation use will not subject the property to Section 4(f). Where the property is formally reserved for transportation use before or at the same time an adjacent park, recreation area, or refuge is established and concurrent or joint planning or development occurs, then any resulting proximity impacts of the transportation project will not be considered a constructive use as defined in § 774.17(d). Examples of such concurrent or joint planning or development include, but are not limited to:

(1) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the Section 4(f) property, or

(2) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the Section 4(f) property, in consultation with each other.

§ 774.13 Exceptions.

The Administration has identified various exceptions to the requirement for Section 4(f) approval. These exceptions include, but are not limited to:

(a) Restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) The Administration finds that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The official(s) with jurisdiction over the property have been consulted and have not objected to the

Administration finding in paragraph (a)(1) of this section.

(b) Archeological sites where the Administration, after consultation with the official(s) with jurisdiction over the property, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the Administration decides, with agreement of the official(s) with jurisdiction, not to recover the resource.

(c) Designations of park and recreation lands, refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archeological resources in § 774.9(e), the Administration may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age it would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register.

(d) Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:

(1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;

(3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;

(4) The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and

(5) There must be documented agreement of the official(s) with jurisdiction over the property regarding the above conditions.

(e) Proximity impacts that are not substantial enough to constitute a ''constructive use'' as defined in § 774.17(d). Examples include:

(1) Compliance with the requirements of 36 CFR 800.5 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register, results in an agreement of ''no historic properties affected'' or ''no adverse effect'';

(2) The impact of projected traffic noise levels of the proposed highway project on a noise sensitive activity do not exceed the FHWA noise abatement criteria as contained in Table 1 in Part 772 of this title, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria for a Section 4(f) activity in the FTA guidelines for transit noise and vibration impact assessment;

(3) The projected noise levels exceed the relevant threshold in paragraph (e)(2) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(4) There are proximity impacts to a Section 4(f) property, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the Administration approval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of the property. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age it would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register;

(5) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a property for protection under Section 4(f);

(6) Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur if the project were not built;

(7) Change in accessibility will not substantially diminish the utilization of the Section 4(f) property; or

(8) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of protected activities, features, or attributes of the Section 4(f) property.

(f) Park road or parkway projects developed in accordance with 23 U.S.C. 204.

(g) Trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2).

(h) Transportation enhancement and mitigation projects where the use of the Section 4(f) property is solely for the purpose of preserving or enhancing the activities, features, or attributes that qualify the property for Section 4(f) protection; and the official(s) with jurisdiction over the property agrees in writing that the use benefits or improves said activities, features, or attributes of the property.

(i) Alternative transportation facilities and services in parks and public lands that are funded under 49 U.S.C. 5320.

(j) The Interstate System and individual elements of the Interstate System, with the exception of those elements formally designated by FHWA for Section 4(f) protection on the basis of national or exceptional historic significance.

§ 774.15 Constructive use determinations.

(a) If the project results in a constructive use, as defined in § 774.17(d), of a nearby Section 4(f) property, the Administration shall evaluate that use in accordance with § 774.3(a)(1). The Administration is not required to determine that a project would not result in a constructive use of a nearby Section 4(f) property. However, such a determination may be made at the discretion of the Administration. When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(1) Identification of the current activities, features, or attributes of a property which qualify for protection under Section 4(f) and which may be sensitive to proximity impacts;

(2) An analysis of the proximity impacts of the proposed project on the Section 4(f) property. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project;

(3) Consultation, on the foregoing identification and analysis, with the

official(s) with jurisdiction over the Section 4(f) property.

(b) The Administration has reviewed the following situations and determined that a constructive use occurs when:

(1) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a property protected by Section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, enjoyment of an urban park where serenity and quiet are significant attributes, or viewing wildlife in an area of a wildlife and waterfowl refuge intended for such viewing;

(2) The proximity of the proposed project substantially impairs esthetic features or attributes of a property protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the property. Examples of substantial impairment to visual or esthetic qualities would be the location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting;

(3) The project results in a restriction of access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;

(4) The vibration impact from operation of the project substantially impairs the use of a Section 4(f) property, such as projected vibration levels from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(5) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes, or substantially reduces the wildlife use of a wildlife or waterfowl refuge.

§ 774.17 Definitions.

The definitions contained in 23 U.S.C. 101(a) are applicable to this part. In addition, the following definitions apply:

(a) *Administration.* The Federal Highway Administration or the Federal Transit Administration, whichever is making the approval for the transportation program or project at issue.

(b) *All Possible Planning.* All possible planning to minimize harm means that measures that would reduce the adverse impacts resulting from the use of Section 4(f) property must be included in the project unless such measures are not prudent. All possible planning does not require analysis of avoidance alternatives.

(1) In evaluating the prudence of minimization and mitigation measures to minimize harm under § 774.3(a)(1), the Administration will consider:

(i) The views of the official(s) with jurisdiction over the Section 4(f) property;

(ii) With regard to public parks, recreation areas, and refuges, the measures may involve a replacement of land or facilities of comparable value and function, or monetary compensation to enhance the remaining property or to mitigate the adverse impacts of the project in other ways;

(iii) With regard to historic sites, the measures normally serve to preserve the historic activities, features, or attributes of the site as agreed by the Administration and the official(s) with jurisdiction over the property in accordance with the consultation process under 36 CFR part 800;

(iv) Whether the cost of the measures is a reasonable public expenditure in light of the adverse impacts of the project on the Section 4(f) property and the benefits of the measure to the property, in accordance with § 771.105(d) of this title; and

(v) The impacts of the measures outside of the Section 4(f) property.

(2) A *de minimis* impact finding under § 774.3(a)(2) subsumes and obviates the requirement for all possible planning to minimize harm.

(c) *Applicant.* The Federal, State, or local government authority, proposing a transportation project, that the Administration works with to conduct environmental studies and prepare environmental documents. For transportation actions implemented by the Federal government on Federal lands, the Administration or the Federal land management agency may take on the responsibilities of the applicant described herein.

(d) *Constructive Use.* A constructive use occurs when the transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished.

(e) *De Minimis Impact.*

(1) For historic sites, *de minimis* impact means that a determination of ''no adverse effect'' or ''no historic properties effected,'' in accordance with the regulation (36 CFR part 800) implementing Section 106 of the National Historic Preservation Act of 1966, is appropriate.

(2) For parks, recreation areas, and refuges, a *de minimis* impact is one that will not adversely affect the protected features, attributes, or activities qualifying the property for protection under Section 4(f).

(f) *Environmental Assessment (EA).* Refers to a document prepared pursuant to NEPA and § 771.119 of this title for a proposed project that is not categorically excluded but for which an EIS is not clearly required.

(g) *Environmental Impact Statement (EIS).* Refers to a document prepared pursuant to NEPA and §§ 771.123 and 771.125 of this title for a proposed project that is likely to cause significant impacts on the environment.

(h) *Feasible and Prudent Alternative.* A feasible and prudent alternative avoids using Section 4(f) property and does not cause other severe problems of a magnitude that outweighs the importance of protecting the Section 4(f) property. In assessing the importance of protecting the Section 4(f) property, it is appropriate to consider the relative value of the resource to the preservation goals of the statute. An alternative may be determined not feasible and prudent if:

(1) It cannot be built as a matter of sound engineering judgment;

(2) It compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;

(3) It results in severe safety or operational problems;

(4) After reasonable mitigation, it causes:

(i) Severe social, economic, or environmental impacts;

(ii) Severe disruption to established communities;

(iii) Severe disproportionate impacts to minority or low income populations; or

(iv) Severe impacts to environmental resources protected under other Federal statutes;

(5) It results in additional construction, maintenance, or

operational costs of an extraordinary magnitude;

(6) It causes other unique problems or unusual factors; or

(7) It involves multiple factors in paragraphs (1) through (6) of this definition, that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

(i) *Finding of No Significant Impact (FONSI).* Refers to a decision document prepared pursuant to NEPA and § 771.121 of this chapter.

(j) *Official(s) with Jurisdiction.*

(1) In the case of historic properties, the official with jurisdiction is the State Historic Preservation Officer or Tribal Historic Preservation Officer for the State or Tribal government wherein the property is located. When the Advisory Council on Historic Preservation (ACHP) is involved in a consultation concerning a property under Section 106 of the National Historic Preservation Act, the ACHP is also an official with jurisdiction over that property for purposes of this part.

(2) In the case of public parks, recreation areas, and refuges, the official(s) with jurisdiction are the official(s) of the agency or agencies that own or administer the property in question, and who are empowered to represent the agency on matters related to the property.

(k) *Record of Decision (ROD).* Refers to a decision document prepared pursuant to NEPA and § 771.127 of this chapter.

(l) *Use.* Except as set forth in § 774.13 of this part, a ''use'' of Section 4(f) property occurs:

(1) When land is permanently incorporated into a transportation facility;

(2) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes as determined by the criteria in § 774.13(d) of this part; or

(3) When there is a constructive use of a Section 4(f) property as defined in paragraph (d) of this section.

Federal Transit Administration

Title 49—Transportation

CHAPTER VI—FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES [AMENDED]

5. Revise the authority citation for Subpart A to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303, 5301(e), 5323(b), and 5324; Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 40 CFR parts 1500 *et seq.*; 49 CFR 1.51.

6. Revise § 622.101 to read as follows:

Subpart A—Environmental Procedures

§ 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related statutes, regulations, and orders are set forth in part 771 of title 23 of the Code of Federal Regulations. The procedures for complying with 49 U.S.C. 303, commonly known as ''Section 4(f),'' are set forth in part 774 of title 23 of the Code of Federal Regulations.

[FR Doc. 06–6496 Filed 7–24–06; 10:10 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 85, 90, 1048, 1065 and 1068

[EPA–HQ–OAR–2005–0030, FRL–8203–9]

RIN 2060–AM81 and 2060–AN62

Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On June 12, 2006 (71 FR 33804), EPA proposed new source standards of performance for stationary spark ignition internal combustion engines. EPA also proposed national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower, and are located at major sources of hazardous air pollutant emissions. In this notice, we are announcing a 30-day extension of the public comment period.

DATES: Submit comments on or before October 11, 2006.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0030, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies. EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 735 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, 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–2005–0030. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 and Radiation Docket is (202) 566–1742.

At this time, the EPA/DC's Public Reading Room is closed until further notice due to flooding. Fax numbers for Docket offices in the EPA/DC are temporarily unavailable. If you wish to hand deliver comments during this closure, you may drop them off between the hours of 8:30 a.m. and 4:30 p.m. eastern standard time (e.s.t.), Monday through Friday, excluding Federal holidays at the EPA Headquarters Library, Infoterra Room (room number 3334C) in the EPA West Building located at 1301 Constitution Ave., NW., Washington, DC. EPA visitors are required to show photographic identification and sign the EPA visitor log. After processing through the X-ray and magnetometer machines, visitors will be given an EPA/DC badge that must be visible at all times.

Informational updates will be provided via the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* as they are available.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; e-mail address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** issued on June 12, 2006 (71 FR 33804), when EPA proposed new source standards of performance for stationary spark ignition internal combustion engines. EPA also proposed national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions. On June 21, 2006, the American Petroleum Institute (API) requested in a formal letter that EPA extend the comment period of the proposed rule. The API indicated that an extended comment period was necessary due to the complexities of the proposed regulation and to be able to develop a complete set of comments that consider all the support information that EPA used to develop the proposal. EPA is hereby extending the comment period, which was set to end on September 11, 2006, to October 11, 2006.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 90

Administrative practice and procedure, Air pollution control.

40 CFR Part 1048

Administrative practice and procedure, Air pollution control.

40 CFR Part 1065

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Research.

Dated: July 20, 2006.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E6–12053 Filed 7–26–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–8202–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Arctic Surplus Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a notice of intent to delete the Arctic Surplus Superfund Site (Site) located in Fairbanks, Alaska, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) OF 1980, as amended, is found at Appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Alaska, through the Alaska Department of Environmental Conservation, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning this site must be received by August 28, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1990–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instruction for submitting comments.
- E-mail: *gusmano.jacques@epa.gov.*
- Fax: (907) 271–3424.
- Mail: Jacques L. Gusmano, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 222 West 7th Avenue, Suite 19, Anchorage, Alaska 99513.
- Hand Delivery: 222 West 7th Avenue, Suite 19, Anchorage, Alaska 99513. 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–SF–1990–0011. 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 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 in the Deletion Docket Bibliography. 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. Deletion Docket materials are available electronically or in hard copy at the EPA's Region 10 Superfund Records Center, 1200 Sixth Avenue, Seattle, Washington 98101 and the Defense Reutilization & Marketing Office (Administrative Records) Building 5001, Mile Badger Road, Fairbanks, AK 99703 at (907) 353–1143. The Region 10 Superfund Records Center is open from 8 a.m. to 4:30 p.m. by appointment, Monday through Friday, excluding legal holidays The Superfund Records Center telephone number is (206) 553–4494.

FOR FURTHER INFORMATION CONTACT: Jacques L. Gusmano, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 222 West 7th Avenue, Suite 19, Anchorage, Alaska 99513, phone: (907) 271–1271, fax: (907) 271–3424, e-mail: *gusmano.jacques@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register,** we are publishing a direct final notice of deletion of the Arctic Surplus Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this final notice of deletion. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must, do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

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

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

Dated: July 18, 2006.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. E6–11811 Filed 7–26–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 144
Thursday, July 27, 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

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Specialty Crop Meeting and Executive Committee Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board Specialty Crop Committee and Executive Committee.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board Specialty Crop Committee will meet on August 24, 2006 and the Executive Committee will hold a meeting on August 25, 2006 at the Hilton Chicago O'Hare Airport, Chicago, Illinois.

ADDRESSES: The public may file written comments before or up to two weeks after the meeting with the contact person. You may submit comments by any of the following methods: E-mail: *smorgan@csrees.usda.gov;* Fax: (202) 720–6199; Mail/Hand-Delivery or Courier: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; Telephone: (202) 720–8408.

SUPPLEMENTARY INFORMATION: On Thursday, August 24, 2006, from 9 a.m. to 4 p.m., the Specialty Crop Committee will hold a General meeting to study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The purpose of Specialty Crop meeting is to obtain regional input on research and education issues of high priority focusing on ''Measures to improve the efficiency, productivity and profitability of specialty crop production in the United States; Measures designed to improve competitiveness to research, extension, and economics programs affecting the specialty crop industry; and Review research projects underway by USDA's Research, Education, and Economics agencies and their collaboration in the Land Grant Universities and other organizations.'' On Thursday, August 24, 2006, at 9 a.m. the focus session will begin with introductory remarks provided by the Chair of the Specialty Crop Committee. There will be brief introductions by Board members, incumbents, and guest officials and/or designated experts from the industry. Following the adjournment of the Specialty Crop Meeting, the Executive Committee will begin their Focus Session, on Friday, August 25, 2006, from 8 a.m. to 3 p.m. at the Hilton Chicago O'Hare Airport, Chicago, Illinois. The Executive Committee will focus on highlights concerning the ''Farm Bill.'' After the focus sessions the Board will discuss and recap highlights of the previous day's focus sessions, followed by overall Board discussions. You will hear remarks from a variety of distinguished leaders and experts, organizations or institutions, local producers, or other groups that are interested in the issues with which the Specialty Crop Committee is charged. Speakers will suggest recommendations regarding the Specialty Crop Committee's role by which USDA can enhance its research, extension, education, and economic programs to protect our Nation's food, fiber and agricultural system. Opportunities for increased collaboration and partnerships concerning Specialty Crops with the public and private sectors will also be discussed. An opportunity for public comment will be offered after the meeting wrap-up.

Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Friday, September 8, 2006). The findings of the Specialty Crop Committee and Executive Committee will be based on input from speakers, other stakeholders, the general public, and Board discussions. They will be consolidated into recommendations to the Secretary of Agriculture and the House and Senate agriculture-related committee/subcommittees of the U.S. Congress, as well as be disseminated to the land-grant colleges and universities, as mandated. All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 24th day of July, 2006.

Gale Buchanan,

Under Secretary, Research, Education, and Economics.

[FR Doc. E6–12116 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, Apache-Sitgreaves, Coconino, Kaibab, Prescott, and Tonto National Forests; Amendment to National Forest Land and Resource Management Plans To Determine How and If Cross-Country Travel by Off Highway Vehicles (OHVs) Should Be Allowed

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Apache-Sitgreaves, Coconino, Kaibab, Prescott, and Tonto National Forest have been preparing an environmental impact statement to address cross-country travel by motorized vehicles and how to standardize road and trail signing conventions for OHVs. The original Notice of Intent published in **Federal**

Register Volume 66, No. 61, Thursday, March 29, 2001. A revised Notice of Intent published in **Federal Register** Volume 67, No. 30 on Wednesday, February 13, 2002, and the Notice of Availability of DEIS published in **Federal Register** Volume 68, No. 85 on Friday, May 2, 2003. The need for this document has been mooted by the Final Travel Management Rule; Designated Routes and Areas for Motor Vehicle Use that revised portions of 36 CFR parts 212, 251, 261 and 295. The Final Rule was posted in the **Federal Register** on November 9, 2005.

ADDRESSES: For information, contact: Charles F. Ernst, Kaibab National Forest, 800 South Sixth Street, Williams, Arizona 86046.

FOR FURTHER INFORMATION CONTACT: Charles F. Ernst (928) 635–8317; *cfernst@fs.fed.us*

Dated: July 7, 2006.

Michael R. Williams,

Forest Supervisor, Kaibab National Forest.

[FR Doc. 06–6493 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday August 2, 2006 at 6 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: August 2, 2006.

ADDRESSES: Forest Supervisor's Office, 1101 U.S. Hwy 2 West, Libby, Montana.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include status of approved projects, reviewing proposals for 2007, and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the *Daily Interlake* based in Kalispell, Montana.

Dated: July 20, 2006.

Paul Bradford,

Forest Supervisor.

[FR Doc. 06–6499 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on August 17, 2006, from 3:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: E-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review Minutes From the June 22, 2006 Meeting; (3) Discuss Other business for 2006; (4) Strategy for Attending the Lake Co. Board of Supervisor's Meeting: (5) Vote on any projects if applicable; (6) Discuss Project Cost Accounting USFS/County of Lake; (7) Set Next Meeting Date; (8) Public Comment Period; Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time. (9) Adjourn.

Dated: July 20, 2006.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 06–6505 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke two antidumping duty orders in part.

EFFECTIVE DATE: July 27, 2006.

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.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Folding Metal Tables and Chairs from the People's Republic of China and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China.

Initiation of Reviews:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2007.

Antidumping Duty Proceedings	Period to be Reviewed
JAPAN: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe.	
A–588–850	06/01/05 - 05/31/06
JFE Steel Corporation.	

Antidumping Duty Proceedings	Period to be Reviewed
Nippon Steel Corporation.	
NKK Tubes.	
Sumitomo Metal Industries, Ltd.	
SOUTH KOREA: Polyethylene Terephthalate (Pet) Film.	
A–580–807	06/01/05 - 05/31/06
Kohap, Ltd.	
SPAIN: Chlorinated Isocyanurates.	
A–469–814	12/20/04 - 05/31/06
Aragonesas Industrias y Energia/Aragonesas Delsa S.A..	
TAIWAN: Certain Stainless Steel Butt–Weld Pipe Fittings.	
A–583–816	06/01/05 - 05/31/06
Ta Chen Stainless Steel Pipe Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates[1].	
A–570–898	12/16/04 - 05/31/06
Hebei Jiheng Chemical Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Folding Metal Tables and Chairs[2].	
A–570–868	06/01/05 - 05/31/06
DongGuan ShiChang Metals Factory Ltd./Maxchief Investments, Ltd.	
Feili Furniture Development Limited Quanzhou City.	
Feili Furniture Development Co., Ltd.	
Feili Group (Fujian) Co., Ltd.	
Feili (Fujian) Co., Ltd.	
New–Tec Integration (Xiamen) Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings.	
A–570–601	06/01/05 - 05/31/06
Chin Jun Industrial Ltd.	
Hebei Longsheng Metals & Minerals Trade Co., Ltd.	
Peer Bearing Company–Changshan.	
Yantai Timken Company Limited.	
Countervailing Duty Proceedings.	
None.	
Suspension Agreements.	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of Chlorinated Isocyanurates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of Folding Metal Tables and Chairs from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consist with FAG Italia v. United States, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: July 19, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–11973 Filed 7–26–06; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–888

Floor–Standing, Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 27, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton, or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–8173, or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order regarding floor standing, metal–top ironing tables and parts thereof from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004). The Department received timely requests from Since Hardware (Guangzhou) Co., Ltd. (Since Hardware), Shunde Yongjian Housewares Co., Ltd. (Shunde Yongjiang), and Forever Holdings Ltd. (Forever Holdings), in

accordance with 19 CFR 351.213(b)(2), for an administrative review of the antidumping duty order on ironing tables and parts thereof from the PRC, which has an August annual anniversary month. On September 20, 2005, the Department initiated a review with respect to Since Hardware, Shunde Yongjiang, and Forever Holdings. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005).

On April 19, 2006, in accordance with 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until August 4, 2006. *See Floor–Standing, Metal–Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 71 FR 20076 (April 19, 2006).

Additional Extension of Time Limits for the Preliminary Results

Section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1) require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. The Department requires additional time to analyze outstanding supplemental questionnaire responses for both Since Hardware and Shunde Yongjian regarding their factors of production and time to issue additional supplemental questionnaires, if necessary. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is fully extending the time limit for the completion of these preliminary results by an additional 27 days to August 31, 2006. The final results, in turn, will be due 120 days after the date of issuance of the preliminary results, unless extended.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: July 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–11970 Filed 7–26–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–802

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of the First Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 27, 2006.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3797 and (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2006, the Department published in the **Federal Register** a notice of initiation listing 84 firms for which it received timely requests for an administrative review of this antidumping duty order. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 71 FR 17813 (April 7, 2006) (''*Initiation Notice*''). The period of review (POR) is July 16, 2004 through January 31, 2006.

On May 3, 2006, the following Respondents withdrew their review requests: Sao Ta Foods Joint Stock company, Fimex VN, and Sao Ta Seafood Factory (collectively, Fimex); Phuong Nam Co., Ltd.; and Vietnam Fish One Co., Ltd.

On June 2, 2006, Petitioner[1] withdrew its request for an administrative review of 27 companies, some of which were duplicate names:[2] Cai Doi Vam Seafood Import–Export Company (Cadovimex); Camau Frozen Seafood Processing Import Export Corporation (Camimex); Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex); Coastal Fishery Development;* Coastal Fisheries Development Corporation (Cofidec);* C P Vietnam Livestock Co. Ltd.;* C P Livestock;* Cuu Long Seaproducts Limited (Cuulong Seapro); Danang Seaproducts Import Export Corporation (Seaprodex Danang); Frozen Seafoods Fty; Minh Hai Export Frozen Seafood Processing Joint Stock Company;* Minh Hai Export Frozen Seafoods Processing Joint Stock Company (Minh Hai Jostoco);* Minh Hai Joint Stock Seafoods Processing Company (Seaprodex Minh Hai); Minh Hai Sea Products Import Export Company (Seaprimiex Co); Minh Phat Seafood;* Minh Phu Seafood Corporation;* Minh Qui Seafood;* Ngoc Sinh Seafoods; Nha Trang Seaproduct Company (Nhatrang Seafoods); Phu Cuong Seafood Processing and Import Export Company Ltd. (Phu Cuong); Soc Trang Aquatic Products and General Import Export Company (Stapimex);* Soc Trang Aquatic Products and General Import Export Company (Stapimex)- 2nd address;* Tho Quang Seafood Processing & Export Company (Tho Quang); Thuan Phuoc Seafoods and Trading Corporation (Thuan Phuoc); UTXI Aquatic Products Processing Company; Viet Foods Co. Ltd.; and Vinh Loi Import Export Company (Vimexco).

On June 9, 2006, Petitioner withdrew its request for an administrative review on seven additional companies:[3] Agrimex; Hacota; Hoa Nam Marine Agricultural; Pataya Food Industry (Vietnam) Ltd. (Pataya); Seafood Processing Imports Exports Vietnam; Thien Ma Seafood; and Vita.

On June 20, 2006, Petitioner withdrew its request for an administrative review on one additional company, Amanda Foods (Vietnam) Ltd. (AVF), and on June 29, 2006, Petitioner withdrew its request for review for three companies appearing in its review request letter of February 28, 2006: Phuong Nam Co.

[1] Ad Hoc Shrimp Trade Action Committee (''Petitioner'').

[2] The companies which have a ''*'' attached to their names are duplicate companies. Specifically, Coastal Fishery Development is the same as Coastal Fisheries Development Corporation (Cofidec); C P Vietnam Livestock Co. Ltd. is the same as C P Livestock; Minh Hai Export Frozen Seafood Processing Joint Stock Company is the same as Minh Hai Export Frozen Seafoods Processing Joint Stock Company (Minh Hai Jostoco); Minh Phat Seafood, Minh Phu Seafood Corporation, and Minh Qui Seafood are collectively known as Minh Phu Group; Soc Trang Aquatic Products and General Import Export Company (Stapimex) is the same as Soc Trang Aquatic Products and General Import Export Company (Stapimex)- 2nd address.

[3] None of these companies are duplicate names. However, two of these companies (*i.e.*, Thien Ma Seafood and Pataya) claimed that they made no shipments of the subject merchandise to the United States during the POR. *See* the Partial Rescission Section below for further discussion.

Ltd.; Phuong Nam Seafood Co. Ltd.*;and Sao Ta Foods Joint Stock Company (Fimex VN). On June 30, 2006, Petitioner withdrew its review request for Can Tho Agricultural and Animal Products Import Export Company (Cataco), and Cataco withdrew its own request for review on July 3, 2006. On July 6, 2006, Cataco clarified that during the POR, it also exported under the name Can Tho Seafood Export, and that its withdrawal letter also covers that name.

Also on July 6, 2006, Petitioner withdrew its review requests for 29 additional companies: AAAS Logistics; American Container Line; Angiang Agricultural Technology Service Company; An Giang Fisheries Import and Export Joint Stock Company (Agifish); Bentre Frozen Aquaproduct Exports; Bentre Aquaproduct Imports & Exports; Can Tho Agricultural Products; Can Tho Seafood Exports; Cautre Enterprises; Dong Phuc Huynh; General Imports & Exports; Grobest & I Mei Industry Vietnam (Grobest); Hai Thuan Export Seaproducts Processing Co. Ltd.; Hai Viet; Hatrang Frozen Seaproduct Fty; Khanh Loi Trading; Kim Anh Co. Ltd.; Lamson Import–Export Foodstuffs Corporation; Saigon Orchide; Sea Product; Sonacos; Special Aquatic Products Joint Stock Company (Seaspimex); Tacvan Frozen Seafoods Processing Export Company; Thami Shipping & Airfreight; Thanh Long; Tourism Material and Equipment Company (Matourimex Hochiminh City Branch); Truc An Company; Vietnam Northern Viking Technologie Co. Ltd.; and Vilfood Co.

Partial Rescission

Pursuant to section 351.213(d)(1) of the Department's regulations, the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within ninety days of the date of publication of notice of initiation of the requested review.

Because the Petitioner's and certain Respondent's requests were timely, in accordance with section 351.213(d)(1) of the Department's regulations, we are rescinding this review with respect to the following 34 companies: AVF; Cadovimex; Camimex; Cafatex; Cataco; Can Tho Seafood Exports*; Coastal Fishery Development; Cofidec; C P Vietnam Livestock Co. Ltd.; C P Livestock; Cuulong Seapro; Seaprodex Danang; Fimex VN; Frozen Seafoods Fty[4]; Minh Hai Export Frozen Seafood Processing Joint Stock Company; Minh Hai Jostoco; Seaprodex Minh Hai; Seaprimiex Co; Minh Phat; Minh Phu; Minh Qui; Ngoc Sinh Seafoods (aka Ngoc Sinh Private Enterprise); Nhatrang Seafoods; Phuong Nam Co. Ltd.; Phuong Nam Seafood Co. Ltd.*; Phu Cuong; Stapimex (both addresses); Tho Quang[5]; Thuan Phuoc Seafoods and Trading Corporation; UTXI Aquatic Products Processing Company; Viet Foods Co. Ltd.; Vimexco; and Pataya. We are not rescinding the review with respect to Vietnam Fish One Co., Ltd. since Petitioners still have an active review request for that company.

In addition, the Department is rescinding this review with respect to the following 34 additional companies which did not receive a separate rate in the prior segment (the less–than-fair–value investigation) of this proceeding: Agrimex; Hacota; Hoa Nam Marine Agricultural; Seafood Processing Imports Exports Vietnam; Vita; AAAS Logistics; American Container Line; Angiang Agricultural Technology Service Company; Agifish; Bentre Frozen Aquaproduct Exports; Bentre Aquaproduct Imports & Exports*; Can Tho Agricultural Products; Cautre Enterprises; Dong Phuc Huynh; General Imports & Exports; Grobest; Hai Thuan Export Seaproducts Processing Co. Ltd.; Hai Viet; Hatrang Frozen Seaproduct Fty; Kim Anh Co. Ltd.; Lamson Import–Export Foodstuffs Corporation; Saigon Orchide; Sea Product; Sonacos; Seaspimex; Tacvan Frozen Seafoods Processing Export Company; Thami Shipping & Airfreight; Thanh Long; Matourimex Hochiminh City Branch; Truc An Company; Vietnam Northern Viking Technologie Co. Ltd.; Thien Ma Seafood; Khanh Loi Trading; and Vilfood Co. For purposes of initiation of this administrative review, the Department accepted requests for review of these entities based upon the premise that such entities would seek to demonstrate in this review that they were, in law and in fact, separate from the Vietnam–wide entity, and therefore entitled to a rate separate from the rate established for the Vietnam–wide entity. However, as the requests for review of these entities have been withdrawn, these entities may be subject to this review as part of the single Vietnam–wide entity. Therefore, the Department will provide assessment instructions to the U.S. Customs and Border Protection (''CBP'') for these entities after the final results of this administrative review.

Assessment Rates

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

[4] Frozen Seafoods Fty is a subsidiary of Thuan Phuoc. We note that the full name of this company is Frozen Seafoods Factory No. 32. The Department included Frozen Seafoods Fty as part of the Thuan Phuoc entity when granting that entity separate rate status in the original investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005). In its separate rate certification filed on April 28, 2006, Thuan Phuoc reported that this relationship remained unchanged during the POR.

[5] Tho Quang is a subsidiary of Seaprodex Danang. The Department included Tho Quang as part of the Seaprodex Danang entity when granting that entity separate rate status in the original investigation. *Id.* In its separate rate certification filed on May 5, 2006, Seaprodex Danang reported that this relationship remained unchanged during the POR.

Dated: July 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc.E6–11969 Filed 7–26–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review: Certain Hot- Rolled Carbon Steel Flat Products from Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for completion of the preliminary results of the administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania until October 16, 2006. The period of review is November 1, 2004, through October 31, 2005.

EFFECTIVE DATE: July 27, 2006.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2005, the Department of Commerce (the Department) published a notice of initiation of the 2004–2005 antidumping duty administrative review of this order covering Mittal Steel Galati S.A. (formerly Ispat Sidex S.A). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2004).

Extension of Time Limit for Preliminary Results

The Tariff Act of 1930, as amended (the Act), provides at section 751(a)(3)(A) that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act provides further that, if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 245-day period to 365 days.

The Department has determined that it is not practicable to complete the preliminary results by the current deadline of August 2, 2006, because it received a request to conduct a sales–below-cost investigation on July 11, 2006. Additional time is necessary to consider whether to initiate a sales–below-cost investigation, give MS Galati an opportunity to provide relevant information, review MS Galati's response, and, if appropriate, conduct the cost analysis as part of the calculation of the weighted–average margin for MS Galati.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 75 days to October 16, 2006.

We are issuing this notice in accordance with section 751(a)(3)(A) of the Act.

Dated: July 21, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–11972 Filed 7–26–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Notice of Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce,

EFFECTIVE DATE: July 27, 2006.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5287 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Extension of Deadline

At the request of various parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand for the period January 26, 2004, through July 31, 2005. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue preliminary results of review within 245 days after the last day of the anniversary month of an order for which a review is requested and final results within 120 days after the date on which the preliminary results were published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

On April 26, 2006, the Department published a notice extending the preliminary results for this review by 90 days until August 1, 2006. See *Notice of Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand*, 71 FR 24641 (April 26, 2006). Since the publication of the extension notice, the Department conducted home–market sales and cost verifications of two of the seven respondents involved in this review and has a number of issues to address as a result of these verifications. In addition, the Department must also address several complex issues raised in recent filings by interested parties involving, among others, costs of production, affiliated–party inputs, direct material expenses, and sales reporting.

Due to the complexity of the issues in this review, the Department needs additional time to conduct its analysis. Therefore, we are extending the deadline for issuing the preliminary results of this review by an additional 30 days until August 31, 2006.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 21, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–11971 Filed 7–26–06; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural

Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, Statutory Import Programs Staff, Room 2104, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 06–018. Applicant: University of Alabama, 201 7th Ave., A129 Bevill Building, Tuscaloosa, AL 35487. Instrument: Electron Microscope, Model Technai G2 F20 S–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used for research programs involving fuel cells, magnetic information storage, catalysis, joining, and thin films. Materials studied include Pt–alloy nanoparticles, TiAl thin film coating and Cu–Sn alloys for welding. It will also be used for graduate student instruction and training. Application accepted by Commissioner of Customs: April 24 2006.

Docket Number: 06–019. Applicant: University of Pittsburgh, Dept. Of ECE, 348 Benedum Hall, 3700 O'Hara Street, Pittsburgh, PA 15261. Instrument: Electron Microscope, Model JEM–2100F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for probing of how elemental composition, chemistry (bonding) and internal structure at the sub–nanometer scale are affected by processing and influence properties of materials, and to study phenomena associated with processing of high–performance metals, intermetallics, multi–functional oxide ceramics, various types of thin films, nanoparticles in catalysis, oxidation and corrosion behavior, phase transformations and crystal defects. Application accepted by Commissioner of Customs: April 24, 2006.

Docket Number: 06–020. Applicant: Middle Tennessee State University, 1114 Cope Building, 1301 East Main Street, Murfreesboro, TN 37132. Instrument: Electron Microscope, Model H–7650 TEM. Manufacturer: Hitachi High Technologies, Japan. Intended Use: The instrument is intended to be used to image samples with thicknesses (diameters) less than 1000 nm. Studies include: (1) Characterization of chemically prepared biological structures at high resolution to demonstrate the structure and function of components, (2) heavy–metal-stained biological samples (e.g., bacterial cells within an amoeba) and (3) metrology of discrete particles (e.g., colloidal silica). It will also be used for a training course in electron microscopy. Application accepted by Commissioner of Customs: April 24, 2006.

Docket Number: 06–021. Applicant: The University of Texas, Southwestern Medical Center at Dallas, 5323 Harry Hines Boulevard, Dallas, TX 75390–9056. Instrument: Electron Microscope, Model Technai G2 Spirit BioTwin. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to study biological molecules, cells, tissues, organs and microorganisms to determine both normal biological structure and changes which may have occurred during either disease or by experimental manipulation in order to improve patient care and treatment. Application accepted by Commissioner of Customs: April 25, 2006.

Docket Number: 06–022. Applicant: Battelle Memorial Institute, Pacific Northwest Division, 902 Battelle Blvd., Richland, WA 99352. Instrument: Electron Microscope, Model Technai G2 Sprint TWIN. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for the development of 3–dimensional reconstruction by TEM tomography based on acquirement of tilt series of a biological specimen, and its software reconstruction and rendering. This will provide a vital tool for morphological and functional studies in the area of cell biology and proteomics. Application accepted by Commissioner of Customs: May 2, 2006.

Docket Number: 06–023. Applicant: University of California, Lawrence Berkeley Lab for the US Department of Energy, One Cyclotron Road, BLDG 69, Berkeley, CA 94720, P.O. Box 528, Berkeley, CA 94701. Instrument: Electron Microscope, Model JEM–2100. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument is intended to be used for high–resolution electron microscopy for characterization of nanostructures combined with Z contrast and element identification, description of interfaces grown on top of each other and growth polarity identification of particular crystals and description of their point groups. Application accepted by Commissioner of Customs: May 4, 2006.

Docket Number: 06–024. Applicant: The University of Alabama, 411 Hackberry Lane, Tuscaloosa, AL 35487–0344. Instrument: Electron Microscope, Model H–7650–II TEM. Manufacturer: Hitachi High–Technologies Corp, Japan Use: The instrument is intended to be used to examine and study the structure and functions of cells and organisms including basic description of cells, comparative studies of structure as a result of various treatments, and localization of proteins within cells. It will also be used for diverse educational purposes. Application accepted by Commissioner of Customs: May 5, 2006.

Docket Number: 06–025. Applicant: The Ohio State University, Campus Microscopy and Imaging Facility, 4029 Graves Hall, 333 West 10th Ave., Columbus, OH 43210. Instrument: Electron Microscope, Model Technai G2 Spirit BioTwin. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used by a multi–disciplinary central instrumentation facility to provide nano–technology capability to its SEM laboratory. It will be used for a number of different electron microscopic techniques, including ultra–high resolution imaging, both with and without surface coating at a wide range of voltages for both biological and material applications. It will also be used for diverse educational purposes. Application accepted by Commissioner of Customs: May 5, 2006.

Docket Number: 06–026. Applicant: The New York Structural Biology Center, 89 Covenant Avenue at 133rd St., New York, NY 10027. Instrument: Electron Microscope, Model JEM–3200FSC. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used by ten educational and research institutions in New York to investigate, among other things, biological assemblies ranging from isolated protein molecules, complexes of protein molecules potentially bound to nucleic acids or membranes, crystalline arrays composed of these protein complexes, cells, viruses, or intact tissues to pursue a wide variety of biological problems. In addition to standard methods of electron microscopy, work will be done using the procedure of electron tomography which is like a CAT scan at molecular proportions, involving the imaging of a given cellular assembly which is systematically tilted to different angles. It will also be used in student courses. Application accepted by Commissioner of Customs: May 5, 2006.

Docket Number: 06–027. Applicant: The University of Akron, 302 Buchtel Common, Akron, OH 44325. Instrument:

Electron Microscope, Model JEM–1230. Manufacturer: Joel Ltd., Japan. Intended Use: The instrument is intended to be used for graduate research education purposes and in class–oriented educational purposes. Major use will be in polymer microscopy in applications including, but not limited to: polymer fibers, films and membranes; polycrystalline materials; engineering resins, rubber and plastics; emulsions and adhesives and inorganic and organic nano particles. Application accepted by Commissioner of Customs: May 5, 2006.

Docket Number: 06–028. Applicant: Clarion Health Partners, 1701 N. Senate Blvd., Indianapolis, IN 46204. Instrument: Electron Microscope, Model Technai G2 Spirit BioTwin. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to study various ultrastructural morphologic aspects of normal and pathological cells and tissues. Examples of recent research include 3–D glomerular imaging of renal biopsies, nephropathology in patients with Brushite nephrolithiasis and ischemic disruption of myosin I beta in renal tubules. Application accepted by Commissioner of Customs: May 5, 2006.

Docket Number: 06–029. Applicant: U.S. Department of Commerce, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. Instrument: Aberration–Corrected Monochromated Electron Microscope, Model ACEM: Technai G3 TF30CSP. Manufacturer: FEI Company, The Netherlands . Intended Use: The instrument is intended to be used to measure and characterize nanoscale devices and nanoscale materials for nanotechnology research including: electron and x–ray nanotomography; 3–D chemical imaging; critical dimension metrology for semiconductor devices; nanoparticle characterization and will use various other techniques for studying a very broad range of materials. Application accepted by Commissioner of Customs: May 9, 2006.

Docket Number: 06–030. Applicant: Florida State University, Department of Biological Science, 119 Biology Unit I, 4370, Tallahassee, FL 32306 Instrument: Electron Microscope, Model Nova 400 NanoSEM. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for studies on: comparative morphology of insects; cellular and tissue engineering; cell morphology on different surfaces; formation of semi–crystalline polymers; use of diatoms and other materials as templates for nanostructures; use of photocatalysts active in the synthesis of marine natural products used as anti–cancer drugs and a wide range of other structural studies. Application accepted by Commissioner of Customs: May 9, 2006.

Docket Number: 06–031. Applicant: Jackson State University, 1400 J.R. Lynch Street, Box 18540. Instrument: Electron Microscope, Model JEM–1011 Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to study: (1) The molecular structures of various mammalian cells, and compare the morphology of various cell lines; (2) assess the cytotoxicity of various therapeutic and environmental compounds; (3) perform apoptosis studies with these compounds; and (4) study their potential effects at the cellular and molecular levels. It will also be used in courses and training in its operation by students. Application accepted by Commissioner of Customs:May 11, 2005.

Docket Number: 06–032. Applicant: Smithsonian Institution. Instrument: Electron Microscope, Model Nova 600 NanoSEM. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for research regarding geological, mineralogical and planetary science by imaging and analyzing natural materials for their chemical composition (minerals, meteorites and rock specimens) at the microscopic scale. Application accepted by Commissioner of Customs: May 15, 2006.

Docket Number: 06–033. Applicant: University of North Florida, 4567 St. Johns Bluff Rd. South, Jacksonville FL 32224. Instrument: Electron Microscope, Model Quantum 200 ESEM. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to: (1) Optimize growth conditions for nanocrystalline ITO thin films and to fabricate gas sensor arrays, (2) study surface morphology, electrical response and chemical analysis of nanocrystalline thin films and gas sensor arrays in the presence of different gases and (3) investigate the surface conditions as well as structural properties of PICM sensors. Application accepted by Commissioner of Customs: May 19, 2006.

Docket Number: 06–034. Applicant: NYS Institute for Basic Research, 1050 Forest Hill Road, Staten Island, NY 10314. Instrument: Electron Microscope, Model H–7500. Manufacturer: Hitachi High–Technologies Corporation, Japan. Intended Use: The instrument is intended to be used to study brain, spinal chord, tissue–cultured cells and chromosomes from humans and animals. Priority areas of research include autism, infant development, fragile X syndrome, Down syndrome, neurodegenerative diseases, pediatric AIDS and other neuroinfectious diseases, environmental neurotoxicology, pharmaceutical therapy and brain development and pathology. It will also be used for student training in research methods in electron microscopy. Application accepted by Commissioner of Customs: May 17, 2006.

Docket Number: 06–035. Applicant: Carnegie Mellon University, 5000 Forbes Avenue, Pittsburgh, Pa 15213. Instrument: Electron Microscope, Model Nova 600 NanoLab Dual Beam. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to study: (1) Grain boundary energy on a wide range of metal, ceramic and semiconductor materials, (2) in–situ serial section for multi–image plans for 3–D analysis of grain boundary energy, (2) thin films of multi–layer materials in semiconductor devices and magnetic recording media and (3) the role of defects in the growth mechanisms of semiconductor substrates. Application accepted by Commissioner of Customs: May 19, 2006.

Docket Number: 06–036. Applicant: Texas Tech University, Health Sciences Center, 3601 4th Street, Stop 9042, Lubbock, TX 79430. Instrument: Electron Microscope, Model H–7650–II TEM. Manufacturer: Hitachi High–Technologies Corporation, Japan . Intended Use: The instrument is intended to be used to study, among other things, (1) The diagnosis of disease processes (e.g., examining the basement membrane of the kidney), (2) a blood substitute project will analyze human coronary endothelial cells, brain capillary endothelial cells, astrocytes, and neurons; cells in culture will be fixed, embedded in epon and thin sections will be examined for changes in cell structure and (3) vein leaflets will be fixed in glutaraldehyde, embedded in epon, and thin sections will be examined. Application accepted by Commissioner of Customs: May 24, 2006.

Docket Number: 06–037. Applicant: Wesleylan University, Biology Dept., Hall–Atwater Labs, Lawn Ave., Middletown, CT 06459–0170 Instrument: Micromanipulators and control system, temperature control and movable top plate. Manufactuurer: Scientifica, United Kingdom. Intended Use: The instrument is intended to be used to correlate the data taken from ''movies'' of cortical activity in the mouse with the activity recorded from a single neuron recorded intracellularly.

The movie is then used to simultaneously monitor the action potential activity of hundreds of neurons to infer subthreshold activity in other non–proximal neurons. Application accepted by Commissioner of Customs: June 6, 2006.

Docket Number: 06–038. Applicant: The Ohio State University,Campus Microscopy and Imaging Facility, 4029 Graves Hall, 333 West 10th Ave., Columbus, OH 43210. Instrument: Electron Microscope, Model Technai G2 Spirit BioTwin. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used in the campus microscopy and imaging facility, a multi–disciplinary central instrumentation facility at the university and will be used to study many different types of biological and non–biological materials, including many different types of solid–state materials including materials used for nano–fabrication studies. It will be used for both research and educational purposes including microscopy classes as well as individual training of faculty, staff and students. Application accepted by Commissioner of Customs: June 29, 2006.

Docket Number: 06–039. Applicant: University of Louisville, Speed School Of Engineering, Ernst Hall Room 106, Louisville, KY, 40292. Instrument: Electron Microscope, Model Technai G2 F–20 X–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used in materials science leading to the development of new materials focusing on carbon–free energy, the development of alternate fuels such as hydrogen and biomass–derived ethanol products and structural biology including biochemistry, molecular biology, genetics and molecular medicine. It will also be used to offer in–depth courses and hands–on seminars on high resolution transmission electron microscopy. Application accepted by Commissioner of Customs: July 10, 2006.

Docket Number: 06–040. Applicant: UC Irvine Medical Center, 101 The City Drive, Orange, CA, 92868. Instrument: Electron Microscope, Model Technai G2 Spirit. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used as a requirement for accreditation of the Pathology residency program. It will be used in the study of renal pathology, muscle and tumor pathology, study of ciliary structure, parasitic protozoan infections in Aids and in viral infection. Application accepted by the Commissioner of Customs: July 10, 2006.

Docket Number: 06–041. Applicant: University of Illinois at Chicago, Department of Physics (m/c 273), 845 West Taylor Street, Chicago, IL 6067–7059. Instrument: Beam Stabilizing System Manufacturer: Laser Laboratorium Gottingen, Germany. Intended Use: The instrument is intended to be used as a compatible accessory for an existing KrF Laser which will be developed to improve the beam quality of the laser maximizing the possibility of a uniform beam with an even wavefront for ultraviolet operation at 248 nm with extension of operation into the x–ray range of. 29 nm for general studies of the interaction of intense radiation with matter. Application accepted by the Commissioner of Customs: July 7, 2006.

Docket Number: 06–042. Applicant: The University of Illinois at Urbana–Champaign, 616 Green Street, Suite 212, Champaign, IL 61820. Instrument: Electron Microscope, Model JEM–220FS with STEM & Monochrometer. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used as a major part of the Center for Microanalysis of Materials, a shared research facility at the University of Illinois at Urbana–Champaign. The range of materials to be studied is very broad and under the direction of the current facility Principal Investigators and their graduate students from approximately ten university departments. One of the main goals of this instrument is to develop new imaging techniques to resolve the structure of materials with atomic resolution in three dimensions. Application accepted by the Commissioner of Customs: July 10, 2006.

Docket Number: 06–043. Applicant: SUNY Upstate Medical University, 750 East Adams Street, Syracuse, NY 13210. Instrument: Electron Microscope, Model JEM–2100. Manufacturer: JEOL Ltd., Japan. Intended Use: The Instrument is intended to be used to study, among other things, the structure of Pgp to visualize the structural changes Pgp is undergoing during the catalytic cycle, to calculate a three dimensional model of Pgp trapped at the different steps during ATP hydolysis and drug transport and to optimize the conditions under which we currently generate two dimensional crystals of Pgp in its native environment, the lipid layer. Application accepted for transmittal to the Commissioner of Customs: July 10, 2000.

Docket Number: 06–044. Applicant: Columbia University, 530 West 120th Street - Room 1001, New York, NY 10027. Instrument: Ultra–High Vacuum Low Temperature Scanning Tunneling Microscope. Manufacturer: Omicron Nano Technology, Germany. Intended Use: The instrument is intended to be used for studying the atomic structure of surfaces; the structure and order of adsorbed monolayers; the electronic properties of the surfaces and adsorbate–covered surfaces. Additionally, the dynamics of change of these properties following heating, cooling, adsorption desorption and laser excitation will be examined. Scanning tunneling microscopy will be conducted at cryogenic temperatures of 4K. Application accepted by the Commissioner of Customs: July 10, 2006.

Docket Number: 06–045. Applicant: Purdue University, WTHR Laboratory of Chemistry, 560 Oval Drive, West Lafayette, IN 47907–2084. Instrument: Nd:YAG Laser/dye laser. Manufacturer: InnoLas, Germany. Intended Use: The instrument is intended to be used for fundamental research studies of the properties of molecules, the way in which they isomerize and how they use energy from a laser to isomerize or react. The laser will excite the molecules of interest to excited electronic states, from which they will either fluoresce or are excited further to ionize before detection. It will be used for training and courses in modern, experimental physical chemistry research. Application accepted by the Commissioner of Customs: July 10,2006.

Gerald A. Zerdy,

Program Manager, Florence Agreement Program.

[FR Doc. E6–11968 Filed 7–26–06; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071906B]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Summer Meeting

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

ACTION: Notice of meeting.

SUMMARY: In preparation for the 2006 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to the ICCAT will have a summer meeting.

DATES: The meeting will be held August 2–3, 2006. There will be an open session the morning of Wednesday August 2, 2006, beginning at 9 a.m. thru 11 a.m. The remainder of the meeting will be closed to the public.

ADDRESSES: The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kelly Denit, Office of International Affairs, 301–713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in an open session to consider information on stock status of highly migratory species. After the open session the Advisory Committee to the U.S. Section to ICCAT will meet in a closed session to discuss sensitive information relating to upcoming international negotiations.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kelly Denit at (301) 713–2276 by at least 5 days prior to the meeting date.

Dated: July 20, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–12050 Filed 7–26–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Federal Acquisition Regulation; Information Collection; Authorized Negotiators

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding authorized negotiators. A request for public comments was published in the **Federal Register** at 71 FR 28856, May 18, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 28, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Contract Policy Division, GSA, (202) 208–4949.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Respondents: 65,660.
Responses Per Respondent: 8.
Total Responses: 525,280.
Hours Per Response: .017.
Total Burden Hours: 8,930.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiator, in all correspondence.

Dated: July 21, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–6512 Filed 7–26–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0047]

Federal Acquisition Regulation;Information Collection; Place of Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning place of performance. A request for public comments was published in the **Federal Register** at 71 FR 28855, May 18, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before August 28, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Contract Policy Division, GSA, (202) 208–4949.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (1) determine bidder responsibility; (2) determine price reasonableness; (3) conduct plant or source inspections; and (4) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract. Contractors can complete the provision electronically in the On-Line Representation and Certifications Application (ORCA); however, because the data being collected could change for a specific solicitation, contractor's will still be required to submit place of performance information on an exceptional basis; that is, whenever the place of performance for a specific solicitation is different from the place of performance shown in ORCA.

B. Annual Reporting Burden

Respondents: 79,397.

Responses Per Respondent: 14.

Total Responses: 1,111,558.

Hours Per Response: .07.

Total Burden Hours: 77,810.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: July 21, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. E6–12042 Filed 7–26–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0064]

Design Criteria Standard for Electronic Records Management Software Applications

AGENCY: Department of Defense.

ACTION: Notice of Availability.

SUMMARY: The DoD Standard, ''Design Criteria Standard for Electronic Records Management Software Applications'' is being revised. This document sets forth the baseline functional requirements for records management application (RMA) software. A draft of the revised document is available for review and comment.

Version 1 of DOD 5015.2–STD was issued November 24, 1997 and addressed basic requirements for RMA software. On June 19, 2002, Version 2 was issued, and was later endorsed by National Archives and Records Administration (NARA) as a standard for use by all federal agencies. Version 2 expanded on previous requirements and added requirements for tracking classified records.

Version 3 of the standard completes e-Government initiative taskings to both DoD and NARA. It incorporates baseline requirements for RMA to RMA inteoperability and archival transfer to NARA. Furthermore, this version encourages the development of RMA software to adhere to DoD net-centric information sharing principles. The DoD Components will use this standard in the implementation of their records management programs. Additionally, this standard is widely used throughout the U.S. by numerous states and counties as well as many foreign governments. The new net-centric thrust of this standard should be influential well beyond the Department of Defense.

DATES: Submit comments by September 25, 2006.

ADDRESSES: A copy of the document may be found at *http://jitc.fhu.disa.mil/recmgt.* You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. the general policy for comments and other submissions from members of the pubic is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Harriet J. Riofrio, telephone (703) 602–0816 or *harriet.riofrio@osd.mil.*

SUPPLEMENTARY INFORMATION: The Department of Defense is requesting review and comment on version 3 of DoD's 5015.2 standard, ''Design Criteria Standard for Electronic Records Management Software Applications''. Version 1 of DoD 5015.2–STD was issued November 24, 1997 and addressed basic requirements for electronic records management applications. On November 18, 1998, the Archivist of the United States sent a letter to the ASD(C3I), stating that DoD 5015.2–STD conformed with the requirements of the Federal Records Act and the implementing records management regulations found in 36 Code of Federal Regulations, 1220–1238. DoD Directive 5015.2 issued March 6, 2000 restated that it is DoD policy to create, maintain, and preserve information as records, in any media, that document the transaction of business and mission in wartime and peacetime to provide evidence of DoD Component organization, functions, policies, procedures, decisions, and activities as provided in Chapter XII of 36 CFR, Chapters 29, 31, 33, 35 of 44 U.S.C. and DoD 5015.2–STD.

Version 2 of DoD 5015.2–STD was issued on June 19, 2002, and endorsed by NARA on January 15, 2003 as a standard for use by all federal agencies. Version 2 expanded onPervious requirements and added new requirements for RMAs to manage classics records.

Version 3 represents the ongoing development of the standard and the DoD's RMA needs, in partnership with NARA. The new proposed version incorporates additional baseline requirements for RMA to RMA interoperability, archival transfer of records to NARA, and encourages the development of RMA software that adheres to the DoD's net-centric information sharing principles. The DoD Components will use this standard in the implementation of their records management programs. This standard, endorsed by NARA for Federal agencies, has been traditionally used throughout the U.S. by numerous states and counties as well as many foreign

governments. As this standard is so widely used outside of DoD, comments and suggestions are solicited to assess its utility to many user communities.

Dated: July 21, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–6513 Filed 7–26–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 28, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 24, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.
Title: Academic Libraries Survey: 2006–2008.
Frequency: Biennially.
Affected Public:
Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 3,236.
Burden Hours: 5,393.
Abstract: The Academic Libraries Survey has been a component of the Integrated Postsecondary Education Data System. Since 2002 it has been a separate biennial survey. Changes to the survey itself are minor from prior collections of this universe survey. The data are collected on the web and consist of information about library holdings, library staff, library services and usage, library technology, library budget and expenditures for 4,300 academic libraries in the U.S.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3071. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–12004 Filed 7–26–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Tribal Colleges and Universities

AGENCY: President's Board of Advisors on Tribal Colleges and Universities, Department of Education.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Tribal Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

Dates and Times: Thursday, August 10, 2006 1 p.m.–5 p.m.; Friday, August 11, 2006 9 a.m.–12 p.m.

ADDRESSES: The Board will meet at the Radisson Hotel in Duluth, Minnesota, 505 W. Superior St., phone: 218–727–8981.

FOR FURTHER INFORMATION CONTACT: Deborah Cavett, Executive Director, White House Initiative on Tribal Colleges and Universities, 1990 K Street, NW., Room 7014, Washington, DC 20006; telephone: (202) 219–7040, fax: 202–219–7086.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Tribal Colleges and Universities is established under Executive Order 13270, dated July 2, 2002, and Executive Order 13385 dated September 25, 2005. The Board is established (a) to report to the President annually on the results of the participation of tribal colleges and universities (TCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis also given to enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of TCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of a Three-Year Federal plan for assistance to TCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of TCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist TCUs.

Agenda: The purpose of the meeting is to update and enhance the Board's Action Agenda through a review of collaborative efforts and to discuss relevant issues to be addressed as the

Board pursues opportunities to strengthen capacity of programs at the tribal colleges and universities.

Additional Information: Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or material in alternative format) should notify Tonya Ewers at (202) 219–7040, no later than Friday, August 4, 2006. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Friday, August 11, 2006, between 11 a.m.–12 noon. Comments will be limited to ten (10) minutes for those speakers who sign up to speak. Those members of the public interested in submitting written comments may do so at the address indicated above by Friday, August 4, 2006.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Dated: July 20, 2006.

James Manning,

Acting Assistant Secretary , Office of Post Secondary Education, U.S. Department of Education.

[FR Doc. E6–12013 Filed 7–26–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, August 17, 2006. 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order
Introductions
Review of Agenda
Approval of July Minutes
6:15 p.m.—Deputy Designated Federal Officer's Comments
6:35 p.m.—Federal Coordinator's Comments
6:40 p.m.—Liaisons' Comments
6:50 p.m.—Public Comments and Questions
7 p.m.—Task Forces/Presentations
- Site Management Plan
- Land Acquisition Study Update
- Water Disposition/Water Quality Task Force

8 p.m.—Review of Action Items
8:05 p.m.—Public Comments and Questions
8:15 p.m.—Break
8:25 p.m.—Administrative Issues
- Preparation for September Presentation
- Budget Review
- Review of Work Plan
- Review of Next Agenda

8:35 p.m.—Subcommittee Report
- Executive Committee—Chairs' Meeting Homework

8:50 p.m.—Final Comments
9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on July 24, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–12038 Filed 7–26–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on a proposed three-year extension and revision to Form EIA–1605, The EIA also proposes to discontinue the Form EIA–1605EZ (short form).

DATES: Comments must be submitted by September 25, 2006, to the addresses listed below.

ADDRESSES: Send all comments to the attention of Stephen E. Calopedis. To ensure receipt of the comments by the due date, submission by e-mail (*stephen.calopedis@eia.doe.gov*) or fax (202–586–3045) is recommended. Comments submitted by mail should be sent to Stephen E. Calopedis, U.S. Department of Energy, Energy Information Administration, EI–81, 1000 Independence Avenue, SW., Washington, DC 20585. Questions on this action should be directed to Stephen E. Calopedis at 202–586–1156 or *stephen.calopedis@eia.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revised reporting form and instructions should be directed to Stephen E. Calopedis at 202–586–1156 or *stephen.calopedis@eia.doe.gov.* The revised version of the Form EIA–1605, ''Voluntary Reporting of Greenhouse Gases,'' and instructions, can also be

downloaded from the Program's Web site at *http://www.eia.doe.gov/oiaf/1605/Forms.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

Voluntary Reporting of Greenhouse Gases Program collections are conducted pursuant to Section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) under General Guidelines issued by the DOE's Office of Policy and International Affairs. The EIA–1605 and EIA–1605EZ forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation, as well as information on commitments to reduce greenhouse gas emissions and sequester carbon in future years. A summary of the results of the Voluntary Reporting of Greenhouse Gases Program appear in the Program's annual report titled Voluntary Reporting of Greenhouse Gases (*http://www.eia.doe.gov/oiaf/1605/vrrpt/*). Additionally, EIA produces and makes publicly available, a ''public-use'' database containing all the non-confidential information reported to EIA's Voluntary Reporting of Greenhouse Gases Program on the Forms EIA–1605 and EIA–1605EZ (*http://www.eia.doe.gov/oiaf/1605/databases.html*).

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

II. Current Actions

In response to the finalization and issuance of the revised Guidelines for reporting to the 1605b Voluntary Reporting of Greenhouse Gases Program (April 21, 2006; *http://www.eia.doe.gov/oiaf/1605/Gen%20Guidelines%20final%20rule%20Apr21.pdf*), the EIA has developed and plans to issue revised reporting forms and instructions for reporting under the revised Program Guidelines. The first year of reporting to the Program under the revised Guidelines is expected to occur in the Summer of 2007, for 2006 data.

EIA will be requesting OMB approval for revisions to Form EIA–1605 and for discontinuation of Form EIA–1605EZ (short form). The revisions to Form EIA–1605 are summarized below.

On the existing Schedule I, ''Entity Identification and Certification,'' the focus was limited to asking for information to identify the reporting entity, the type of reporting entity, the geographic scope of activities, the Standard Industrial Classification Code (SIC), the applicability of confidentiality, and the reporting entities attesting to/certifying the accuracy of the information reported. The revised Schedule I, ''Entity Information,'' has been expanded to include an inventory of emissions and emissions reductions, carbon flux, and emissions offsets, all calculated at the entity level. In addition, Schedule I includes the collection of NAICS codes (instead of SIC codes), an expanded list of entity type categories, information on any changes in entity statement from previous reporting years, and other reporter characteristics, such as base period, voluntary program affiliation, and entity organization.

On the existing Schedule II, ''Project-level Emissions and Reductions,'' the reporting entity was asked to provide information on individual projects that had achieved reductions in greenhouse gas emissions and/or have sequestered carbon. The revised Schedule II, ''Subentity Information,'' collects data that are similar to data collected on Schedule I of the revised Form EIA–1605, but on a subentity-level basis. Project-level or action-specific reductions can be registered under limited circumstances using the calculation methods specified in the Technical Guidelines and embodied in Addendum A of the revised form.

On the existing Schedule III, ''Entity-level Emissions and Reductions,'' the reporting entity was able to establish a record of its greenhouse gas emissions, emissions reductions and carbon sequestration achievements. Schedule III was used to report information such as actual emissions for the baseline period of 1987 to 1990, emissions for subsequent years (1991 to the present), emission reductions for the years 1991 to the present, and causes for changes in the levels of emissions and/or emissions reductions, all at the entity-level. The collection of entity-level emissions and reductions has been incorporated into Schedule I in the revised form. The revised Schedule III, ''Emissions Reductions Summary,'' focuses on summarizing the entity-level emissions reductions, based on information reported by the entity on Schedule I or Schedule II. Reporters may subdivide the entity into two or more subentities to permit the use of different calculation methods for estimating reductions.

On the existing Schedule IV, ''Commitments to Reduce Greenhouse Gases,'' the reporting entity was provided the opportunity to report on its commitments made, under a variety of governmental initiatives, to reduce greenhouse gases. The information gathered included descriptions of the commitment, the type of reference case used to calculate emissions reductions, the voluntary program the reduction activity was affiliated with (if applicable), as well as information on financial commitments made to support activities designed to reduce greenhouse gas emissions. Collection of commitment information has been discontinued in the revised form.

The revised Schedule IV, ''Verification and Certification,'' provides an opportunity for reporters to document optional independent, ''third-party'' verification of the information reported on the Form EIA–1605 and expands the certification statement that all reporters must sign. Third-party verification was not included on the existing EIA–1605 form. Schedule IV of the revised form consists of two sections. The first section titled, ''Independent Verification,'' collects information on the identity and qualifications of the independent verifier and verification approach and includes the independent verifier's certification. The second section titled ''Reporter Self-Certification,'' is a self-certification, including the reporter's declaration that the form meets all three requirements for ''reported'' reductions, and in the case of ''registered'' reductions, five additional requirements.

The form includes the following addenda for portions of the form that will not be required for all reporters: Addendum A, Emission Reduction Methods; Addendum B, Subentity Emissions Inventory; and Addendum C, Country-specific Factors Used to Estimate Emissions from Foreign Sources.

Please refer to the revised version of the form and instructions for more information about the purpose, who may report, when to report, where to submit, the elements to be reported, instructions for reporting, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information (*http://www.eia.doe.gov/*

oiaf/1605/Forms.html). For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following issues are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to range between 32 hours to 64 hours per response on Form EIA–1605, depending on the type of report and level of detail the respondent chooses to report at, or an average of 48 hours. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 17, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–12039 Filed 7–26–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0023; FRL–8079–1]

Notice of Filing of a Pesticide Petition for Establishment of an Exemption from the Requirement of a Tolerance for Residues of Sodium Chlorite/Chlorine Dioxide in or on Various Food and Feed Commodities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of June 7, 2006, announcing the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of a tolerance for residues of sodium chlorite/sulfur dioxide [sic] in or on wheat/barley/oats (grain, straw), and wheat (aspirated grain fractions) food and feed commodites. This document is being issued to correct the chemical name that was misrepresented in the document.

FOR FURTHER INFORMATION CONTACT: Bryant Crowe, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0025; e-mail address: *crowe.bryant@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the June 7, 2006 notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0023. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

II. What Does this Correction Do?

FR Doc. E6–8718 published in the **Federal Register** of June 7, 2006 (71 FR 32952) (FRL–8065–5), is corrected as follows:

1. On page 32952, second column, in the heading, the chemical name ''Sodium Chlorite/Sulfur Dioxide'' is corrected to read ''Sodium Chlorite/Chlorine Dioxide.''

2. On page 32952, second column, in the **SUMMARY**, the chemical name ''sodium chlorite/sulfur dioxide'' is corrected to read ''sodium chlorite/chlorine dioxide.''

3. On page 32953, second column, under the heading ''New Exemption from Tolerance,'' fifth line, the chemical name ''sodium chlorite/sulfur dioxide'' is corrected to read ''sodium chlorite/chlorine dioxide.''

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 19, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–12052 Filed 7–26–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0397; FRL–8079–7]

TSCA Section 21 Petition; Response to Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On April 21, 2006, the Sierra Club petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to take four actions under TSCA to mitigate risks from lead in toy jewelry. The petitioner requested that EPA: (1) Require TSCA section 8(d) health and safety data reporting; (2) submit a report to the Consumer Product Safety Commission (CPSC) under TSCA section 9; (3) issue a significant new use rule pursuant to TSCA section 5(a); and (4) issue quality control orders under TSCA section 6(b). Of the actions requested by the petitioner, TSCA section 21 applies only to the requests for actions under TSCA sections 6(b) and 8(d). For the reasons set forth in this notice, EPA has denied the petition to initiate rulemaking under these two sections.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline&epa.gov*.

For technical information contact: Doreen Cantor, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0486; e-mail address: *cantor.doreen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me

You may potentially be affected by this action if you manufacture, import, or distribute in commerce toy jewelry containing lead, or if you manufacture, import, process, or distribute in commerce lead. Potentially affected entities may include, but are not limited to:

- (NAICS code 339914) Costume jewelry and novelty manufacturing
- (NAICS code 339932) Game, toy, and children's vehicle manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding some of the entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification number EPA–HQ–OPPT–2006–0397. The docket is available for public viewing at the EPA Docket Center, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Public Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the OPPT docket.

II. Background

A. What is a TSCA Section 21 Petition

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial, or the expiration of the 90–day period, if no action is taken, the petitioners may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding.

B. What Action is Requested Under this TSCA Section 21 Petition?

On April 21, 2006, the Sierra Club petitioned EPA to take four actions intended to reduce risks from toy jewelry containing lead. The Sierra Club defines toy jewelry as any item that serves a decorative but no or minimal functional purpose that is valued at less than $20 per item. The requested actions are:

- Require TSCA section 8(d) health and safety data reporting for lead and lead salts.
- Submit a TSCA section 9 report to CPSC regarding lead and lead salts.
- Issue a TSCA section 5(a) significant new use rule regarding lead and lead salts in toy jewelry.
- Issue TSCA section 6(b) quality control orders regarding production of toy jewelry.

The petition also requested certain actions by CPSC.

Again, of the actions requested by the petitioner, TSCA section 21 applies only to actions under TSCA sections 6(b) and 8(d), and these requests are addressed in this notice.

III. Disposition of Petition

EPA does not believe that the actions requested by the petitioner under TSCA sections 6(b) and 8(d) would be helpful in addressing the problem presented by lead in toy jewelry, at this time. These two requests are therefore denied. The other two requests, for actions under TSCA sections 5(a) and 9, are not petitionable under TSCA section 21. Section 21 enumerates specific sections and subsections of TSCA under which any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule or an order. Sections 5(a) and 9 are not included.

A. Request to Issue Section 6(b) Quality Control Order Regarding Production of Toy Jewelry

EPA does not believe that section 6(b) is an appropriate tool to address the risks associated with lead in toy jewelry at this time. The use of section 6(b) would be most beneficial when the Agency can identify a small number of companies who, by their unique actions, are causing unreasonable risks to be present. In the case at hand, EPA believes that this approach may be inadequate and inefficient. Information

contained in several of the public comments suggests that there may be numerous instances where toy jewelry containing lead is still available in the marketplace. EPA is working in coordination with CPSC to understand the scope of the problem. A holistic and proactive approach may be more effective and less resource intensive than the case-by-case approach provided for under section 6(b).

Where the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present an unreasonable risk, TSCA section 6(b)(1) allows the Administrator to require the manufacturer or processor to provide information regarding the relevant quality control procedures followed in the manufacturing or processing. If the Administrator then determines such procedures are inadequate, TSCA section 6(b)(2) allows the Administrator to require the manufacturer or processor to revise its procedures. EPA notes that only orders under section 6(b)(2) are subject to TSCA section 21. The request contained in this petition is for orders to remedy quality control procedures where necessary (section 6(b)(2)). However, EPA is not in a position to issue such orders at this time because it has not issued any section 6(b)(1) orders that could provide the basis for section 6(b)(2) orders.

The request that EPA identify and issue section 6(b) orders to all manufacturers and processors producing toy jewelry with greater than 0.06% lead is therefore denied. However, EPA is not foreclosing the possibility of issuing section 6(b) orders in the future should it conclude that section 6(b) is an appropriate tool to address risks presented by particular manufacturers or processors.

B. Request to Require TSCA Section 8(d) Health and Safety Data Reporting for Lead and Lead Salts

TSCA section 8(d) authorizes the Agency to promulgate rules requiring that manufacturers, processors, and distributors of chemical substances or mixtures submit lists and copies of such health and safety studies to the Administrator. While this could allow the Agency to require the submission of health and safety studies on lead and lead salts, the Agency does not believe that a section 8(d) rule would provide useful information, at this time.

Extensive and detailed information on the toxicity of lead is already widely available. The Agency is already in possession of voluminous information on the health hazards of lead, and has undertaken numerous rulemakings and other actions based on this information. Along with the rest of the federal government and many other bodies, the Agency has concluded that lead can cause multiple adverse health effects, and has set a goal to eliminate lead poisoning as a major health concern in children by 2010. While the Agency is always open to the receipt of additional information on the health and safety of various substances, it believes that the health effects of lead are already well-known and accepted. Over the course of EPA's many rulemaking and policy development efforts to address lead risks to children, including numerous notice and comment proceedings, public meetings, and other fora for exchange of information, EPA believes that it has assessed the most critical existing lead health and safety studies that EPA and/or CPSC would find most valuable for regulatory purposes.

While it is possible some new information could be obtained from a section 8(d) rule, EPA does not consider it likely that it would gain significant new information through a section 8(d) rule requiring the types of studies identified by the petitioner. In addition, it is not clear that EPA has authority to obtain under section 8(d) all of the information identified by the petitioner (e.g., information on marketing and patterns of use).

For the reasons described above, EPA does not believe, at this time, that the requested section 8(d) rule would be helpful in assessing the risks to children from lead in toy jewelry and is, thus, denying this request. However, EPA is continuing to work with CPSC, and would consider doing a targeted section 8(d) rule should EPA conclude in the future that it has a need for specific information that could likely be obtained through this mechanism.

IV. Related Issues

After receiving this petition, EPA published a notice in the**Federal Register** soliciting comments and further information on the issues associated with lead in toy jewelry (71 FR 30921, May 31, 2006) (FRL–8069–3). EPA has carefully assessed this information, along with the information provided in the petition, and will continue to evaluate this information and conduct additional analyses to better understand the scope and severity of this issue.

Despite EPA's reservations about the specific approaches requested in this petition, the Agency is concerned about the continuing use of lead in toy jewelry and is working with CPSC to develop the most effective means to address this issue. The two Agencies have met four times since receiving this petition and have established an interagency group to identify the most effective steps to move forward. In the short-term, EPA will work with CPSC to examine approaches to outreach to retailers.

V. Comments Received

EPA received 10 comments in response to the **Federal Register** notice published May 31, 2006 (71 FR 30921), announcing EPA's receipt of this TSCA section 21 petition.

Five comments were received from state and municipal governmental agencies (Chicago, Minnesota, Minneapolis/Hennepin County, New York State, and Illinois), all of which strongly supported the petition. Several of these comments included survey data and anecdotal information showing that toy jewelry containing lead is available and causes moderate to severe health effects. These comments stressed the need for Federal action to eliminate lead from toy jewelry. Several comments also stressed that Federal action is needed to eliminate lead from other consumer and children's products as well.

Four comments were received from other sources (a private citizen, the Regulated Community Compliance Project of Boston University, the Coastal Health District, and Kids in Danger) which were also supportive of the petition, describing health risks to children from lead in toy jewelry. These comments did not include additional data, except that one (from Kids In Danger) included its 2004 report ''Playing With Poison: Lead Poisoning Hazards of Children's Products, 1990-2004''). These comments also urged federal action to eliminate lead in toy jewelry and in other products.

One trade association (the Association of Battery Recyclers (ABR)) submitted comments. This commenter opposed the petition for the TSCA section 8(d) request, on the bases that the petitioner had not identified benefits to be derived from the use of section 8(d), had not demonstrated why EPA action is needed given CPSC programs, and was overly broad. The comment also opposed the TSCA section 9 request on the basis of being overly broad. This commenter had no comment on the requests for action under TSCA sections 5(a) and 6(b).

EPA has considered these comments in responding to the petition.

List of Subjects

Environmental protection, lead, children's health.

Dated: July 20, 2006.

James B. Gilliford

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E6–12044 Filed 7–26–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, August 1, 2006 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 3, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Final Audit Report—2004 Democratic National Convention Committee, Inc. (DNCC).

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–6565 Filed 7–25–06; 2:49 pm]

BILLING CODE 6715–01–M

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 August 11, 2006.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Richard Jarrell, Freda Jarrell, Carol Jarrell, Robert Jarrell, and Robin Jarrell, all of Whitesville, West Virginia; as a group acting in concert to retain voting shares of Big Coal River Bancorp, Inc., Whitesville, West Virginia, and thereby indirectly retain voting shares of Whitesville State Bank, Whitesville, West Virginia.

Board of Governors of the Federal Reserve System, July 24, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–12011 Filed 7–26–06; 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 Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. TCF Financial Corporation, Wayzata, Minnesota; to acquire 100 percent of the voting shares of TCF National Bank Arizona, Mesa, Arizona, a de novo bank.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Liberty Holdings, LLC, Oklahoma City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Hazelton Bancshares, Inc., Hazelton, Kansas; and thereby indirectly acquire voting shares of The Farmers State Bank, Meno, Oklahoma.

Board of Governors of the Federal Reserve System, July 24, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–12012 Filed 7–26–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 28–29, 2006

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 28–29, 2006.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 5¼ percent.

[1] Copies of the Minutes of the Federal Open Market Committee Meeting on June 28–29, 2006, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

The vote encompassed approval of the paragraph below for inclusion in the statement to be released shortly after the meeting:

Although the moderation in the growth of aggregate demand should help to limit inflation pressures over time, the Committee judges that some inflation risks remain. The extent and timing of any additional firming that may be needed to address these risks will depend on the evolution of the outlook for both inflation and economic growth, as implied by incoming information. In any event, the Committee will respond to changes in economic prospects as needed to support the attainment of its objectives.

By order of the Federal Open Market Committee, July 21, 2006.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. E6–12040 Filed 7–26–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator of Health Information Technology; American Health Information Community Confidentiality and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the first meeting of the American Health Information Community Confidentiality and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: August 4, 2006 from 2 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic.html.*

SUPPLEMENTARY INFORMATION: The Confidentiality and Security Workgroup must convene in early August 2006 to begin discussion of cross-cutting issues relating to the principles of confidentiality and security in health information technology in order to meet upcoming deadlines.

The meeting will be available via internet access. Go to *http://www.hhs.gov/healthit/ahic.html* for additional information on the meeting.

Dated: July 20, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–6498 Filed 7–26–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–05CP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Micro-Finance Project for HIV Prevention—New—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a 3-year approval from the Office of Management and Budget to conduct focus groups and administer a one-on-one qualitative interview to women who are at risk for HIV infection and community leaders in four communities in the southeastern United States.

The purpose of this project is to conduct formative research to determine the most realistic and efficacious approach for developing a micro-finance project to reduce HIV/STD-related risk behavior among unemployed or underemployed high-risk African-American women in the southeastern United States, who are among those most at risk for HIV infection in the country. The project addresses goals of the ''CDC HIV Prevention Strategic Plan,'' specifically the goal of decreasing the number of persons at high risk of acquiring or transmitting HIV infection. Information from this project will inform the development of economic empowerment interventions to reduce risk for HIV infection.

A focus group will be conducted with eight women (who are screened for eligibility) in each of the four communities (a total of 32 women) in the southeast United States with high prevalence of HIV and other sexually transmitted diseases. A subset of these women will participate in individual interviews. Another focus group will include community leaders in each of the four communities (a total of 32 individuals). The focus groups will capture demographic information, attitudes, and knowledge regarding income-generating activities that are feasible (can be done with small capitalization and by these women with some training and other preparation), attractive (women will do this work), and useful (likely to produce income to address a reasonable proportion of economic need; the community will use the service or purchase the product of the activity).

The subset of focus group participants who also participate in individual interviews (five women in each of the four communities, with a maximum of 20 individual interviews) will respond to more personal questions. The semi-structured individual interviews will explore behavioral, social, and economic conditions that might contribute to risk for HIV infection.

The focus groups and interviews will take about two hours each to complete. A screening interview for women participants will take about 10 minutes to complete. There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Women-Screening interview	55	1	10/60	10
Women-Focus groups	32	1	2	64
Women-individual interviews	20	1	2	40
Community leaders-Focus groups	32	1	2	64
Total				178

Dated: July 21, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–12023 Filed 7–26–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06BM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Randomized Controlled Trial of Routine Screening for Intimate Partner Violence—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate partner violence (IPV) is a prevalent problem with serious health consequences that include death, physical injury, increased rates of physical illness, posttraumatic stress, increased psychological distress, depression, substance abuse, and suicide. Some studies suggest that abuse perpetrated by intimate partners tends to be repetitive and escalates in severity over time. This research has been the basis for promoting early diagnosis and intervention.

Health care providers appear to be well situated to identify IPV. Women come into contact with health care services routinely for a number of reasons such as prenatal care, family planning, cancer screening, and well baby care. Women experiencing IPV make more visits to emergency departments, primary care facilities, and mental health agencies than non-abused women. Considering the magnitude and severity of IPV, and the potential role health care providers could play in reducing its serious consequences, numerous professional and health care organizations have recommended routine screening of women for IPV in primary care settings. However, various systematic reviews of the literature have not found evidence for the effectiveness of screening to improve outcomes for women exposed to IPV.

A recent expert panel recommended that a randomized controlled trial (RCT) be conducted to establish the effectiveness of screening on women's health. In order to appropriately design a RCT, estimates of health change are required to calculate the sample size for the RCT, and consequently, establish its cost. In addition, the feasibility, acceptability, and impact of different approaches to screening and the concordance of different data collection methods need to be assessed to adequately design the RCT.

CDC has a contract to pilot test measures and procedures that are being proposed for a RCT of routine screening of IPV. This pilot test will recruit 175 women from OBGYN and family planning services in Cook County Hospital in Chicago. Women who agree to participate will be asked to complete a baseline computer-assisted and one week follow-up telephone questionnaire that will include overall health, physical and mental health, disability, health care utilization, and quality of life (QOL). Based on this pilot test, the measure will be revised and used in a RCT with 3000 women to test the impact of screening on health and QOL. There are no costs to respondents other than their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondents	Avg. burden/ response (in hours)	Total burden (hours)
Screener for Pilot	210	1	1/60	4
Pilot Health and QOL questionnaire	175	2	20/60	117
Screener for Final Pilot	3750	1	1/60	63

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form	Number of respondents	Number of responses per respondents	Avg. burden/ response (in hours)	Total burden (hours)
Health and QOL questionnaire Final	3000	2	20/60	2000
Total				2184

Dated: July 21, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–12025 Filed 7–26–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Public Health Research: Health Protection Research Initiative Graduate Training Program Grant, Request for Applications (RFA) CD07–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Public Health Research: Health Protection Research Initiative Graduate Training Program Grant, Request for Applications (RFA) CD07–001.

Time and Date: 12 p.m.–4 p.m., September 14, 2006 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA CD07–001, ''CDC Public Health Research: Health Protection Research Initiative Graduate Training Program Grant.''

Contact Person For More Information: Christine Morrison, PhD., Scientific Review Administrator, Office of Extramural Research, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone 404.639.3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–12015 Filed 7–26–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0275]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Fecal Calprotectin Immunological Test Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Fecal Calprotectin Immunological Test Systems.'' This guidance document describes a means by which fecal calprotectin immunological test systems may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify fecal calprotectin immunological test systems into class II (special controls). This guidance document is immediately in effect as the special control for fecal calprotectin immunological test systems, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Class II Special Controls Guidance Document: Fecal Calprotectin, Immunological Test Systems'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Deborah Moore, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0493.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying fecal calprotectin immunological test systems into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This notice announces the guidance document that will serve as the special control for fecal calprotectin immunological test systems.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register**

announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Thus, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the agency's current thinking on fecal calprotectin immunological test systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Fecal Calprotectin Immunological Test Systems,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1599 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120, the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073, and the collections of information in 21 CFR part 809 have been approved under OMB control number 0910–0485.

V. 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 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.

Dated: July 19, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–11974 Filed 7–26–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 429 [285c–3] of the Public Health Service Act (Pub. L. 95–158), notice is hereby given of a meeting of the statutory Diabetes Mellitus Interagency Coordinating Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Diabetes Mellitus Interagency Coordinating Committee.

Date: September 18, 2006.

Open: September 18, 2006, 9 a.m. to 3 p.m.

Agenda: Psychoactive Drugs and Type 2 Diabetes.

Place: National Institutes of Health, 9000 Rockville Pike, Building 45, Conference Rooms E1/E2.

Contact Person: Sanford A. Garfield, PhD, Senior Advisor, Biometrics and Behavioral Science, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, 6707 Democracy Blvd, Room 685, Bethesda, MD 20892, 301–594–8803, *Garfields@extra.niddk.nih.gov.*

Information is also available on the Institute's/Center's Web site: *http://www.niddk.nih.gov/federal/dmicc.htm*, where an agenda and any additional information for the meeting will be posted when available. For logistics and updated information not available on the Web site, contact Maria Smith, The Scientific Consulting Group, Inc., contractor for the DMICC, at *msmith@scgcorp.com.*

Please note: In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm.*

Dated: July 20, 2006.

Sanford A. Garfield,

Senior Advisor, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. E6–12046 Filed 7–26–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Screening, Brief Intervention, Brief Treatment and Referral to Treatment (SBIRT) Cross-Site Evaluation—New

SAMHSA's Center for Substance Abuse Treatment is conducting a cross-

site external evaluation of the impact of programs of screening, brief intervention (BI), brief treatment (BT) and referral to treatment on patients presenting at various health care delivery units with a continuum of severity of substance use. CSAT's SBIRT program is a cooperative agreement grant program designed to help six States and one Tribal Council expand the continuum of care available for substance misuse and use disorders. The program includes screening, Brief Intervention, Brief Treatment and Referrals (BI, BT) for persons at risk for dependence on alcohol or drugs. The primary purpose of the evaluation is to study the extent to which the modified models of SBIRT being implemented by the grantees expand the continuum of care available for treatment of substance use disorders.

A survey will be used to collect data from patients at the participating grantee health care delivery units at baseline using a computer-assisted personal interview (CAPI) and at a six-month follow-up primarily via computer-assisted telephone interviewing (CATI). A second survey will be administered to practitioners who are delivering SBIRT services using CAPI. The patient survey is composed of questions on substance use behaviors and other outcome measures such as productivity, absenteeism, health status, arrests and accidents. The practitioner survey is designed to evaluate the implementation of proposed SBIRT models by measuring their penetration and practitioners' willingness to adopt. Furthermore, the survey will document moderating factors related to practitioner and health care delivery unit characteristics.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument/activity	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours per collection
Patient Survey:				
Baseline Data Collection	3,600	1	.42	1,512
6-Month Follow-up Data	2,880	1	.47	1,354
Practitioner Survey	261	1	.40	104
Total	3,861			2,970

Written comments and recommendations concerning the proposed information collection should be sent by August 28, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 20, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–12028 Filed 7–26–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Request for Comment From the Field on the Substance Abuse and Mental Health Services Administration's (SAMHSA) Addiction Technology Transfer Center (ATTC) Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

SUMMARY: This notice is to request comments from interested stakeholders in the substance use disorders treatment field regarding SAMHSA's ATTC Program. SAMHSA will be issuing a Request for Applications (RFA) for a new round of competitive cooperative agreement awards under the ATTC program in Federal fiscal year (FFY) 2007. To assist SAMHSA in developing the RFA, SAMHSA is seeking input from stakeholders and interested parties on a number of issues relating to these cooperative agreements.

Program Title: Addiction Technology Transfer Centers (ATTC) Program.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 5001(d)(5) of the Public Health Service Act, as amended.

FOR FURTHER INFORMATION CONTACT: Catherine D. Nugent, SAMHSA/CSAT/DSI, 1 Choke Cherry Road, Room 5–1079, Rockville, MD 20857, phone: 240–276–1577, e-mail: *cathy.nugent@samhsa.hhs.gov.*

Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) is committed to building resilience and facilitating recovery for people with or at risk for substance use and mental disorders. SAMHSA collaborates with the States, national associations, local community-based and faith-based organizations, and public and private sector providers to implement initiatives in its priority areas, including development of the workforce serving individuals needing treatment and recovery for substance use disorders. The Center for Substance Abuse Treatment (CSAT) supports training and technology transfer activities to promote the adoption of evidence-based practices in substance use disorders treatment and, more broadly, to promote workforce development in the addiction treatment field. CSAT's Addiction Technology Transfer Centers (ATTCs), funded by CSAT since 1993, are a major component of SAMHSA/CSAT's workforce development efforts.

The ATTC Network is dedicated to identifying and advancing opportunities for improving addiction treatment. The vision of the ATTCs is to unify science, education and services to transform the lives of individuals and families affected by alcohol and other drug addition.

Serving the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and the Pacific Islands, the ATTC Network operates as 14 individual Regional Centers and a National Office. At the regional level, individual Centers focus primarily on meeting the unique needs in their areas while also supporting national initiatives. The National Office leads the Network in implementing national initiatives and concurrently supports and promotes individual regional efforts.

The current ATTC program is funded through cooperative agreements initially awarded in 2001 and 2002. These cooperative agreements will end in FFY 2007. SAMHSA/CSAT will be issuing a new funding announcement to re-compete the ATTCs in FY 2007. To assist CSAT in designing the

requirements and parameters for the next round of ATTCs, CSAT is requesting comments on the directions and priorities for the ATTC program and on meeting the workforce development needs of the addiction treatment field in an equitable manner across all the States, the District of Columbia, the Carribean Islands, and Pacific Islands.

DATES: Submit all comments on or before September 11, 2006.

ADDRESSES: Address all comments concerning this notice to: Catherine D. Nugent, SAMHSA/CSAT/DSI (ATTC Notice), 1 Choke Cherry Road, Room 5–1079, Rockville, MD 20857.

Electronic Access and Filing Address: You may submit comments by sending electronic mail (e-mail) to *cathy.nugent@samhsa.hhs.gov.*

Overview

The ATTC Network undertakes a broad range of initiatives that respond to emerging needs and issues in the substance use disorders treatment field. The ATTC Network is funded to upgrade the skills of existing practitioners and other health professionals and to disseminate the latest science to the treatment community. Resources are expended to create a variety of products and services that are timely and relevant to the many disciplines represented by the addiction treatment workforce.

Background

History

SAMHSA/CSAT funded 11 centers, which were known as the Addiction Training Centers (ATCs), in 1993. These ATCs covered 19 States and Puerto Rico. In 1995, SAMHSA expanded the program to cover six additional States, which brought the total number of States served to 25. In 1996, the program was renamed the Addiction Technology Transfer Center (ATTC) program. In 1998, a new round of cooperative agreements was funded and the ATTC network was expanded to include 13 Regional Centers and a National Office, serving 39 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. New cooperative agreements were funded in 2001 and 2002 for 14 ATTC Regional Centers and a National Office covering all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Islands. The funding announcements for the ATTC cooperative agreements awarded in 2001 and 2002 may be found on the SAMHSA Web site, *http://www.samhsa.gov*. Click on ''Grants'' at the top of the page and then on ''SAMHSA Grant Archives'' to find a listing of SAMHSA funding announcements for 2001 and 20021.

Purpose of the ATTCs

The primary purpose of the ATTCs is to enhance professional development by training the addiction treatment workforce to use evidence-based practices in providing treatment services and to train allied health professionals on the interdisciplinary foundation of addiction treatment, In 2001 and 2002, the ATTCs were tasked with the following:

- Building and maintaining collaborative networks with academic institutions, State and local governments, substance abuse/mental health/primary care fields, counselor credentialing boards, professional, recovery, community and faith-based organizations, managed care and criminal justice entities;
- Creating linkages with and disseminating research from the National Institute on Drug Abuse (NIDA, the National Institute of Alcohol Abuse and Alcoholism (NIAAA), the National Institute of Mental Health (NIMH), SAMHSA, and other government agencies;
- Developing and updating state-of-the-art research-based curricula, including curricula based on new and revised Treatment Improvement Protocols (TIPs), and developing faculty and trainers;
- Enhancing the clinical and cultural competencies of professionals from a variety of disciplines to help individuals with substance abuse problems;
- Upgrading standards of professional practice for addictions workers;
- Serving as technical resources to community-based and faith-based organizations, consumers and recovery organizations, and other stakeholders; and
- Providing feedback from the field to SAMHSA regarding the development of a comprehensive agenda for learning about and applying state-of-the-art treatment approaches.

The ATTCs are currently organized as 14 Regional Centers and one national coordinating center (National ATTC Office—NATTC). This organizational structure was predicated on the belief that the ATTCs can more effectively advance the addiction field through a unified effort among a coordinated network of education and training centers than through a number of free-standing centers. The NATTC serves a coordinating function, building and maintaining a viable infrastructure that promotes internal and external communication among the ATTC Network and between the Network and its various audiences.

Core Priorities of the Current ATTCs

A major focus of he ATTCs has been on professional development and training the workforce in the adoption of evidence-based practices to improve the provision of treatment for substance use disorders. In addition to training substance use disorders counselors, the ATTCs have trained professionals from related disciplines including social workers, criminal justice workers, nurses, and other allied health professionals. The blending of science and service is particularly evident in the NIDA/SAMHSA Blending Research and Practice Initiative carried out by the ATTCs. Using evidence-based protocols developed by NIDA's Clinical Trials Network (CTN), teams from the CTN and the ATTCs work together to create toolkits and training material for dissemination to the field. This project exemplifies collaboration between research and practice and serves as an illustration of technology transfer.

Working with the International Coalition for Addiction Studies Education (INCASE), the ATTCs have promoted professional development activities for addictions educators. For example, they have conducted training for addictions educators and have disseminated ''curriculum infusion packages,'' resource materials on specific topics in addictions studies that educators can use to update their course materials. Several of the ATTCs provide pre-service training for individuals in academic settings preparing for a career as a substance use disorder professional. This training is provided both in classroom settings and through on-line courses.

With the continuing aging of the addiction treatment workforce, the need for emerging leaders has been well noted. The ATTCs have offered a leadership training program in each region to help prepare the next generation of leaders in the field. This intensive program pairs emerging leaders with mentors, thereby offering opportunities for ongoing dialogue and support.

In addition, many of the ATTCs have conducted workforce surveys in their respective regions that provide demographic, job satisfaction, training/educational, and retention and recruitment information. These surveys have been a vital source of data on workforce conditions and trends in the past several years, particularly in the absence of any national survey of the substance use disorders treatment workforce.

ATTCs also work to support the recovery community through educational programs, development of materials, collaboration on special initiatives and support of Recovery Month activities.

The NATTC serves a coordinating role for the ATTC Regional Centers and hosts a Web site that provides many important resources to the field, such as:

- Addiction Science Made Easy—a library of cutting-edge research articles taken from the Journal of Alcoholism: Clinical and Experimental Research and re-written in lay terms.
- Addiction ED—a catalogue of addiction-related distance education opportunities offered by organizations around the world.
- Certification Info—a listing of State, national and international licensing and credentialing information for alcohol and drug counselors.
- ATTC Publication Catalog—a directory of ATTC Network products and resources including curricula, videos, presenter materials, and trainings.
- Eye on the Field—a monthly electronic magazine which features important topics in substance abuse treatment and provides useful tools for practitioners and administrators.

The National Office has also hosted committees with representation from the regional ATTCs and experts from the field that have produced such products as the TAP 21 Addiction Counseling Competencies and The Change Book. These publications have been milestones in the addiction treatment field, helping set national competency standards and a process to adopt evidence-based practices respectively.

New Request for Applications

For FY 2007, SAMHSA will be issuing a new Request for Applications (RFA) for the ATTC program. The FY 2007 President's Budget requests approximately $8.1 million for the ATTCs, about the same funding level as the current program. At this time, SAMHSA does not anticipate changing the number of ATTCs from the current number (i.e., 14 Regional Centers and 1 national coordinating center); however, SAMHSA might consider changing the geographic areas each ATTC regional center covers. To assist SAMHSA in developing the RFA, SAMHSA is seeking input from stakeholders and interested parties on a number of issues relating to these cooperative agreements.

SAMHSA wants to explore how the ATTCs can provide more equitable access to ATTC services throughout the States. The current ATTC regions vary greatly in population, square miles covered, and number of treatment facilities within their borders. Therefore, SAMHSA is seeking comments on possible alternative regional configurations that may address some of these differences.

SAMSHA has researched the population, square miles covered, and number of treatment facilities in the current ATTC regions, as well as the regions used by CSAT's Division of State and Community Assistance (DSCA), the Department of Health and Human Services (DHHS) Public Health Service, and the DHHS Health Resources and Services Administration (HRSA) regions. This information is presented in the table below.

TABLE. 1.—REGIONS BY POPULATION, SQUARE MILES, AND TREATMENT FACILITIES

Entity	Number of regions	Range of population in the regions	Range of square miles in the regions	Range of treatment providers in the regions
Current ATTCs	*14	3,809,000–45,154,000	5,330–830,670	199–2,747
DSCA	5	47,560,000–65,948,000	178,510–1,542,760	2,764–4,133
HHS	10	9,327,000–53,252,000	61,400–824,290	915–3,152
HRSA	11	9,987,000–47,241,000	56,070–971,540	386–2,938

*Plus a Coordinating Center.

The tables below give a state-by-state breakout for each of the four regional structures shown above.

Region	State
ATTC Regions	
New England	ME, NH, VT, MA, CT, RI.
Northeast	NY, NJ, PA.
Central East	DC, DE, KY, TN, MD.
Mid-Atlantic	VA, MD, NC, WV.
Southeast	GA, SC.
Southern Coast	AL, FL.
Caribbean Basin & Hispanic	PR, VI.
Great Lakes	IL, OH, WI, IN, MI.
Prairielands	IA, NE, ND, SD, MN.
Mid-America	MO, KS, OK, AR.
Gulf Coast	TX, LA, MS.
Pacific Southwest	CA, AZ, NM.
Mountain West	NV, MT, WY, UT, CO.
Northwest Frontier	AK, WA, OR, ID, HI, Pac. Isl.

Region	State
HHS Regions	
I	ME, NH, VT, MA, CT, RI.
II	NY, NJ, PR, VI.
III	MD, VA, WV, PA, DE, DC.
IV	AL, FL, GA, KY, MS, NC, SC, TN.
V	IL, IN, OH, MI, MN, WI.
VI	AR, LA, NM, OK, TX.
VII	IA, KS, MO, NE.
VIII	CO, MT, ND, SD, UT, WY.
IX	AZ, CA, HI, NV, Pac. Isl.
X	AK, ID, OR, WA.
DSCA Regions	
Northeast	ME, NH, VT, MA, CT, RI, NY, NJ, PA, DC, DE, MD.
Southeast	PR, VI, VA, WV, KY, TN, MS, AL, GA, SC, NC, FL.
Central	IA, ND, SD, MN, IL, OH, WI, IN, MI.
Southwest	NE, CO, KS, MO, AR, OK, NM, TX, LA.
Western	CA, MT, WY, NV, UT, AZ, AK, WA, OR, ID, HI, Pac. Isl.
HRSA Regions	
New England	ME, NH, VT, MA, CT, RI.
New York/New Jersey	NY, NJ.
Pennsylvania/Mid-Atlantic	PA, OH, WV, VA, MD, DC, DE.
Southeast	KY, TN, NC, SC, AL, GA.
Florida/Caribbean	PR, VI, FL.
Delta Region	AR, LA, MS.
Midwest	MN, WI, MI, IN, IL, IA, MO.
Oklahoma/Texas	OK, TX.
Mountain Plains	ND, SD, WY, UT, CO, NE, KS, NM.
Pacific	CA, NV, AZ.
Northwest	WA, ID, MT, OR.

In addition to the factors discussed above, there are a number of critical program priorities or cross-cutting principles affecting the addiction treatment field that need to be addressed by professionals providing services. SAMHSA is seeking guidance on whether it would be advisable to have the ATTCs house of Centers of Excellence on the critical priorities. The products and resources developed by these Centers of Excellence could then be disseminated throughout the ATTC Network and the field. This would avoid duplication of effort while addressing important clinical issues.

SAMHSA also seeks input from the field on what the ATTC priorities should be. In view of the pivotal role the ATTCs have played in bridging the gap between science and service, and in gathering data on the workforce, they are an integral component of SAMHSA's workforce development efforts. Recruitment and retention, leadership and management skills, and increasing the diversity of the workforce have been identified as key workforce issues. What role, if any, should the ATTCs have on these subjects?

SAMHSA funds the Centers for the Application of Prevention Technologies (CAPTs) through the Center for Substance Abuse Prevention. The CAPTs assist State/jurisdictions and community-based organizations in the application of evidence-based substance abuse prevention programs, practices, and policies. The CAPT system is a practical tool to increase the impact of the knowledge and experience that defines what works best in prevention programming. Because knowledge application is a prime focus of both the ATTCs and CAPTs, SAMHSA is seeking input on what the relationship should be between the ATTCs and the CAPTs.

Questions To Consider in Making Your Comments

SAMHSA/CSAT is seeking response to questions on a number of issues regarding the configuration of the ATTC regions, the areas of emphasis, and the relationship with CAPTs, including the following:

- What should be the major areas of emphasis for the ATTCs?
- How well do the current priorities and activities of the ATTCs meet the needs of the field? Are there some activities the ATTCs are currently undertaking that are no longer necessary? Are there activities related to workforce development or other topics the ATTCs should be doing that they are not currently doing?
- How should ATTC activities be coordinated with those of the CAPTs and other similar centers maintained by other Federal agencies?
- Who should be the primary audiences for/recipients of ATTC services?
- Should the ATTCs be organized around Centers for Excellence? If so, what topics should these Centers address?
- What should the role of the National ATTC Coordinating Center be?
- What types of services and products should the ATTCs provide?
- Should the ATTCs function primarily as independent regional centers or as a unified network collaborating to provide services and products to the field a large?
- How well does the current geographic configuration of the regional ATTCs meet the needs of the various constituents, including the States, providers, and practitioners?
- How well does the current geographic configuration of the ATTCs provide effective and equitable delivery of technology transfer services throughout the State?
- Are there alternative regional configurations for the ATTCs that could provide more equitable access to ATTC services throughout the Nation?

Dated: July 20, 2006.

Eric B. Broderick,

Acting Deputy Administrator, Assistant Surgeon General, Substance Abuse and Mental Health Services, Administration.

[FR Doc. 06–6500 Filed 7–26–06; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2006–0036]

System of Records

AGENCY: Office of the Secretary, DHS.

ACTION: System of records notice.

SUMMARY: The Department of Homeland Security is republishing the Privacy Act system of records notice for the Automated Biometric Identification System in order to expand its scope and authority to serve all or most programs that collect biometrics as part of their mission. As previously published, this system stored biometric information as a result of encounters pursuant to the Immigration and Nationality Act. As now proposed, this system will store biometric and limited biographic data collected for all national security, law enforcement, immigration, intelligence, and other mission-related functions.

DATES: Written comments must be submitted on or before August 28, 2006.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS–2006–0036 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: (202) 298–5201 (not a toll-free number).
- Mail: Steve Yonkers, US–VISIT Privacy Officer, 245 Murray Lane, SW., Washington, DC 20538; Maureen Cooney, Acting DHS Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, US–VISIT Privacy Officer, 245 Murray Lane, SW., Washington, DC 20538, by telephone (202) 298–5200 or by facsimile (202) 298–5201.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) is publishing a revision to existing Privacy Act systems of records known as Enforcement Operational Immigration Records/Automated Biometric Identification System (ENFORCE/IDENT). The notice for these systems of records was last published in the **Federal Register** on March 20, 2006 (71 FR 13987).

ENFORCE is the primary administrative case management system for DHS' Bureau of Immigration and Customs Enforcement (ICE). IDENT is the primary repository of biometric information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws (including the immigration law); investigations, inquiries, and proceedings there under; and national security and intelligence activities. IDENT is a centralized and dynamic DHS-wide biometric database that also contains limited biographic and encounter history information needed to place the biometric information in proper context. The information is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies.

For business purposes ENFORCE and IDENT were operated jointly. Now, as a part of operational and technical restructuring these systems will be operated independently-IDENT under the management of US–VISIT and ENFORCE under the management of ICE. Consequently, the ENFORCE/IDENT system notice is being split into two system notices: one for ENFORCE and one for IDENT. Until a new notice is published by ICE, ENFORCE continues to operate under the system notice published March 20, 2006 (71 FR 13978).

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system change to the Office of Management and Budget and to Congress.

DHS/2006–0036

SYSTEM NAME:

DHS Automated Biometric Identification System (IDENT).

SYSTEM LOCATION:

Department of Homeland Security (DHS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. Individuals whose biometrics are collected by, on behalf of, in support of, or in cooperation with DHS concerning operations that implement and/or enforce laws, regulations, treaties, or orders related to the missions of DHS.

B. Individuals whose biometrics are collected by, on behalf of, in support of, or in cooperation with DHS as part of a background check or security screening connection with their hiring, retention, performance of a job function, or the issuance of a license or credential.

C. Individuals whose biometrics are collected by Federal, state, local, tribal, foreign, or international agencies for national security, law enforcement, immigration, intelligence, or other DHS mission-related functions, and who are the subjects of wants, warrants, or lookouts or any other subject of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

IDENT contains biometric, biographic, and encounter-related data for operation/production, testing, and training environments. Biometric data includes, but is not limited to, fingerprints and photographs. Biographical data includes, but is not limited to, name, date of birth, nationality, and other personal descriptive data. The encounter data provides the context of the interaction with an individual including, but not limited to, location, document numbers, and reason fingerprinted. Test data may be real or simulated biometric, biographic, or encounter related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 202, 8 U.S.C. 1103, 1158, 1201, 1225, 1324, 1357, 1360, 1365a, 1365b, 1379, and 1732.

PURPOSE(S):

This system of records is established and maintained to enable DHS to carry out its assigned national security, law enforcement, immigration, intelligence and other DHS mission-related functions, and to provide associated testing, training, management reporting, planning and analysis, or other administrative uses by providing a DHS-wide repository of biometrics captured in DHS or law enforcement encounters.

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), limited by privacy impact assessments, data sharing, or other agreements, as follows:

A. To appropriate Federal, state, local, tribal, foreign, or international Governmental agencies seeking information on the subjects of wants, warrants, or lookouts, or any other subject of interest, for purpose related to

administering or enforcing the law, national security, immigration, or intelligence, where consistent with a DHS mission-related function as determined by DHS.

B. To appropriate Federal, state, local, tribal, foreign, or international government agencies charged with national security, law enforcement, immigration, intelligence, or other DHS mission-related functions in connection with the hiring or retention by such an agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency.

C. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or discovery proceedings.

D. 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.

E. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

F. To individuals who are obligors or representatives of obligors of bonds posted.

G. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a DHS mission function related to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information can be stored in case file folders, cabinets, safes, or a variety of electronic or computer databases and storage media.

RETRIEVABILITY:

Records may be retrieved by biometrics or select personal identifiers.

SAFEGUARDS:

The system is protected through multi-layer security mechanisms. The protective strategies are physical, technical, administrative, and environmental in nature, and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

The following proposal for retention and disposal is pending approval with National Archives and Records Administration (NARA):

Records that are stored in an individual's file will be purged according to the retention and disposition guidelines that relate to the individual's file (DHS/ICE/USCIS001A).

Testing and training data will be purged when the data is no longer required. Electronic records for which the statute of limitations has expired for all criminal violations or that are older than 75 years will be purged. Fingerprint cards, created for the purpose of entering records in the database, will be destroyed after data entry. Work Measurement Reports and Statistical Reports will be maintained within the guidelines set forth in NCI–95–78–5/2 and NCI–85–78–1/2 respectively.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, IDENT Program Management Office, US–VISIT Program, U.S. Department of Homeland Security, Washington, DC 20528, USA.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the US–VISIT Privacy Officer, US–VISIT Program, U.S. Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20528, USA.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). A determination as to the granting or denial of access shall be made at the time a request is received. Requests for access to records in this system must be in writing, and should be addressed to the US–VISIT Privacy Officer as noted above. Such request may be submitted either by mail or in person. The envelope and letter shall be clearly marked ''Privacy Officer—Redress Request.'' To identify a record, the record subject should provide his or her full name, date and place of birth; if appropriate, the date and place of entry into or departure from the United States; verification of identity by submitting a copy of fingerprints if appropriate (in accordance with 8 CFR 103.21(b) and/or pursuant to 28 U.S.C. 1746, make a dated statement under penalty of perjury as a substitute for notarization), and any other identifying information that may be of assistance in locating the record. The requestor shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). A determination as to the granting or denial of a request shall be made at the time a request is received. An individual desiring to request amendment of records maintained in this system should direct his or her request to the System Manager noted above or the appropriate FOIA/PA Officer. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is supplied by individuals covered by this system, and other Federal, state, local, tribal, or foreign governments; private citizens; and public and private organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g) pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), and (e)(4)(H) pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: July 19, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. E6–11995 Filed 7–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Publication and Release of the National Response Plan

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice informs the public that the Department of Homeland

Security (DHS) has developed and published a Notice of Change to the National Response Plan, that is now available to the public.

Authority: Homeland Security Act of 2002, Public Law 107–296; Homeland Security Presidential Directive—5, *Management of Domestic Incidents*.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Gabbrielli, National Preparedness Task Force, DHS, Washington, DC 20528, 202–282–9810 or *NPTF-CP@dhs.gov*; Mr. Paul Schwartz, Interagency Response Planning, DHS, Federal Emergency Management Agency, Washington, DC 20472, 202–646–7653 or *paul.k.schwartz@dhs.gov*.

SUPPLEMENTARY INFORMATION: In December 2004, the Department of Homeland Security (DHS) published the National Response Plan (NRP). The NRP, using the comprehensive framework of the National Incident Management System (NIMS), establishes a comprehensive, national, all-hazards approach to domestic incident management across a spectrum of activities including prevention, preparedness, response, and recovery. It provides the structure and mechanisms for the coordination of Federal support to State, local, and tribal incident managers and for exercising direct Federal authorities and responsibilities. The NRP is applicable to all Federal departments and agencies that may be requested to provide assistance or conduct operations in the context of actual or potential domestic incidents requiring a coordinated Federal response.

As of April 14, 2005, the NRP superseded the Initial National Response Plan, Federal Response Plan, U.S. Government Interagency Domestic Terrorism Concept of Operations Plan, and Federal Radiological Emergency Response Plan, and all Federal departments and agencies were required to fully implement the NRP.

Based on lessons learned during Hurricane Katrina, DHS reviewed recommendations applicable to the execution of the NRP and worked with the White House Homeland Security Council (HSC) to identify and amend select sections of the NRP. A Notice of Change, which was limited in scope to those actions requiring immediate clarification or modification in order to ensure future effective and coordinated Federal responses, was subsequently developed by DHS and approved by the HSC Domestic Readiness Group. A full scale review of the NRP will commence at a later date.

The Notice of Change to the NRP became effective on May 25, 2006. When providing support under the NRP, Federal departments and agencies are required to conform to any modifications to the processes or structures identified in the Notice of Change.

This Notice informs the public of the release and availability of the National Response Plan Notice of Change. The Notice of Change is available on the Department of Homeland Security's Web site at *http://www.dhs.gov/nationalresponseplan*.

George W. Foresman,

Under Secretary for Preparedness, Department of Homeland Security.

R. David Paulison,

Under Secretary for Federal Emergency Management, Department of Homeland Security.

[FR Doc. E6–11998 Filed 7–26–06; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

United States Visitor and Immigrant Status Indicator Technology Program

Processing Additional Aliens Privacy Impact Assessment

AGENCY: Privacy Office, Office of the Secretary, DHS.

ACTION: Notice of availability of a Privacy Impact Assessment.

SUMMARY: The Department of Homeland Security has updated and is making available its United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) Privacy Impact Assessment (PIA) to discuss the impact of program change on privacy. The PIA can be found under the Privacy Impact Assessment Section of the Privacy Office's Web site, *www.dhs.gov/privacy*.

DATES: The Privacy Impact Assessment will be available for a minimum of (60) days.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Privacy Officer, US–VISIT, Department of Homeland Security, Washington, DC 20528, telephone (202) 298–5200, facsimile (202) 298–5201, e-mail: *usvisitprivacy@dhs.gov*; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, Mail Stop 0550, 601 S. 12th Street, Arlington, VA 22202–4220; by telephone (571) 227–3813, facsimile (571) 227–4171, or e-mail: *privacy@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) has updated and is making available its US–VISIT PIA to discuss the impact of a program change on privacy. The PIA updates relate to the proposal by DHS to expand the US–VISIT population to cover additional classes of aliens under a Notice of Proposed Rulemaking titled Authority to Process Additional Aliens in US–VISIT published in today's **Federal Register**. The revised PIA is available on the Web site of the DHS Privacy Office, *www.dhs.gov/privacy*, under Privacy Impact Assessments, and on the US–VISIT Web site, *www.dhs.gov/usvisit*. The original US–VISIT PIA was published in the **Federal Register** on January 16, 2004 (69 FR 2608); revised versions reflecting subsequent changes were published on September 23, 2004 (69 FR 57036), and on July 7, 2005 (70 FR 39300).

Dated: July 19, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. E6–11994 Filed 7–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2388–06; USCIS–2006–0018]

RIN 1615–ZA35

Extension of the Designation of Temporary Protected Status for Somalia; Automatic Extension of Employment Authorization Documentation for Somalia TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of extension of temporary protected status for Somalia.

SUMMARY: The designation of Somalia for Temporary Protected Status (TPS) will expire on September 17, 2006. This Notice informs the public that the TPS designation for Somalia has been extended for 18 months, until March 17, 2008, and sets forth procedures for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) for the additional 18-month period. Re-registration is limited to persons who have previously registered for TPS under the designation of Somalia and whose application was granted or remains pending. Certain nationals of Somalia (or aliens having

no nationality who last habitually resided in Somalia) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the timeframes involved with processing TPS re-registrants, the Department of Homeland Security (DHS) recognizes that many re-registrants may not receive a new EAD until after their current EAD expires on September 17, 2006. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Somalia for six months until March 17, 2007, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: *Effective Dates:* The extension of Somalia's TPS designation is effective September 17, 2006, and will remain in effect until March 17, 2008. The 60-day re-registration period begins July 27, 2006 and will remain in effect until September 25, 2006.

FOR FURTHER INFORMATION CONTACT: Matthew Horner, Status and Family Branch, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272–1505. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act.
ASC—USCIS Application Support Center.
DHS—Department of Homeland Security.
DOS—Department of State.
EAD—Employment Authorization Document.
Secretary—Secretary of Homeland Security.
TPS—Temporary Protected Status.
USCIS—U.S. Citizenship and Immigration Services.

What Authority Does the Secretary of Homeland Security Have to Extend the Designation of Somalia for TPS?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state (or part thereof) for TPS. 8 U.S.C. 1254a(b)(1). The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultation with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of the TPS designation. 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, he must terminate the designation. 8 U.S.C. 1254a(b)(3)(B).

Why Did the Secretary of Homeland Security Decide to Extend the Designation of Somalia for TPS?

On September 16, 1991, the Attorney General published a Notice in the **Federal Register** designating Somalia for TPS due to extraordinary and temporary conditions resulting from an ongoing armed conflict. 56 FR 46804. The Attorney General extended this TPS designation annually, determining in each instance that the conditions warranting such designation continued to be met. 57 FR 32232, 58 FR 48898, 59 FR 43359, 60 FR 39005, 61 FR 39472, 62 FR 41421, 63 FR 51602, 64 FR 49511, 65 FR 69789. On September 4, 2001, the Attorney General re-designated Somalia based upon extraordinary and temporary conditions resulting from the armed conflict and lack of functioning state institutions. 66 FR 46288. Since that date, the Attorney General or Secretary of DHS has extended Somalia's TPS designation annually, determining in each instance that the conditions warranting such designation continued to be met. 67 FR 48950, 68 FR 43147, 69 FR 47937, 70 FR 43895. The most recent extension became effective on September 17, 2005, and is due to expire at midnight on September 17, 2006.

Since the date of the current extension, DHS and the Department of State (DOS) have continued to review conditions in Somalia, which remain dire. DOS submitted a memorandum (''DOS Recommendation'') to USCIS recommending the extension of TPS for Somalia. Based on this review, an 18-month extension of the TPS designation is warranted because the armed conflict and extraordinary and temporary conditions that prompted designation persist. Further, it is not contrary to the national interest of the United States to permit aliens who are eligible for TPS to remain temporarily in the United States. 8 U.S.C. 1254a(b)(1)(C).

Somalia has persisted in a state of chaos since the fall of the Siad Barre regime in January 1991, characterized by the lack of central government, a crippled economy, the absence of civil structures, and the destruction of infrastructure (''DOS Recommendation''). Generalized ''insecurity'' persists in the form of banditry, kidnapping, looting, revenge killings, targeted assassinations, and inter-clan fighting. *Id.* The result has been population displacement, loss of livelihoods, food ''insecurity,'' and a total lack of government services. *Id.* The current security situation generally prevents Somalis from repatriating in safety. *Id.* Major regions of the country are under the control of self-proclaimed ''governors,'' or warlords, in the absence of any rule of law. *Id.* The capital, Mogadishu, has been divided into armed zones controlled by a dozen factional leaders and two attempts were made there on the life of the prime minister. (USCIS Office of Refugee, Asylum and International Operations Report, June 21, 2006 (''ORAIO Report'')). By mid-June 2006, Islamic Court militias assumed control of Mogadishu and a swath of southern Somalia. *Id.* It is unclear how the Islamic Court militias will work with the Transitional Government or how the militias will respond to the positioning of Ethiopian troops along its shared border. *Id.*

Although the signing of the Aden Declaration on January 5, 2006, which culminated in the convening of 211 of the 275 members of Parliament, improved the prospect for peace, the peace process remains vulnerable. (DOS Recommendation). Problems that persist include a violent political power struggle, extremist activity in Mogadishu, a severe drought and famine, and violent clashes over scarce water, land, and grazing rights. *Id.*

The United Nations (UN) Somalia country team, which consists of the heads of the relevant UN humanitarian aid offices present in Somalia and the surrounding region, reported that Somalia is plagued by extreme levels of suffering. *Id.* Polio has reappeared and there are presently more war-wounded people living in Somalia than in any other African country. *Id.* The number of people directly affected by this humanitarian emergency situation is 915,000. *Id.* The UN High Commissioner for Refugees reported that there were 407,060 internally displaced persons (IDPs) in Somalia, of which 250,000 are located in the capital, Mogadishu. (ORAIO Report). Severe drought and localized conflicts during 2005 necessitated urgent humanitarian assistance during the first half of 2006 for an estimated additional 1.7 million Somalis (out of a total population of 7 million). *Id.*

Based upon this review, the Secretary of Homeland Security, after consultation with appropriate Government agencies, finds that the conditions for designation of Somalia for TPS continue to be met. See 8 U.S.C. 1254a(b)(3)(A) (describing procedures for periodic review of TPS designations). There is an ongoing armed conflict and extraordinary and temporary conditions in Somalia that prevent aliens who are nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) from returning in safety. The Secretary also finds that permitting these aliens who meet the TPS eligibility requirements to remain temporarily in the United States is not contrary to the national interest of the United States. See 8 U.S.C. 1254a(b)(1)(A) (describing ongoing armed conflict); 1254a(b)(1)(C) (describing extraordinary and temporary terms of TPS). On the basis of these findings and determinations, the Secretary will exercise his discretion to extend the TPS designation of Somalia for an 18-month period. See 8 U.S.C. 1254a(b)(3)(C) (providing the Secretary of Homeland Security with discretion to determine the length of an extension).

If I Currently Have Benefits Through the Designation of Somalia for TPS and Would Like to Maintain Them, Do I Need to Re-Register for TPS?

Yes. If you already have received TPS benefits through the designation of Somalia for TPS, your benefits will expire on September 17, 2006. All TPS beneficiaries must comply with the re-registration requirements described below to maintain TPS benefits through March 17, 2008. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period. 8 U.S.C. 1254a(a)(1), 1254a(f). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C). In addition, all EADs issued pursuant to this designation will expire on September 17, 2006. TPS beneficiaries who fail to re-register will not be issued a new EAD valid through March 17, 2008.

If I Am Currently Registered for TPS or Have a Pending Application for TPS, How Do I Re-Register to Renew My Benefits for the Duration of the Extension Period?

All persons previously granted TPS under the designation of Somalia who would like to maintain such status and those whose applications remain pending but who wish to renew their benefits, must re-register by filing the following:

(1) Form I–821, Application for Temporary Protected Status, without fee;

(2) Form I–765, Application for Employment Authorization (see the chart below to determine whether you must submit the one hundred and eighty dollar ($180) filing fee with Form I–765 (for which a fee waiver may be requested));

(3) A biometric services fee of seventy dollars ($70) if you are 14 years of age or older, or if you are under 14 and requesting an EAD extension. The biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii); and

(4) A photocopy of the front and back of your EAD if you received an EAD during the most recent registration period.

When filing Form I–821, it is important to place your Alien Registration Number on your application. You may find your Alien Registration Number, also known as ''A#,'' listed below your name on your EAD. In addition, please note that you do not need to submit photographs with your TPS application because a photograph will be taken, if needed, when you are requested to appear at an USCIS Application Support Center (ASC) for collection of biometrics.

Aliens who have previously registered for TPS but whose applications remain pending should follow these instructions if they wish to renew their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicants.

What Edition of the Form I–821 Should be Submitted?

Form I–821 has been revised. Only Forms I–821 with revision dates of November 5, 2004 or later will be accepted. The revision date can be found on the bottom right corner of the form. Submissions of older versions of Form I–821 will be rejected. You may obtain immigration forms, free of charge, on the Internet at http://www.uscis.gov or by calling the USCIS forms hotline at 1–800–870–3676.

Who Must Submit the $180 Filing Fee for the Form I–765, Application for Employment Authorization?

If	Then
You are applying for an extension of your EAD valid until March 17, 2008.	You must complete and file the Form I–765, Application for Employment Authorization, with the $180 fee.
You are not applying for an extension of your EAD	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.
You are applying for a TPS-related EAD under the late initial registration provisions and are under age 14 or over age 65.	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.
You are applying for an extension of your EAD and are requesting a fee waiver.	You must complete and file: 1) Form I–765 and 2) a fee waiver request and affidavit (and any other supporting information) in accordance with 8 CFR 244.20.

Who Must Submit the $70 Biometric Services Fee?

The $70 biometric services fee must be submitted by all aliens 14 years of age and older who: (1) Have previously been granted TPS and are now re-registering for TPS; (2) have an initial application for TPS currently pending, have an EAD bearing the notification ''C–19'' on the face of the card under ''Category'' and wish to renew temporary treatment benefits; or (3) are applying for TPS under the late initial registration provisions. In addition, any alien, including one who is under the age of 14, choosing to apply for a new EAD or an extension of an EAD must submit the $70 biometric services fee. This biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

When Should I Submit My Re-Registration Application for TPS?

Applications must be filed during the 60-day re-registration period from July 27, 2006 until September 25, 2006. You are encouraged to file the application as soon as possible after the start of the 60-day re-registration period.

Where Should I Submit My Re-Registration Application for TPS?

To facilitate efficient processing, USCIS has designated two post office (P.O.) boxes with the Chicago Lockbox for the filing of TPS applications. The type of TPS re-registration application you submit will determine the P.O. Box where your application must be submitted. Certain applications for TPS re-registration may also be electronically filed or ''E-Filed'' as well. See below for further filing instructions. Please note that applications should not be filed with a USCIS Service Center or District Office. Failure to file your application properly may result in the delay of the processing of your application.

Category 1: Applications for re-registration that do not require the submission of additional documentation or a renewal of temporary treatment benefits must either be E-Filed (see below) or filed at this address: U.S. Citizenship and Immigration Services, P.O. Box 6943, Chicago, IL 60680–6943.

Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Somalia, 427 S. LaSalle—3rd Floor, Chicago, IL 60605–1029.

E-Filing Your Application: If your application falls into Category 1 you are strongly encouraged to E-File your application. During the re-registration period from July 27, 2006 to September 25, 2006, aliens re-registering for TPS under this designation may file the Forms I–821 and I–765 and associated fees electronically by using E-Filing at the USCIS Internet site, *http://www.uscis.gov.* In order to properly re-register using E-Filing, aliens must begin the E-Filing process by completing Form I–821 online. After the Form I–821 is completed, the system will then automatically link the alien to Form I–765.

Aliens re-registering for TPS after September 25, 2006 and/or whose application falls into Category 2 (explained below) may not E-File and must send their application materials to the USCIS Chicago Lockbox at the address listed below.

Category 2: Aliens who are filing a re-registration application that requires the submission of additional documentation or who are filing for TPS for the first time as a late initial registrant must file at the P.O. Box listed below: U.S. Citizenship and Immigration Services, P.O. Box 8677, Chicago, IL 60680–8677.

Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Somalia—[EOIR/Additional Documents] *or* [Late Initial Registrant], 427 S. LaSalle—3rd Floor, Chicago, IL 60605–1029.

Note: Please make sure to use either EOIR/Additional Documents or Late Initial Registrant on the ''Attn:'' line, as appropriate, after ''Somalia,'' above.

Applications for re-registration require the submission of supporting documentation under the following circumstances:

(A) If one or more of the questions listed in Part 4, Question 2 of Form I–821 apply to the alien, then the alien must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation.

(B) If the alien was granted TPS by an Immigration Judge or the Board of Immigration Appeals, then the alien must include evidence of the grant of TPS (such as an order from the Executive Office for Immigration Review (EOIR)) with his or her application package.

Category 2 applications may not be E-Filed.

Are Certain Aliens Ineligible for TPS?

Yes. There are certain criminal and security-related inadmissibility grounds that render an alien ineligible for TPS. 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act. 8 U.S.C. 1254a(c)(2)(B)(i)–(ii), 1158(b)(2)(A). Aliens should also note that an individual granted TPS will have his or her TPS withdrawn if the alien was not in fact eligible for TPS, fails without good cause to timely re-register, or, with some exceptions, fails to maintain continuous physical presence in the United States from the date the alien first was granted TPS. 8 U.S.C. 1254a(c)(3)(A)–(C).

Am I Eligible to Receive an Automatic Extension of My EAD From September 17, 2006, to March 17, 2007?

To receive an automatic extension of your EAD, you must be a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who has applied for and received an EAD under the TPS designation for Somalia and who has not had TPS withdrawn or denied. This automatic extension is limited to EADs (1) issued on Form I–766, Employment Authorization Document, (2) bearing an expiration date of September 17, 2006, and (3) bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category''.

If I Am Currently Registered for TPS Under the Designation for Somalia and Am Re-Registering for TPS, How Do I Receive an Extension of My EAD after the 6-Month Automatic Extension Expires?

TPS re-registrants will receive a notice in the mail with instructions to appear at an ASC for biometrics collection. When you report to the ASC, you must bring the following documents: (1) Your receipt notice for your re-registration application; (2) your ASC appointment notice; and (3) your current EAD. If no further action is required for your case, you will receive a new EAD, valid until March 17, 2008, through the mail. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If your re-registration application is approved, you will receive a new EAD in the mail with an expiration date of March 17, 2008.

May I Request an Interim EAD at My Local District Office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at District Offices.

How May Employers Determine Whether an EAD Has Been Automatically Extended for Six Months through March 17, 2007, and is Therefore Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until March 17, 2007, employers of Somali TPS beneficiaries whose EADs have been automatically extended by this Notice must accept the EAD if presented. An EAD that has been automatically extended for six months by this Notice to March 17, 2007, will actually contain an expiration date of September 17, 2006, and must be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' New EADs showing the March 17, 2007, expiration date of the six-month automatic extension will not be issued.

Employers should not request proof of Somali citizenship. If presented with an EAD that has been extended pursuant to this **Federal Register** Notice and that reasonably appears on its face to be genuine and appears to relate to the employee, employers should accept the EAD as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by the Secretary of Homeland Security through

this **Federal Register** Notice does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. *See* 8 CFR 274a.2(b)(1)(vii) (employers re-verification requirements). For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

How May Employers Determine an Employee's Eligibility for Employment Once the Automatic Extension Has Expired, Between March 17, 2007, and the End of the TPS Extension on March 17, 2008?

TPS beneficiaries who successfully re-register will possess an EAD with an expiration date of March 17, 2008. This EAD must be accepted for the purposes of verifying identity and employment authorization. Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force, as described above.

What Can an Employee Present to an Employer for Purposes of Completing Form I–9, Employment Eligibility Verification?

During the first six months of this extension of the TPS designation for Somalia, employees may submit the following to their employer for completion of the Form I–9 at the time of hire or re-verification. Qualified individuals who have received a six-month extension of their EADs by virtue of this **Federal Register** Notice may present a TPS-based EAD to their employer, as described above as proof of identity and employment authorization until March 17, 2007. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation to March 17, 2007.

After the first six months of this designation extension, employees may present a new EAD valid through March 17, 2008.

As an alternative to the aforementioned options, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

Does TPS Lead to Lawful Permanent Residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence by itself or confer any other immigration status. 8 U.S.C. 1254a(e), (f)(1), (h). When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected to plan for their departure from the United States and may wish to apply for other immigration benefits for which they may be eligible.

May I Apply for Another Immigration Benefit While Registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status, from filing for adjustment of status based on an immigrant petition, or from applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. 8 U.S.C. 1254a(f)(4).

How Does an Application for TPS Affect my Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii), 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Somalia (or Aliens Having No Nationality Who Last Habitually Resided in Somalia) Who Entered the United States after September 4, 2001, to File for TPS?

No. This is a Notice of an extension of TPS, not a Notice of re-designation of TPS for Somalia. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS eligibility beyond the current TPS requirements for the Somalia designation. To be eligible for TPS benefits under this extension, nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) must have been continuously physically present and continuously resided in the United States since September 4, 2001.

What is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A)(iv) and 8 CFR 244.2(f)(2) and (g). In order to be eligible for late initial registration an applicant must:

(1) Be a national of Somalia (or an alien who has no nationality and who last habitually resided in Somalia);

(2) Have continuously resided in the United States since September 4, 2001;

(3) Have been continuously physically present in the United States since September 4, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the re-designation (from September 4, 2001 to September 17, 2002), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g). All late initial registration applications pursuant to the TPS designation of Somalia should be submitted to the aforementioned Lockbox address in Chicago, Illinois listed under Category 2.

What Happens When This Extension of TPS Expires on March 17, 2008?

At least 60 days before this extension of Somalia's TPS designation expires on March 17, 2008, the Secretary, after consultation with appropriate agencies of the Government, will review conditions in Somalia and determine whether the conditions for TPS designation continue to be met at that time, or whether the TPS designation should be terminated. 8 U.S.C. 1254a(b)(3). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

Notice of Extension of Designation of TPS for Somalia

By the authority vested in the Secretary of Homeland Security under section 244 of the Act, the Secretary has determined, after consultation with the appropriate Government agencies, that the conditions that prompted designation of Somalia for TPS continue to be met. Accordingly, the Secretary orders as follows:

(1) The TPS designation of Somalia is extended for an additional 18-month period from September 17, 2006, to March 17, 2008. 8 U.S.C. 1254a(b)(1)(A); 1254a(b)(1)(C); 1254a(b)(3)(C).

(2) There are approximately 250 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have been granted TPS and who may be eligible for re-registration.

(3) To maintain TPS, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who was granted TPS and who has not had TPS withdrawn must re-register for TPS during the 60-day re-registration period from July 27, 2006 until September 25, 2006.

(4) To re-register, aliens must follow the aforementioned filing procedures set forth in this Notice.

Information concerning the extension of the designation of Somalia for TPS will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.*

Dated: July 13, 2006.

Michael Chertoff,

Secretary.

[FR Doc. 06–6401 Filed 7–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–923–06–1320–00]

Notice of Federal Competitive Coal Lease Sale, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale, Mill Fork West Tract, Coal Lease Application UTU–84285.

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management (BLM) Utah State Office will offer certain coal resources described below as the Mill Fork West Tract (UTU–84285) in Emery County, Utah, for competitive sale by sealed bid, in accordance with the provisions for competitive lease sale notices in 43 CFR 3422.2(a), and the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq*).

DATES: The lease sale will be held at 1 p.m., Tuesday, August 1, 2006. The bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m., Tuesday, August 1, 2006.

The BLM cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state that envelop contains a bid for Coal Lease Sale UTU–84285, and is not to be opened before the date and hour of the sale.

ADDRESSES: The lease sale will be held in the Utah State Office, BLM in the Monument Conference Room, Fifth Floor, 440 West 200 South, Salt Lake City, Utah. Sealed bids can be hand delivered to the cashier, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah, or may be mailed to the BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Stan Perkes, 440 West 200 South, Suite 500 Salt Lake City, Utah 84101–1345 or telephone 801–539–4036.

SUPPLEMENTARY INFORMATION: This Coal Lease Sale is being held in response to a lease by application (LBA) submitted by InterWest Mining Company (InterWest), a subsidiary of PacifiCorp to BLM on January 26, 2006. All coal LBAs submitted to BLM for processing on or after November 7, 2005 are subject to cost recovery on a case by case basis (See 43 CFR 3000.10(d)(1), 70 FR 58872, October 7, 2005). The cost recovery rules implemented for coal LBAs at 43 CFR 3473.2(f) (70 FR 58876, October 7, 2005) require the applicant who nominates a tract for a competitive lease sale to pay the processing fee on a case-by-case basis as described in 43 CFR 3000.11 prior to publication of the sale notice. InterWest paid the BLM a processing fee in the amount of $12.388.00. The successful bidder must pay to BLM the cost recovery amount of all costs BLM incurs processing the coal lease sale and additionally must pay all processing costs that BLM incurs after the date of the sale notice leading to lease issuance (See 43 CFR 3473.2(f)). If the successful bidder is someone other than the applicant, BLM will refund to the applicant the processing fee specified in this sale notice. If there is no successful bidder, the applicant remains responsible for all processing fees.

The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Emery County, Utah approximately fourteen miles northwest of Huntington, Utah on Forest Service (FS) administered surface with BLM administered minerals:

SLM, Emery County, Utah

T. 16 S., R. 6 E.,
Sec. 10, S½NE¼NE¼, SE¼NE¼, W½E½SE¼;
Sec. 15, E½W½E½;
Sec. 22, lot 3.

Containing approximately 213.57 acres in Emery County, Utah.

The Mill Fork West coal tract has two minable coal beds. The minable portions of the Hiawatha coal bed and the Blind Canyon coal bed in this area are around eleven feet in thickness. The Hiawatha and Blind Canyon coal beds contain around 325 thousand tons of recoverable high-volatile A to B bituminous coal. The coal quality in the Hiawatha coal bed on an ''as received basis'' is as follows: 12,892 Btu/lb., 4.54

percent moisture, 7.69 percent ash, 42.46 percent volatile matter, 45.48 percent fixed carbon, and 0.57 percent sulfur. The coal quality in the Blind Canyon coal bed on an ''as received basis'' is as follows: 13,314 Btu/lb., 5.26 percent moisture, 4.68 percent ash, 44.18 percent volatile matter, 45.88 percent fixed carbon and 0.61 percent sulfur. The Mill Fork West Tract may be leased to the qualified bidder of the highest cash amount, provided that the high bid equals or exceeds the Fair Market Value (FMV) for the tract as determined by the authorized officer after the Sale.

The BLM held a public hearing and requested comments on the Environmental Assessment (EA) and the FMV of the Mill Fork West Tract on June 1, 2006. The BLM and the FS prepared a joint Finding of No Significant Impact (FONSI), Decision Record (DR)/Decision Notice (DN). The BLM signed the FONSI/DR June 2, 2006. No appeals of the BLM decision to lease were filed during the appeal period that ended on July 3, 2006. The BLM must have FS consent to lease land under surface lands that is in their jurisdiction (43 CFR 3400.3–1). The FS signed the FONSI/DN on June 5, 2006 consenting to allow leasing beneath the FS surface. The FS appeal period ends on July 24, 2006. No appeals have been received by the FS as of July 14, 2006. The BLM will not issue this lease until any FS appeals have been resolved.

The Department of the Interior has established a minimum bid of $100 per acre or fraction thereof for the tract. The minimum bid is not intended to represent the FMV. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre, a royalty rate of 12.5 percent of the value of coal mined by surface methods, and a royalty of 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

The required Detailed Statement for the offered tract, including bidding instructions and sales procedures under 43 CFR 3422.3–2, and the terms and conditions of the proposed coal lease, is available from BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (Room 500), 440 West 200 South, Salt Lake City, Utah 84101. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the BLM Public Room (Room 500).

Dated: July 12, 2006.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. E6–12003 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–130; COC 69290]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Red Cliff Coal Mine, Railroad Spur Line, and Other Associated Surface Facilities in Garfield County and Mesa County, CO

AGENCY: Bureau of Land Management, Interior; U.S. Army Corps of Engineers, Army; Office of Surface Mining, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976, notice is hereby given that the Bureau of Land Management (BLM), Grand Junction Field Office located in Grand Junction, CO, will be directing the preparation of an Environmental Impact Statement (EIS) for the Proposed Red Cliff Coal Mine near Loma, Colorado, including Right-of-Way and Land Use Applications for facilities on Federal Lands, submitted by CAM-Colorado, LLC (CAM).

The EIS will analyze the development of surface facilities for coal mining associated with CAM's proposed underground Red Cliff Mine, including roads, a water pipeline, coal stockpile and waste disposal areas, a coal preparation plant, the mine portal, other administrative and operations facilities, and a railroad spur line that would connect to the existing Union Pacific Railroad line near Mack, Colorado. Cooperating agencies include the U.S. Army Corps of Engineers, the Office of Surface Mining, the Colorado Department of Natural Resources, Mesa County, and Garfield County. The BLM invites the public to participate in the NEPA process.

DATES: The scoping comment period will commence with the publication of this notice and terminate at 45 days. A public meeting will be held during the scoping comment period in Fruita, Colorado. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered, can be made at the public meeting or can be submitted in writing to the address below. The date of the public meeting will be announced through the local media, newsletters, and the BLM Red Cliff Mine mailing list. The Draft EIS is expected to be available for public review and comment in Spring 2007 and the Final EIS is expected to be available in late 2007.

ADDRESSES: Written comments should be sent to: David Lehmann, BLM, 2815 H Road, Grand Junction, Colorado 81506. At the close of the scoping comment period, written comments, including names and addresses of respondents, will be available for public review at the offices of the BLM Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506, during normal working hours (7:30 a.m. to 4:30 p.m., except holidays). Submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. The Draft EIS will consider comments and issues received during public scoping, and responses to comments on the Draft EIS will be published as part of the Final EIS.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact David Lehmann, Supervisory Natural Resource Specialist, at (970) 244–3021. E-mail can be directed to *David_Lehmann@blm.gov* and mail can be sent to the address above.

SUPPLEMENTARY INFORMATION: On September 28, 2005, CAM filed a Right-of-Way application with BLM for facilities associated with the proposed Red Cliff Mine. Subsequently, on February 10, 2006, CAM submitted a Land Use Application to the BLM for other facilities supporting the proposed coal mine project. A mine permit will also be required for all mine facilities, in accordance with U. S. Office of Surface Mining and Colorado Division of Minerals and Geology regulations. This EIS will meet the National Environmental Policy Act requirements for the mine permit. There will be additional opportunities for public

involvement when the mine permit application is processed.

The proposed Red Cliff Mine is located approximately 11 miles north of the towns of Mack and Loma, Colorado, and 1.5 miles east of Colorado State Highway 139. CAM is proposing a new portal and associated facilities to extract low-sulfur coal from Federal Coal Leases C–0125515 and C–0125516 and from several potential new Federal leases as well as a small amount of private coal.

The proposed railroad line would traverse approximately 9.5 miles of Federal land, and include one crossing of State Highway 139 and approximately 5 miles of private land. The EIS will analyze the potential impacts associated with the construction and operation of facilities proposed in CAM's Right-of-Way and Land Use Applications, and other potential impacts associated with the Red Cliff Mine project. Citizens are invited to help identify issues or concerns and to provide input on the proposed action. Alternatives will be developed through the public involvement process and analyzed in the EIS.

A company affiliated with CAM is currently mining approximately 280,000 tons of coal per year from the nearby McClane Canyon Mine. CAM's production from the Red Cliff Mine would be approximately 8 million tons per year. CAM is proposing to load the coal onto rail cars at the mine site and ship it to coal consumers. CAM would recover this coal by mining the Cameo Seam using both room and pillar and longwall mining techniques. As is consistent with the goals of the 2001 National Energy Policy report and the Energy Policy Act of 2005, this project would help meet the existing and future domestic market demand for low-sulfur coal, thereby supporting clean coal initiatives; and would encourage and facilitate meeting national demands for electricity from a domestic source of energy.

The BLM will analyze the potential impacts of the proposed action and no action alternatives, as well as other reasonable alternatives that could include optional approaches for activities proposed in the project area. The alternatives will be further defined as part of the scoping and planning process. Consultation with tribal governments will be accomplished as part of the planning process. Section 106 consultations with the Colorado State Historic Preservation Officer will be conducted as required by the National Historic Preservation Act. U. S. Fish and Wildlife Service Section 7 consultations will be conducted as required by the Endangered Species Act. BLM will consult with the U.S. Army Corps of Engineers as required by the Clean Water Act.

Dated: June 5, 2006.

Catherine Robertson,

Field Manager.

[FR Doc. E6–12010 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Cancellation of the Pinedale Anticline Working Group Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of public meeting.

SUMMARY: The August 1, 2006 PAWG meeting has been cancelled. Another PAWG meeting will be announced when new PAWG members have been appointed.

DATES: The PAWG meeting scheduled for August 1, 2006, has been cancelled.

ADDRESSES: The meeting was scheduled to be held in the Lovatt room of the Pinedale Library, 155 S. Tyler Ave., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Matt Anderson, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mills St., PO Box 738, Pinedale, WY, 82941; 307–367–5328.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds for the life of the field.

Dated: July 20, 2006.

Dennis Stenger,

Field Office Manager.

[FR Doc. E6–12014 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PH–029H; HAG 06–0163]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior, Burns District.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting Monday, August 7 from 8 a.m. to 4 p.m., at the Holiday Inn Ontario, 1249 Tapadera Avenue, Ontario, Oregon 97914. A field trip to the Bully Creek area of the Vale District Bureau of Land Management (BLM) for SEORAC members will follow on Tuesday, August 8.

Agenda items for Monday's session include liaison reports from SEORAC members; updates from Designated Federal Officials; follow-up information sharing on the Grazing Administration Rule, the Recreation Resource Advisory Council (RAC), and Statewide transportation planning and a joint sub-committee with the John Day/Snake RAC; review of SEORAC jurisdictional boundaries and district-by-district planning efforts through fiscal year 2007; and discussion on the Malheur National Forest Plan, energy issues, the monitoring pilot project, and possible RAC involvement. Other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment session at 11 a.m. Those who verbally address the SEORAC during public comment are asked to also provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

If you have information you would like distributed to SEORAC members, please send it to Sally Nelson at the Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, prior to the start of the meeting.

FOR FURTHER INFORMATION CONTACT: Tara Wilson, SEORAC Facilitator, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4519, or *Tara_Wilson@blm.gov.*

Dated: July 20, 2006.

Dana R. Shuford,

District Manager.

[FR Doc. E6–12017 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP6–0166]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (RAC) will meet Friday, August 18, 2006 at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane Valley, Washington 99212–1275.

SUPPLEMENTARY INFORMATION: The meeting will start at 8 a.m. and adjourn at 10 a.m. The meeting is open to the public, with an opportunity for public comment between 8:30 a.m. and 9 a.m. Discussion will focus on the proposed Huckleberry Forest Stewardship Project—a vegetation treatment project for 190 acres of public land in Stevens County Washington, approximately 50 miles northwest of Spokane. After the meeting, the RAC will tour the Huckleberry Project area.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Scott Pavey, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane Valley, Washington 99212, or call (509) 536–1200.

Dated: July 21, 2006.

Richard N. Bailey,

Acting District Manager.

[FR Doc. E6–12019 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01–EI; WYW158351]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Fellows Energy Ltd. for competitive oil and gas lease WYW158351 for land in Weston County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW158351 effective July 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 06–6506 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 79768]

Public Land Order No. 7668; Withdrawal of National Forest System Lands for the Utah Lake Drainage Basin and Diamond Fork Systems, Bonneville Unit of the Central Utah Project; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 6,450 acres of National Forest System lands from location and entry under the United States mining laws, for a term of 20 years, and reserves the lands for the Department of the Interior, Central Utah Project Completion Act Office for use in conjunction with the Utah Lake Drainage Basin and Diamond Fork Systems, Bonneville Unit of the Central Utah Project.

DATES: *Effective Date:* July 27, 2006.

FOR FURTHER INFORMATION CONTACT: Reed Murray, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606–7317, 801–379–1237.

SUPPLEMENTARY INFORMATION: The lands would remain open to all other uses as may by law be authorized on National Forest System lands.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws 30 U.S.C. Ch. 2 (2000), and reserved for the Department of the Interior, Central Utah Project Completion Act Office, for use in conjunction with the Utah Lake Drainage Basin and Diamond Fork Systems, Bonneville Unit of the Central Utah Project:

Uinta National Forest

Salt Lake Meridian

T. 7 S., R. 3 E.,
Sec. 21, SW¼NE¼SW¼.
T. 9 S., R. 3 E.,
Sec. 1, S½SW¼;
Sec. 2, SW¼NE¼ and NE¼NW¼;
Sec. 12, lots 1 and 2 and the Federal land within the NE¼NW¼.
T. 9 S., R. 4 E.,
Sec. 18, NE¼NE¼.

T. 8 S., R. 5 E.,
Sec. 2, lots 9, 10, 15 and 16, NE¼SE¼, and W½SE¼;
Sec. 11, W½E½;
Sec. 14, W½NE¼ and NW¼SE¼;
Sec. 22, SE¼SE¼;
Sec. 28, E½SE¼ and SW¼SE¼.
T. 9 S., R. 5 E.,
Sec. 25, NE¼NE¼ and S½S½;
Sec. 35, E½;
Sec. 36.
T. 10 S., R. 5 E.,
Sec. 2, lots 1 and 2.
T. 8 S., R. 6 E.,
Sec. 32, E½ and E½W½.
T. 9 S., R. 6 E.,
Sec. 5, lot 4 and SW¼;
Sec. 6, lots 1 and 2, and SE¼;
Sec. 7, E½;
Sec. 8, W½;
Sec. 17, W½;
Sec. 18, E½;
Sec. 19, lots 5 to 8, inclusive, lots 10, 11, and 12, E½, and E½W½;
Sec. 20, NW¼NW¼;
Sec. 30;
Sec. 31, lots 1 to 10, inclusive, and NE¼NW¼.

The areas described aggregate approximately 6,450 acres in Utah County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: July 3, 2006.

R. Thomas Weimer,

Assistant Secretary of the Interior.

[FR Doc. E6–12005 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 42931, UTU 42932, UTU 42933, UTU 42938, UTU 011167, and UTU 0139316]

Public Land Order No. 7666; Partial Revocation of Six Bureau of Reclamation Project Withdrawal Orders; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes four Secretarial Orders, one Bureau of Reclamation Order, and one Public Land Order insofar as they affect approximately 25,133 acres of lands withdrawn for the Bureau of Reclamation's Central Utah and Strawberry Valley Projects. This order opens approximately 24,293 acres of Federal lands to such forms of disposition as may by law be authorized on National Forest System lands and to mining.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Reed Murray, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606–7317, 801–379–1237.

SUPPLEMENTARY INFORMATION: The lands are no longer needed for reclamation purposes and the Bureau of Reclamation and the Forest Service concur with the partial revocation. This is a record-clearing action only for the non-Federal lands.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Secretarial Orders dated May 6, 1905, November 16, 1905, January 30, 1906, and November 17, 1916, which withdrew lands for the Bureau of Reclamation's Strawberry Valley Project; and the Bureau of Reclamation Order dated December 17, 1954 (20 FR 8580), and Public Land Order No. 3682 (30 FR 7821), which withdrew lands for the Bureau of Reclamation's Central Utah Project, are hereby revoked insofar as they affect the following described lands:

(a) Federal Lands

Uinta National Forest

Salt Lake Meridian

T. 8 S., R. 4 E.,
Sec. 36, lots 1 to 4, inclusive, lots 6, 7, 8, 12, and 13, and NW¼.
T. 9 S., R. 4 E.,
Sec. 1, SE¼SE¼;
Sec. 3, lots 1 and 2, SE¼NE¼, and NE¼SE¼;
Sec. 9, NE¼NE¼ and SW¼SW¼;
Sec. 10, N½NW¼;
Sec. 17, N½NE¼, SW¼NE¼, and NE¼NW¼.
T. 8 S., R. 5 E.,
Sec. 1, lots 2, 3, and 4, and S½S½;
Sec. 2, lots 1, 2, and 7;
Sec. 12, N½, SW¼, NE¼SE¼, and W½SE¼;
Sec. 13, NW¼NE¼, NW¼, and NW¼SW¼;
Sec. 20, E½NE¼SE¼ and SE¼SE¼;
Sec. 21, S½NE¼, E½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 22, NE¼, E½NW¼, SW¼NW¼, and N½S½;
Sec. 23, E½E½ and W½NW¼;
Sec. 24, E½E½, NW¼, NW¼SW¼, and SW¼SE¼;
Sec. 25, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 26, W½NE¼;
Sec. 27, N½NW¼;
Sec. 28, NW¼NW¼;
Sec. 29, E½, SE¼NW¼, and SW¼;
Sec. 31, lots 1, 3, and 4, NW¼NE¼, NE¼NW¼, E½SW¼, and SE¼;
Sec. 32, N½NE¼, NE¼NW¼, and S½;
Sec. 33, NW¼NW¼, E½SW¼, and SE¼;
Sec. 34, S½NE¼, SE¼NW¼, and S½;
Sec. 35, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 36.
T. 7 S., R. 6 E.,
Sec. 32, N½, W½SW¼, NE¼SW¼, and NW¼SE¼;
Sec. 33, N½NE¼, SW¼NE¼, and NW¼;
Sec. 34, NE¼, E½NW¼, NW¼NW¼, and N½SE¼;
Sec. 35, N½ and N½S½.
T. 8 S., R. 6 E.,
Sec. 2, lots 1 to 8, inclusive, lots 11, 12, 14, 15, and 16;
Sec. 3, lots 1, 2, and 3, lots 5 to 16, inclusive, N½SW¼, and SE¼SE¼;
Sec. 4, lots 4 to 16, inclusive, and S½;
Sec. 5, lots 1, lots 6 to 16, inclusive, and S½;
Sec. 6, lots 2 and16, and SE¼SW¼;
Sec. 7, E½NW¼;
Sec. 8, NE¼, E½W½, and NW¼SE¼;
Sec. 9, NW¼NE¼, N½NW¼, SW¼NW¼, SE¼SW¼, and SE¼;
Sec. 10, E½, S½NW¼, and SW¼;
Secs. 11 and 16;
Sec. 17, E½E½;
Sec. 18, SE¼;
Sec. 19;
Sec. 20, E½E½ and SW¼SW¼;
Sec. 29, E½NE¼, W½W½, and NE¼SE¼;
Secs. 30 and 31.

Uintah Special Meridian

T. 3 S., R. 12 W.,
Sec. 11;
Sec. 13, W½NE¼, SE¼NE¼, NW¼, and S½;
Sec. 14;
Sec. 24, NE¼NE¼, W½E½, and W½;
Sec. 25, N½, SW¼, and N½SE¼;
Sec. 36, S½SW¼.
T. 4 S., R. 12 W.,
Sec. 1, S½NE¼ and S½;
Sec. 2, NW¼NE¼, N½NW¼, NW¼SW¼, and S½SE¼;
Sec. 3, lots 1, 2, 4, and 5, and NE¼SE¼;
Sec. 10, lots 3 and 4, SE¼NE¼, and E½SE¼;
Sec. 11, N½N½, SW¼NE¼, S½NW¼, and NW¼SW¼;
Secs. 12, 13, 24, 25, and 35.

(b) Non-Federal Lands

Salt Lake Meridian

T. 9 S., R. 3 E.,
Sec. 16.
T. 9 S., R. 4 E.,
Sec. 3, SW¼NE¼, N½SW¼, and NW¼SE¼;

Sec. 9, NW¼SE¼.

The areas described aggregate approximately 25,133 acres in Duchesne and Utah Counties.

2. At 10 a.m. on August 28, 2006, the lands described in Paragraph 1(a) shall be opened to such forms of disposition as may by law be authorized on National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in Paragraph 1(a) under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 3, 2006.

R. Thomas Weimer,

Assistant Secretary of the Interior.

[FR Doc. E6–12007 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–ET; WIES–032707]

Public Land Order No. 7667; Extension of Public Land Order No. 6619; Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6619 for an additional 20-year period. This extension is necessary to allow the U.S. Fish and Wildlife Service to continue to manage the land as part of the Necedah National Wildlife Refuge.

DATES: *Effective Date:* July 25, 2006.

FOR FURTHER INFORMATION CONTACT: Ida Doup, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1541.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 6619 (51 FR 26687, July 25, 1986), which withdrew 4,107 acres of public land from settlement, sale, location and entry under the general land laws, but not from leasing under the mineral leasing laws, and reserved the land for use by the U.S. Fish and Wildlife Service in conjunction with the Necedah National Wildlife Refuge, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6619 will expire on July 24, 2026, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 CFR 2310.4)

Dated: July 3, 2006.

R. Thomas Weimer,

Assistant Secretary of the Interior.

[FR Doc. E6–12006 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–931–06–5870–HN]

Request for Public Nomination of Qualified Properties for Potential Purchase by the Federal Government in the State of Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of request for public nomination of qualified properties for potential purchase by the Federal Government in the State of Arizona.

SUMMARY: In accordance with the Federal Land Transaction Facilitation Act of 2000 (43 U.S.C. 2303) (FLTFA), this notice provides the public the opportunity to nominate lands within the State of Arizona for possible acquisition by the Federal agencies identified below. Such lands must be (1) inholdings within a federally designated area or (2) lands that are adjacent to federally designated areas and contain exceptional resources.

DATES: Nominations may be submitted at any time following the publication of this notice.

ADDRESSES: Nominations should be mailed to the attention of the FLTFA Program Manager for the agency listed below having jurisdiction over the adjacent federally designated area:

- Bureau of Land Management, Arizona State Office (AZ–931), One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427.
- National Park Service (IMSF–LR), P.O. Box 728, Santa Fe, New Mexico 87504–0728.
- National Park Service (PWR–LP), 1111 Jackson Street, Suite 700, Oakland, California 94607–4807.
- U.S. Department of Agriculture, Forest Service, 333 Broadway, Southeast, Albuquerque, New Mexico 87102.
- U.S. Fish and Wildlife Service, 500 Gold Avenue, Southwest, P.O. Box 1306, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Julie Decker, Bureau of Land Management, Arizona State Office (AZ–931), One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, (602) 417–9234 or e-mail *julie_decker@blm.gov*.

SUPPLEMENTARY INFORMATON: In accordance with the FLTFA, the four agencies noted above are offering to the public at large the opportunity to nominate lands in the State of Arizona that meet FLTFA eligibility requirements for possible Federal acquisition. Under the provisions of FLTFA, only the following lands are eligible for nomination: (1) Inholdings within a federally designated area; or (2) lands that are adjacent to federally designated areas and contain exceptional resources.

An inholding is any right, title, or interest held by a non-Federal entity, in or to a tract of land that lies within the boundary of a federally designated area.

A federally designated area is land that on July 25, 2000, was within the boundary of: A unit of the National Park System; a unit of the National Wildlife Refuge System; an area of the National Forest System designated for special management; a national monument, national conservation area, national riparian conservation area, national recreation area, national scenic area, research natural area, national outstanding natural area, national natural landmark, or an area of critical environmental concern managed by the BLM; a wilderness or wilderness study area; or a component of the Wild and Scenic Rivers System or National Trails System. If you are not sure of whether a particular area meets the statutory definition of a federally designated area in FLTFA, you should consult the statute or contact the BLM at the above address.

An exceptional resource refers to a resource of scientific, natural, historic, cultural, or recreational value that has been documented by a Federal, State, or local government authority, and for

which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.

Nominations meeting the above criteria may be submitted by any individual, group, or governmental body. If submitted by a party other than the landowner, the landowner must also sign the nomination to confirm their willingness to sell. Pursuant to FLTFA, nominations will only be considered eligible by the agencies if: (1) The nomination package is complete; (2) acquisition of the nominated land or interest in land would be consistent with an agency approved land use plan; (3) the land does not contain a hazardous substance and is not otherwise contaminated and would not be difficult or uneconomic to manage as Federal lands; and (4) acceptable title can be conveyed in accordance with Federal title standards. Priority will be placed on nominations for areas where there is no local or tribal government objection to Federal acquisition.

Nominations may be made at any time following publication of this notice and will continue to be accepted for consideration during the life of the FLTFA, which ends on July 24, 2010, unless extended by an Act of Congress.

Nominations may be made on forms available from the BLM at the above address. Request for the forms may also be made by telephone, e-mail, or U.S. Postal Service mail.

The agencies will assess the nominations for public benefits and rank the nominations in accordance with a jointly prepared State-level Interagency Implementation Agreement for FLTFA and a national-level Interagency Memorandum of Understanding among the agencies. The nomination and identification of an inholding does not obligate the landowner to convey the property nor does it obligate the United States to acquire the property.

All Federal land acquisitions must be made at fair market value established by applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions.

Further information, including the required contents for a nomination package and details of the State-level Interagency Implementation Agreement, may be obtained by contacting Julie Decker at the aforementioned address and phone number.

Elaine Y. Zielinski,

State Director.

[FR Doc. E6–12008 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Request for Clearance of Collection of Information to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service invites comments on a proposed new collection of information (1024–xxxx).

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted on or before thirty days from the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–xxxx), Office of Information and Regulatory Affairs, Office of Management and Budget, by fax at 202–395–6566, or by electronic mail to *OIRA_docket@omb.eop.gov*. Please also send, mail, or hand carry a copy of your comments and your request for a copy of the draft ''Application'' to James H. Charleton, Office of International Affairs, National Park Service, 1201 Eye Street, NW., (0050) Washington, DC 20005. E-mail: *james_charleton@contractor.nps.gov*. Phone: 202–354–1802. Fax 202–371–1446. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: James H. Charleton, 202–354–1802 or April Brooks, 202–354–1808. You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION:

Title: Application for Inclusion of a Property in the U.S. World Heritage Tentative List.

Bureau Form #: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New collection.

Description of Need: The primary purpose of the ICR is to gather the information necessary to evaluate the potential of properties for possible nomination by the United States to the World Heritage List by preparing a Tentative List of candidate sites. The World Heritage List is an international list of cultural and natural properties nominated by the signatories of the World Heritage Convention (1972). In 1973, the United States was the first nation to ratify the treaty. U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR part 73—World Heritage Convention.

A Tentative List is a national list of natural and cultural properties appearing to meet the eligibility criteria for nomination to the World Heritage List. It is an annotated list of candidate sites which a country intends to nominate within a given time period.

The World Heritage Committee has issued *Operational Guidelines* asking participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. The *Guidelines* recommend that a nation review its Tentative List at least once every decade. The current U.S. Tentative List (formerly Indicative Inventory) dates to 1982.

The new U.S. Tentative List will serve as a guide for at least the next decade 2009–2019) of U.S. nominations to the World Heritage List, commencing with nominations expected to be submitted in final form to the World Heritage Centre of UNESCO on or before February 1, 2009. The Tentative List will be structured so as to meet the World Heritage Committee's December 2004 request that the Tentative List allow for the nomination of no more than two sites per year by any one nation, at least one of which must be a natural site (excluding potential emergency nominations not at present foreseen).

The National Park Service Office of International Affairs (NPS–OIA) and the George Wright Society (GWS) are working together under a cooperative agreement to prepare the new U.S. Tentative List. After various reviews and approvals and an opportunity for owners and the public to comment on the Tentative List and the accompanying explanatory essay, the Secretary of the Interior, through the Assistant Secretary for Fish and Wildlife and Parks, will determine the composition of the new Tentative List and will submit it through the U.S. Department of State to the World Heritage Committee.

The proposed ''Application'' invites owners and other preparers to document properties proposed for inclusion in the Tentative List and for potential nomination by the United States to the

World Heritage List. It is intended to demonstrate that the properties meet the World Heritage criteria established for inclusion by the World Heritage Committee and the other requirements, including those of U.S. domestic law (16 U.S.C. 470a–1, a–2, d) and the program regulations (36 CFR part 73—World Heritage Convention). The documentation will be used directly to develop the Tentative List, to assist the completion of U.S. World Heritage nominations, and indirectly to assist in the conservation of the properties and for heritage education and interpretation.

NPS specifically requests comments on: (1) The need for the information, including whether the information has practical utility; (2) the accuracy of the reporting burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated techniques or other forms of information technology.

Automated data collection: The ''Application'' can be submitted electronically by e-mail to the staff in the Office of International Affairs who are drafting the Tentative List and preparing the accompanying explanatory essay. Those without access to electronic means will be able to obtain copies of the ''Application'' and return them by mail.

Description of respondents: Individual private property owners and groups of property owners and local, State, and Federal agency representatives/owners. Participation will be strictly voluntary and only respondent owners who submit, or who authorize to have submitted on their behalf, a completed ''Application * * *'' will have their sites fully considered for inclusion in the U.S. Tentative List.

Estimated Annual Reporting Burden: (This is a one-time report that is not expected to be repeated for a number of years.) A total of 2000–6000 hours depending on the balance between less complex sites and more complex ones. If, for example, 50 individual completed ''Applications'' are received, of which 35 are of single buildings (estimated at 40 hours/per ''Application'') and 15 of more complex sites (at 120 hours each), the total burden hours would be 3200.

Estimated Average Burden Hours per Response: Depending on the complexity of the site for which the ''Application'' for inclusion in the Tentative List is being prepared, the average burden hours per response may vary considerably because of many complex factors. In general, to fulfill minimum program requirements describing the property and demonstrating its ''outstanding universal value'' under the World Heritage criteria, the average burden hours will likely range from 40 hours for a single building ''Application'' to upward of 120 hours for a more complex group of buildings or a natural area, such as a major national or state park unit or wildlife refuge.

Estimated Average Number of Respondents: 50.

Frequency of Response: 1 time per respondent.

Dated: July 13, 2006.

Leonard E. Stowe,

NPS Information Collection Clearance Officer.

[FR Doc. 06–6502 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 3507), and 5 CFR Part 1320, Report and Recordkeeping Requirements, the National Park Service invites public comments on a submitted request for the Office of Managment and Budget (OMB) to approve a revision of a currently approved collection. (OMB #1024–0009).

The Primary Purpose of the Information Collection Request is to request approval for Federal tax incentives for historic preservation contained in Section 47 of the Internal Revenue Code. Section 47 of the Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits, (a) the historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. The NPS administers the program in partnership with the Internal Revenue Service. The Historic Preservation Certification Application is used by the NPS to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether the rehabilitation work meets the Secretary of the Interior's ''Standards for Rehabilitation.''

DATES: Public comments will be accepted on or before August 28, 2006.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior, (OMB #1024–0009), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov.* Please also mail or hand carry a copy of your comments to: Sharon C. Park, Heritage Preservation Services, National Park Service, 1849 C St., NW., Org. code 2255, Washington, DC 20240–0001. All comments will be a matter of public record.

SUPPLEMENTARY INFORMATION:

Title: Historic Preservation Certification Application.

Form: NPS 10–168, 10–168a, 10–168b, 10–168c.

OMB Control Number: 1024–0009.

Type of Request: Revision of a currently approved collection.

Expiration Date: 7/31/2006.

Description of Need: Section 47 of the Internal Revenue Code provides a 20% Federal income tax credit for the rehabilitation of historic buildings and an income tax deduction for the donation of easements on historic properties. The Historic Preservation Certification Application provides documentation to enable the Secretary of the Interior determine whether historic buildings qualify for these Federal tax incentives. Comments are invited on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the information collection on respondents respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology, and (5) the appropriateness of the filing fee. In addition to the hour burden, there is a filing fee for applications describing rehabilitation projects over $20,000. The fee is based on the size of the rehabilitation, according to a fee schedule published in 36 CFR 67.11, as follows:

Fee	Size of rehabilitation
$500	$20,001 to $99,999.
$800	$100,000 to $499,999.
$1,500	$500,000 to $999,999.
$2,500	$1,000,000 or more.

Description of respondents: The respondents are owners of historic buildings, or qualified long-term lessees. The number of respondents is estimated to be 4000 per year. The frequency of response is on occasion, as requested by owners of buildings (one response per respondent). Application for Federal historic preservation tax incentives is voluntary.

Estimated annual reporting burden: 80,000 hours for an estimated 4,000 applications total, broken down as follows: Part 1 application: Approximately 14.1 hours per Part 1 × 1834 applications = 25,859 hours; Part 2 application: Approximately 36.6 hours per application × 1224 applications = 44,798 hours; Part 3 application: approximately 8.9 hours per application × 861 applications = 7,663. This totals 78,320, based on a total of 3919 Part 1s, Part 2s, and Part 3s, or 20 hours average for each. At approximately 4000 applications per year (project agency totals for coming years), the estimated total burden is 80,000.

Estimated average burden hours per response: Depending on which form is used, the average burden hours per response can vary considerably because of the wide range of activities described in each application. In general, the average burden hours range from 14 hours for a Part 1 describing a historic building to approximately 37 hours for a Part 2 application describing rehabilitation work to be undertaken.

Estimated average number of respondents: 4000.

Estimated frequency of response: the 4000 ''responses'' are submitted on occasion, as owners of historic buildings apply for certifications from the Secretary of the Interior.

Dated: July 10, 2006.

Leonard E. Stowe,

NPS Information Collection Clearance Officer.

[FR Doc. E6–12021 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cedar Creek and Belle Grove National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Cedar Creek and Belle Grove National Historical Park Advisory Commission will be held to discuss the development of the Park's general management plan.

Dates and Locations: September 21, 2006 at the Warren County Government Center, 220 N. Commerce Ave., Front Royal VA; November 16, 2006 at the Strasburg Town Hall Council Chambers, 174 East King St., Strasburg, VA; January 18, 2007 at the Middletown Town Hall Council Chambers, 7875 Church St., Middletown, VA; March 15, 2007, at the Warren County Government Center; May 17, 2007 at the Strasburg Town Hall; and July 19, 2007 at the Middletown Town Hall.

All meetings will convene at 9 a.m. and are open to the public.

FOR FURTHER INFORMATION CONTACT: Diann Jacox, Superintendent, Cedar Creek and Belle Grove National Historical Park, (540) 868–9176.

SUPPLEMENTARY INFORMATION: Topics to be discussed at the meetings include: General management plan scoping issues, management alternatives, planning process and schedule, park boundaries, land protection planning, environmental impact analysis, election of a commission chair, and commission sub-committees.

Dated: July 17, 2006.

Christopher J. Stubbs,

Acting Superintendent, Cedar Creek and Belle Grove National Historical Park.

[FR Doc. E6–12020 Filed 7–26–06; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Horner Collection, Oregon State University, Corvallis, OR. The human remains were removed from an unknown location along the Yukon River, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Horner Collection, Oregon State University professional staff. The Calista Corporation and Doyon, Ltd. Were advised of the human remains, but did not participate in consultation.

The Museum of the Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

In 1934, human remains representing a minimum of one individual were removed from an unknown location along the Yukon River, AK. In 1949, the human remains were donated to the Horner Museum by Mrs. Josephine C. Lloyd. It was Mrs. Lloyd's husband who had originally collected the human remains. No known individual was identified. No associated funerary objects are present.

Member tribes of the Calista Corporation and Doyon, Ltd. have occupied the area along the Yukon River since time immemorial and that occupation continues today.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Calista Corporation and Doyon, Ltd.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before August 28, 2006. Repatriation of the human remains to the Calista Corporation and Doyon, Ltd. may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying

the Calista Corporation and Doyon Ltd. that this notice has been published.

Dated: June 20, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–12027 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Horner Collection, Oregon State University, Corvallis, OR, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The four cultural objects are one mortar, one maul, one blanket strip, and one unknown lithic.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon and the Confederated Tribes of the Warm Springs Reservation of Oregon. The Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Cowlitz Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; and Skokomish Indian Tribe of the Skokomish Reservation, Washington were informed, but did not participate in the consultations.

At an unknown date, one mortar was removed from a sand dune on the Wishram River, Klickitat County, WA, where it feeds into the Columbia River, by an unknown person. In 1934, the mortar was brought to the Horner Museum by the heirs of Mr. J.L. Hill and donated to the Horner Museum in 1981.

At an unknown date, a maul was removed from sand dunes near the mouth of the Deschutes River where it connects with the Columbia River in Wasco County, OR, by Truman Wilcox. According to donor information, the sand dunes were where the Indians held their pow-wows. Tribal representatives identify this area as a former village site. In 1934, the maul was donated to the Horner Museum by J.G. Crawford.

In the 1880s, the blanket strip was found in an abandoned settler's cabin near Columbus (now Maryhill, Klickitat County, WA), along the Columbia River by members of the James Berrien family. In 1962, the blanket strip was brought to the Horner Museum by Mr. Bliss Clark. It is unknown how Mr. Clark acquired the cultural item.

In the 1880s, an unknown lithic was removed from near Biggs, Sherman County, OR, along the Columbia River by Lucius E. Clark. In 1962, the unknown lithic was brought to the Horner Museum by Mr. Bliss Clark. It is unknown how Mr. Clark acquired the lithic.

The traditional lands of the Tenino, Tygh, Wyam, Dock-Spus, Dalles band of Wasco, Ki-Gal-Twal-La band of Wasco, and Dog River band of Wasco include Klickitat County in Washington, and Wasco and Sherman Counties in Oregon. Descendants of these Indian groups are members of the present-day Confederated Tribes of the Warm Springs Reservation of Oregon.

The Horner Collection, Oregon State University has no specific evidence that the four cultural items were ever buried with any individual. However, Mr. Crawford, Mr. Dyer, and Mr. Hill are known to have collected cultural items from burials and mounds. Based on consultation and museum records, the Horner Collection, Oregon State University has identified the cultural items as unassociated funerary objects.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the four cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the four unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before August 28, 2006. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Cowlitz Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; and Skokomish Indian Tribe of the Skokomish Reservation, Washington that this notice has been published.

Dated: June 20, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–12029 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of a Native American associated funerary object in the possession of the Horner Collection,

Oregon State University, Corvallis, OR. The associated funerary object was removed from an unidentified location in the Sonora Desert near Tucson, Pima County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the associated funerary object was made by the Horner Collection, Oregon State University professional staff in consultation with representatives of the Kumeyaay Cultural Repatriation Committee, a coalition of federally recognized Indian tribes; Tohono O'odham Nation of Arizona; and Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona. The Kumeyaay Cultural Repatriation Committee is acting on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indins of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California. The Tohono O'odham Nation of Arizona is acting on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and themselves. The Cocopah Indian Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California, & Nevada; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona were advised of the associated funerary object, but did not participate in the consultations.

The Museum of the Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

In 1976, a ceramic jar, later determined to be an associated funerary object, was found in the Sonora Desert near Tucson, Pima County, AZ. In 1986, the cultural item was gifted to the Horner Museum by Donald A. Cruise and Edith W. Cruise of Tucson, AZ. It is unknown if the jar was found by either of the Cruises.

The ceramic jar is red in color and made of micaceous clay. It measures 29 cm high, 20 cm in diameter at the opening, and its circumference is 97 cm at the widest point. The ceramic jar is similar to plainware types typically found at Hohokam sites in Arizona. Archeological evidence has demonstrated that pit or urn cremations were the predominant Hohokam burial practice prior to A.D. 1100. Extended supine inhumations then became more prevalent, completely replacing cremations by A.D. 1300. There is no information in the Horner Museum records indicating this jar ever held human remains. However, both the Kumeyaay Cultural Repatriation Committee and Tohono O'odham Nation of Arizona have identified this as a jar possibly used to hold cremated human remains. The Tohono O'odham Nation of Arizona have also stated that the jar could also have been used as a grave offering. Therefore, officials of the Horner Collection recognize that while ceramic jars had other uses within Hohokam culture, it is reasonable to believe this ceramic jar was made exclusively for burial purposes.

Archeological evidence has demonstrated a strong relationship of shared group identity between the Hohokam and the present-day O'odham (Pima and Papago) and Hopi people. The O'odham people are currently represented by the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. In 1990, representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona issued a joint policy statement claiming ancestral ties to the Hohokam cultural traditions.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the cultural item is reasonably believed to have been made exclusively for burial purposes or to contain human remains. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the associated funerary object and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary object should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before August 28, 2006. Repatriation of the associated funerary object to the the Tohono O'odham Nation of Arizona, acting on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and

themselves, may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cocopah Indian Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona & California; Ewiiaapaayp Band of Kumeyaay Indians, California; Fort McDowell Yavapai Nation, Arizona; Fort Mojave Indian Tribe of Arizona, California, & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kumeyaay Cultural Repatriation Committee, a coaltion of federally recognized Indian tribes; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Navajo Nation, Arizona, New Mexico, & Utah; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reseration, California; Sycuan Band of the Kumeyaay Nation; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona that this notice has been published.

Dated: June 20, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–12030 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Institute for American Indian Studies, Washington, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Institute for American Indian Studies, Washington, CT, that meets the definition of ''cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is a ''Dakota Sioux'' navel amulet. The amulet was collected by Bishop Frederick Foote Johnson of South Dakota (circa 1890–1900). In 1983, the amulet was donated to the Institute for American Indian Studies by Mr. and Mrs. Stanley King of Newtown, CT. The museum has no additional information on the circumstances under which either Mr. Johnson or the Kings came to possess this cultural item. Museum records identify it as ''Dakota Sioux.'' The leather amulet is in the shape of a lizard. It is covered on top with sinew-sewn beadwork in green, white, blues, and red. Red horsehair tassels with tin cones are sewn with cotton thread to the ends of the animal's legs, head, and tail. It is 5.5 inches long.

The Institute for American Indian Studies professional staff consulted with representatives of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota and Standing Rock Sioux Tribe of North & South Dakota. Tribal representatives confirmed the traditional cultural importance of the amulet to the Sioux tribal peoples and the determination that the amulet could not be alienated by a single individual because of its symbolic importance to the Dakota belief system. The Standing Rock Sioux have made a claim for the cultural item.

Officials of the Institute for American Indian Studies have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Institute for American Indian Studies also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Standing Rock Sioux Tribe of North & South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the object of cultural patrimony should contact Dr. Lucianne Lavin, Director of Research and Collections, Institute for American Indian Studies, 38 Curtis Road, Washington, CT 06793, telephone (860) 868–0518, before August 28, 2006. Repatriation of the object of cultural patrimony to the Standing Rock Sioux Tribe of North & South Dakota may proceed after that date if no additional claimants come forward.

The Institute for American Indian Studies is responsible for notifying the Sisseton Wahpeton Oyate of the Lake Traverse Reservation, South Dakota and Standing Rock Sioux Tribe of North & South Dakota that this notice has been published.

Dated: June 9, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–12000 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Saguaro National Park, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Saguaro National Park, Tucson, AZ. The

human remains and associated funerary objects were removed from two separate sites in the Rincon Mountain District of Saguaro National Park, Pima County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Saguaro National Park.

A detailed assessment of the human remains and associated funerary objects was made by Saguaro National Park professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona was contacted, but did not attend the consultation meeting and was represented by the Gila River Indian Community of the Gila River Indian Reservation, Arizona.

In 1970, human remains representing a minimum of two individuals were removed from the Freeman Site in Pima County, AZ, during legally authorized excavations under the direction of Jack R. Zahniser. No known individuals were identified. The four associated funerary objects are one Tanque Verde red on brown pottery bowl, one large stone flake chopper, one worked stone, and one soil sample taken from the area encompassing the remains. Saguaro National Park took possession of the human remains and associated funerary objects in 1983 and 1984.

In 1970, human remains representing a minimum of four individuals were removed from the Pithouse Village Site in Pima County, AZ, during legally authorized excavations under the direction of Jack R. Zahniser. No known individuals were identified. No associated funerary objects are present. Saguaro National Park took possession of the human remains in 1983 and 1984.

Based on the burial type and location, as well as available archeological and historical information, the human remains have been identified as Native American. The Freeman Site and the Pithouse Village Site are both Tucson Basin Hohokam villages that span the Rillito and Rincon phases (A.D. 700–1150).

The Hohokam were a sedentary agricultural people developing out of the local Archaic population. Hohokam settlement pattern was predominantly of rancheria type, with pithouse or house-in-pit architecture. Ballcourts are often found at Hohokam sites. Pit or urn cremations were the predominant burial practice prior to A.D. 1100. Extended supine inhumations then became more prevalent, completely replacing cremations by A.D. 1300. There was a pronounced, though far from complete, decline in population after about A.D. 1350.

Overall, the archeological (including material culture, architectural styles, and burial practices), ethnographic, and historical evidence indicate affiliation with a number of contemporary indigenous groups including the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. In addition, the oral traditions of these six tribes support ancestral ties to the Hohokam.

Officials of Saguaro National Park have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains and funerary objects described above represent the physical remains of six individuals of Native American ancestry. Officials of Saguaro National Park also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the four objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Saguaro National Park have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Sarah Craighead, superintendent, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, AZ 85730, telephone (520) 733–5101, before August 28, 2006. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

Saguaro National Park is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: June 20, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–12001 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Pacific Lutheran University, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Pacific Lutheran University, Tacoma, WA. The human remains and associated funerary objects were removed from an unknown site in the Southwestern United States.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Pacific Lutheran University professional staff in consultation with representatives of the

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Tohono O'odham Nation of Arizona; and themselves.

At unknown date, human remains representing a minimum of one individual were removed from an unknown site in Southwestern United States. At an unknown date, the human remains were acquired by Jens Knudsen, a biology professor at Pacific Lutheran University and private collector. Mrs. Knudsen, the widow of Mr. Knudsen, transferred the human remains to Pacific Lutheran University. No known individual was identified. The two associated funerary objects are one bag of pebbles and one dog skeleton.

The human remains and associated funerary objects are in a box labeled ''Hohokam.'' During consultation, Salt River Pima tribal representative stated that dogs were sometimes interred with an individual. Based on the donor's collection history, it is reasonable to believe that the human remains are Native American. Based on museum documentation and information during consultation, it is reasonable to believe the human remains are Hohokam.

Archeological evidence has demonstrated a strong relationship of shared group identity between the Hohokam and the present-day O'odham (Pima and Papago) and Hopi. The O'odham people are currently represented by the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. In 1990, representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona issued a joint policy statement claiming ancestral ties to the Hohokam cultural traditions.

O'odham oral traditions indicate that some of the Hohokam people migrated north and joined the Hopi. In 1994, representatives of the Hopi Tribe of Arizona issued a statement claiming cultural affiliation with Hohokam cultural traditions. Zuni oral traditions mention Hawikuh, a Zuni community, as a destination of settlers from the Hohokam area. In 1995, representatives of the Zuni Tribe of the Zuni Reservation, New Mexico issued a statement claiming cultural affiliation with the Hohokam cultural traditions.

Officials of the Pacific Lutheran University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Pacific Lutheran University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Pacific Lutheran University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact David R. Huelsbeck, Anthropology Department, Pacific Lutheran University, Tacoma, WA 98447, telephone (253) 535–7196, before August 28, 2006. Repatriation of the human remains and associated funerary object to the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Tohono O'odham Nation of Arizona; and themselves may proceed after that date if no additional claimants come forward.

Pacific Lutheran University is responsible for notifying Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 13, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–11999 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1894, cultural items were removed from Point Barrow (formerly known as Cape Smyth), AK. Cape Smyth was located on the southern end of Point Barrow Spit. The cultural items were removed from a grave by Dr. James Taylor White and donated by Mrs. James T. White to the Burke Museum in 1904 (Burke Accession. #846). No human remains are present. The 13 unassociated funerary objects are 4 bead bracelets (including loose beads), 1 amulet, 1 pipe cleaner with beads, 5 bracelet fragments (including loose beads), and 2 seed bead bracelets strung on sinew.

The unassociated funerary objects are culturally affiliated with the Native Village of Barrow Inupiat Traditional Government based on geographic and ethnographic information. Point Barrow is located in Northern Alaska within the traditional territory of the Inupiat people. The Utqiagvigmiut Inpuiat community occupied the area immediately surrounding Point Barrow. The cultural items are consistent with the material culture of the Inupiat. Descendants of the Inupiat are members

of the Native Village of Barrow Inupiat Traditional Government. Furthermore, consultation with tribal representatives confirmed that the preponderance of the evidence suggests the cultural items can be culturally affiliated to the Native Village of Barrow Inupiat Traditional Government.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 13 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Native Village of Barrow Inupiat Traditional Government.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before August 28, 2006. Repatriation of the unassociated funerary objects to the Native Village of Barrow Inupiat Traditional Government may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Native Village of Barrow Inupiat Traditional Government that this notice has been published.

Dated: June 20, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–11997 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (5), of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE. The human remains and associated funerary objects were removed from Dakota, Douglas, and Stanton Counties, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of human remains and associated funerary objects in a Notice of Inventory Completion published in the **Federal Register** on November 18, 1998 (FR Doc. 98–30683, page 64100). After publication, human remains and associated funerary objects were found in museum collections. This notice supercedes the previously published notice.

A detailed assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of the Omaha Tribe of Nebraska.

In 1939, human remains representing an unknown number of individuals were removed from a historic Omaha cemetery (25DK2a) in Dakota County, NE, during excavations under the direction of Stanley Bartos, Jr. Prior to November 16, 1990, the University of Nebraska State Museum and the Omaha Tribe of Nebraska agreed to repatriate all individuals and associated funerary objects from site 25DK2a. On October 3, 1991, human remains and associated funerary objects were repatriated to the Omaha Tribe. In 1994–1995, during NAGPRA inventory activity, five individuals from this site were found in the museum collections. In 1999, two additional individuals and nine associated funerary objects from site 25DK2a were found in collections. No known individuals were identified. The nine associated funerary objects are 4 thimbles; 1 glass jar of strung black, glass, tube-type trade beads; 2 strands of strung white mixed shell and glass, tube-type trade beads; 1 bag of strung black, glass, tube-type trade beads; and 1 fragment of sewn white and black, tube-type trade beads.

In 1940, human remains representing an unknown number of individuals were removed from a historic Omaha cemetery (25DK10) in Dakota County, NE, during excavations under the direction of John Champe. Prior to November 16, 1990, the University of Nebraska State Museum and the Omaha Tribe of Nebraska agreed to repatriate all individuals and associated funerary objects from sites 25DK10. On October 3, 1991, human remains and associated funerary objects were repatriated to the Omaha Tribe. In 1994–1995, and 1998, during NAGPRA inventory activity, three individuals from site 25DK10 were found in the museum collections. In 1999, one additional individual was found in the collections. No known individuals were identified. No associated funerary objects are present.

Consultations with representatives of the Omaha Tribe of Nebraska identified sites 25DK2a and 25DK10 as historic Omaha cemeteries.

In 1940, human remains representing a minimum of one individual were removed from Emil Entenmann's cornfield (25ST0) in Stanton County, NE, and acquired by the museum. No known individual was identified. In 1999, additional cultural items were identified as funerary objects associated with this individual. The eight associated funerary objects are seed, tube, glass, and bone beads.

Based on the presence of glass beads associated with the burial, the human remains have been determined to be Native American from the historic period. During the historic period, the Omaha occupied the immediate vicinity of this burial. Consultation with representatives of the Omaha Tribe of Nebraska confirms this information and attributes this burial to the Omaha people.

In 1941, human remains representing a minimum of two individuals were removed from the Maxwell site (25DK13) near Homer, NE, during excavations conducted by S. Bartos, Jr. under the direction of John L. Champe and Paul Cooper. No known individuals were identified. In 1999, during NAGPRA inventory activity, one cultural item was identified as an associated funerary object. The one associated funerary object is a tin cup.

Based on the degree of preservation and skeletal morphology, the individuals from site 25DK13 have been determined to be Native American from the historic period. Based on the apparent age of the human remains and the location of the burials, the individuals have been determined to be affiliated with the Omaha Tribe of Nebraska.

During the 1910s, human remains representing a minimum of one individual were removed during construction activity at 13th and I Streets in Omaha, NE, by Robert Gilder who donated the human remains to the

University of Nebraska State Museum. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains and copper staining on a hand phalanx, this individual has been determined to be Native American. A historic Omaha village site is located several miles to the south of the burial site. Based on the apparent age of the human remains and the location of the burial, this individual has been determined to be affiliated with the Omaha Tribe of Nebraska.

Officials of the University of Nebraska have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 15 individuals of Native American ancestry. Officials of the University of Nebraska also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 18 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 25 U.S.C 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Omaha Tribe of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Priscilla Grew, NAGPRA Coordinator, University of Nebraska State Museum, 307 Morrill Hall, Lincoln, NE 68588–0338, telephone (402) 472–3779 before August 28, 2006. Repatriation of the human remains and associated funerary objects to the Omaha Tribe of Nebraska may proceed after that date if no additional claimants come forward.

The University of Nebraska is responsible for notifying the Omaha Tribe of Nebraska that this notice has been published.

Dated: July 13, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–12009 Filed 7–26–06; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442–443 and 731–TA–1095–1097 (Final)]

In the Matter of Certain Lined Paper School Supplies from China, India, and Indonesia; Notice of Commission Determination Not To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Commission determination not to close any part of the hearing to the public.

SUMMARY: The Commission has determined to deny the requests of respondents Staples, Inc. (''Staples'') and NuCarta, LLC (''NuCarta'') to conduct a portion of its hearing in the above-captioned investigations scheduled for July 25, 2006, *in camera*. *See* Commission rules 201.13 and 201.36(b)(4) (19 CFR 201.13 and 201.36(b)(4)).

FOR FURTHER INFORMATION CONTACT: Monica A. Stump, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes it should conduct its business in public in all but the most unusual circumstances. The Commission has determined that, in light of the nature of these investigations, it will be able to assess adequately all arguments raised by Staples and NuCarta without resorting to the extraordinary measure of an *in camera* hearing. Accordingly, the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. *See* 19 CFR 201.36(c)(1).

Authority: This notice is provided pursuant to Commission Rule 201.35(b)(19 CFR 201.35(b)).

By order of the Commission.

Issued: July 21, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–12051 Filed 7–26–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to serve as members of Performance Review Board.

DATES: *Effective:* July 19, 2006.

FOR FURTHER INFORMATION CONTACT: Jeri L. Buchholz, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chairman of PRB—Vice-Chairman Shara L. Aranoff
Chairman of PRB—Commissioner Charlotte R. Lane
Member—Robert A. Rogowsky
Member—Lyn M. Schlitt
Member—Stephen A. McLaughlin
Member—Lynn I. Levine
Member—Robert G. Carpenter
Member—Robert B. Koopman
Member—James Lyons
Member—Karen Laney-Cummings

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chairman.

Issued: July 21, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–11966 Filed 7–26–06; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–047]

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 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

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.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–12049 Filed 7–26–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 1, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American History & Studies II, submitted to the Division of Research Programs at the May 1, 2006 deadline.

2. *Date:* August 1, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in American Literature I, submitted to the Division of Research Programs at the May 1, 2006 deadline.

3. *Date:* August 2, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Film, Media, Rhetoric, and Communication, submitted to the Division of Research Programs at the May 1, 2006 deadline.

4. *Date:* August 3, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Music, submitted to the Division of Research Programs at the May 1, 2006 deadline.

5. *Date:* August 4, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Romance Studies, submitted to the Division of Research Programs at the May 1, 2006 deadline.

6. *Date:* August 7, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in European History II, submitted to the Division of Research Programs at the May 1, 2006 deadline.

7. *Date:* August 7, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in American Literature II, submitted to the Division of Research Programs at the May 1, 2006 deadline.

8. *Date:* August 8, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in Ancient and Classical Studies, submitted to the Division of Research Programs at the May 1, 2006 deadline.

9. *Date:* August 8, 2006.
Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Fellowships in Medieval and Renaissance Studies, submitted to the Division of Research Programs at the May 1, 2006 deadline.

10. *Date:* August 9, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Latin American Studies I, submitted to the Division of Research Programs at the May 1, 2006 deadline.

11. *Date:* August 9, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in Latin American Studies II, submitted to the Division of Research Programs at the May 1, 2006 deadline.

12. *Date:* August 10, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American Studies II, submitted to the Division of Research Programs at the May 1, 2006 deadline.

13. *Date:* August 11, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for Advanced Research on Japan, submitted to the Division of Research Programs at the May 1, 2006 deadline.

14. *Date:* August 14, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Religious Studies I, submitted to the Division of Research Programs at the May 1, 2006 deadline.

15. *Date:* August 14, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in Religious Studies II, submitted to the Division of Research Programs at the May 1, 2006 deadline.

16. *Date:* August 15, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Philosophy I, submitted to the Division of Research Programs at the May 1, 2006 deadline.

17. *Date:* August 15, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in Philosophy II, submitted to the Division of Research Programs at the May 1, 2006 deadline.

18. *Date:* August 16, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Comparative Literature & Literary Criticism, submitted to the Division of Research Programs at the May 1, 2006 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E6–11977 Filed 7–26–06; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 20141, and two comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity oft he information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Catherine Hines at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comment: On April 19, 2006, we published in the **Federal Register** (71 FR 20141) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days. Two comments were received from the public notice. The first comment came from Dr. Michael A. Gibson, The University of Tennessee at Martin, Martin, TN on 24 April 2006. Dr. Gibson requested for his university to partake in the survey, as they have a paleontological collection from past NSF support.

Response: NSF noted this request and confirmed that the University of Tennessee at Martin was included on our list of eligible institutions.

Comment: The second comment came from Ellen Paul, The Ornithological Council, Chevy Chase, MD on 6 June 2006. Ms. Paul requested a copy of the survey to address the anticipated burden. On 8 June 2006, the NSF sent Ms. Paul an electronic copy of the IWGSC Scientific Collections survey. On 16 June 2006, NSF received comments regarding the survey from Ms. Paul.

Response: We responded to her concerns, noting that we had received and incorporated input from the scientific community through correspondence during NSF panel meetings (which are populated from scientists representing a plethora of institutions) and scientific professional society conferences during the creation

of the survey, and that the issues regarding ambiguity in language used in the survey are addressed in the ''FAQ'' section of the website. After extensive phone and email correspondences, it was determined Ms. Paul's concerns originated from distress about a new National Park Service policy regarding scientific collections. As that program is unrelated to our survey collection and her concerns of unclearly defined terms used in the survey are addressed in the FAQ section of the survey instrument, the NSF is moving forward with the clearance request.

Title of Collection: ''Scientific Collections Survey.''

OMB Approval Number: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection for three years

Proposed Project: The Office of Science and Technology Policy (OSTP) has requested an assessment of information regarding all object-based scientific collections maintained or financially supported by the Federal government or used in research supported by the Federal government, and ancillary materials directly related to them. The Interagency Working Group on Scientific Collections (IWGSC), established in September 2005 by the Committee on Science of the National Science and Technology Council, is working with the IDA Science and Technology Policy Institute (STPI) to collect the information through an online survey. As part of the IWGSC, the National Science Foundation (NSF) has agreed to survey institutions with object-based scientific collections that receive support from the NSF or that are used by researchers that receive support form the NSF.

Estimate of Burden: The Foundation estimates that, on average, 40 minutes per respondent will be required to complete the survey, for a total of 400 hours for all respondents. Respondents from the approximately 730 institutions that receive NSF support for object-based collections, or whose object-based collections are used by researchers that receive NSF support, will complete this survey once.

Respondents: Not-for-profits.

Estimated Number of Responses: 730.

Estimated Total Annual Burden on Respondents: 5353 hours.

Dated: July 24, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–6514 Filed 7–26–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Committee on Strategy and Budget; Sunshine Act Meeting

DATE AND TIME: August 4, 2006; 9 a.m.–10 a.m. (ET).

PLACE: National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Webber, (703) 292–7000. *http://www.nsf.gov/nsb.*

STATUS: This meeting will be closed to the public.

Agenda

Teleconference discussion of the National Science Foundation's FY 2008 budget submission to the Office of Management and Budget.

Russell Moy,

Attorney Advisor.

[FR Doc. 06–6534 Filed 7–25–06; 11:10 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

[Docket No. 52–009–ESP; ASLBP No. 04–823–03–ESP]

In the Matter of System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site); Notice of Opportunity To Make Oral or Written Limited Appearance Statements

July 21, 2006.

Before Administrative Judges: Lawrence G. McDade, Chairman; Nicholas G. Trikouros, and Dr. Richard E. Wardwell.

This proceeding involves the application of System Energy Resources, Inc., (SERI) for a 10 CFR Part 52 early site permit (ESP). The ESP application seeks approval of the site at the existing Grand Gulf nuclear power station in Claiborne County, Mississippi, for the possible future construction of a new nuclear power generation facility.

SERI filed its application on October 16, 2003. Thereafter, the National Association for the Advancement of Colored People (Claiborne County, Mississippi Branch), Nuclear Information and Resource Service, Public Citizen, and the Mississippi chapter of the Sierra Club (Petitioners) filed a request for hearing and petition to intervene. Based on the pleadings submitted, and after hearing argument regarding the standing of the Petitioners and the admissibility of their seven proffered contentions, the previously assigned Atomic Safety and Licensing Board determined that although Petitioners had established the requisite standing to intervene in this proceeding, they had failed to submit at least one admissible contention. LBP–04–19, 60 NRC 277 (2004). Petitioners collectively appealed the Board's Order and, on January 18, 2005, the Commission affirmed the Board's rulings. CLI–05–04, 61 NRC 10 (2005). Therefore, the only matter remaining before this Board is satisfaction of the Mandatory Hearing requirement with regard to SERI's ESP Application. 42 U.S.C. 2235 (2000); 10 CFR 52.18, 52.21, 52.24. This Atomic Safety and Licensing Board hereby gives notice that, in accordance with 10 CFR 2.315(a), the Board will entertain oral limited appearance statements from members of the public in connection with this proceeding at the date, time, and location specified below.

A. Date, Time, and Location of Oral Limited Appearance Statement Session

The session will be held on the following date at the specified location and time:

Date: August 28, 2006.

Time: 6 p.m. CDT until 9 p.m. CDT.

Location: City Hall, 1005 College Street, Port Gibson, Mississippi 39150.

B. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or the representative of a party, to the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence in the proceeding, they nonetheless help the Board and/or the parties in their consideration of the issues.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as might be necessary to accommodate the speakers who are present. In this regard, if all scheduled and unscheduled speakers present at the session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed above. During the limited appearance session no signs or banners will be permitted in the hearing room.

In order to allow all interested persons an opportunity to address the Board, the time allotted for each statement normally will be no more than five (5) minutes, but may be limited, or expanded, depending on the number of written requests to make oral statements that are submitted in

accordance with Section C below, and/or the number of persons present at the designated time. At the outset of each statement, the speaker should identify himself or herself by stating their name, city and state of residence, and stating whether they have any affiliation (such as employment, consultancy, or membership) with any of the parties (SERI or the NRC).

C. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5 p.m. EDT on August 21, 2006. Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge Lawrence G. McDade, c/o: Debra Wolf, Esq., Law Clerk, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–6094).

E-mail: daw1@nrc.gov.

D. Submitted Written Limited Appearance Statements

A written limited appearance statement may be submitted to the Board regarding this proceeding at any time, either in lieu of or in addition to any oral statement. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman.

E. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

F. Scheduling Information Updates

Any updated/revised scheduling information regarding the limited appearance session can be found on the NRC Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* or by calling (800) 368–5642, extension 5036, or (301) 415–5036.

Dated in Rockville, Maryland, July 21, 2006.

For the Atomic Safety and Licensing Board.[1]

Lawrence G. McDade,

Chairman, Administrative Judge.

[FR Doc. 06–6507 Filed 7–26–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for Comments on the Nuclear Regulatory Commission's Low Level Radioactive Waste Program; Extension of Comment Period

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for comments on the Nuclear Regulatory Commission's low level radioactive waste program; Extension of Comment Period.

DATES: The public comment period for this action has been extended and now closes September 5, 2006. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received or postmarked after that date will be considered to the extent practical.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Whited, Chief, Low Level Waste Section, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–7257; fax number: (301) 415–5370; e-mail: *arw2@nrc.gov.*

[1] Copies of this Notice were sent this date by Internet electronic mail transmission to counsel for (1) applicant SERI; and (2) the NRC Staff.

SUMMARY: On July 7, 2006 (71 FR 38675), the U.S. Nuclear Regulatory Commission published a document requesting public comment on its low level radioactive waste regulatory program. The comment period for this action, which was to have closed 30 days after publication, is being extended for an additional 30 days.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments will also be accepted by e-mail at *NRCREP@nrc.gov* or by fax to (301) 415–5397, Attention: Ryan Whited.

Dated at Rockville, Maryland this 20th day of July, 2006.

For the Nuclear Regulatory Commission.

Scott Flanders,

Deputy Director, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Materials Safety and Safeguards.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27423; File No. 812–13260]

ING Life Insurance and Annuity Company, et al., Notice of Application

July 20, 2006.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (''1940 Act'' or ''Act''), approving certain substitutions of securities and for an order of exemption pursuant to Section 17(b) of the Act.

APPLICANTS: ING Life Insurance and Annuity Company, ING USA Annuity and Life Insurance Company, ReliaStar Life Insurance Company, (each a ''Company'' and together, the ''Companies''), Variable Annuity Account B of ING Life Insurance and Annuity Company, Variable Annuity Account C of ING Life Insurance and Annuity Company, Variable Annuity Account I of ING Life Insurance and Annuity Company, Separate Account B of ING USA Annuity and Life Insurance Company, Separate Account N of Reliastar Life Insurance Company (each, an ''Account'' and together, the ''Accounts''), ING Investors Trust, ING Partners, Inc., and ING VP Balanced

Portfolio, Inc., collectively referred to herein as (the ''Applicants'').

SUMMARY OF APPLICATION: The Applicants request an order, pursuant to Section 26(c) of the 1940 Act, permitting the substitutions of securities issued by certain registered investment companies held by the Accounts to support certain in force variable life insurance policies and variable annuity contracts (collectively, the ''Contracts'') issued by the Companies. More particularly, the Applicants propose to substitute shares of certain series of ING Investors Trust and ING Partners, Inc., and certain shares of the ING VP Balanced Portfolio, Inc. (the ''Substitute Funds'') for shares of certain registered investment companies currently held by subaccounts of the various Accounts (the ''Replaced Funds'') as follows:

Replaced funds	Substitute funds
Baron Asset Fund	ING Baron Asset Portfolio—Class S.
Baron Growth Fund	ING Baron Small Cap Growth Portfolio—Class S.
Fidelity Advisor Mid Cap Fund—Class T	ING FMR Diversified Mid Cap Portfolio—Class S.
Fidelity VIP Growth Portfolio—Initial Class	ING FMR Earnings Growth Portfolio—Class I.
AIM V.I. Capital Appreciation Fund—Series I	
Fidelity VIP Equity-Income Portfolio—Initial Class	ING FMR Equity Income Portfolio—Class I.
Fidelity VIP Equity-Income Portfolio—Service Class 2	ING FMR Equity Income Portfolio—Class S.
AllianceBernstein Growth and Income Portfolio—Class A	ING JPMorgan Value Opportunities Portfolio—Class I.
Alliance Bernstein Growth and Income Fund—Class A	ING JPMorgan Value Opportunities Portfolio—Class S.
Legg Mason Value Trust, Inc.—Primary Class	ING Legg Mason Value Portfolio -Class S.
Lord Abbett Series Fund—Growth and Income Portfolio—Class VC	ING Lord Abbett Affiliated Portfolio—Class I.
Lord Abbett Affiliated Fund—Class A	
MFS Total Return Series—Initial Class	ING MFS Total Return Portfolio—Class I.
Oppenheimer Global Fund—Class A	ING Oppenheimer Global Portfolio—Class S.
Oppenheimer Main Street Fund—Class A	ING Oppenheimer Main Street Portfolio—Class S.
Fidelity VIP High Income Portfolio—Initial Class	ING PIMCO High Yield Portfolio—Class I.
Pioneer Equity Income VCT Portfolio—Class I	ING Pioneer Equity Income Portfolio—Class I.
AIM V.I. Core Equity Fund—Series I	ING Pioneer Fund Portfolio—Class I.
Pioneer Fund VCT Portfolio—Class I	ING Pioneer Fund Portfolio—Class I.
Pioneer Fund—Class A	ING Pioneer Fund Portfolio—Class S.
Pioneer High Yield VCT Portfolio—Class I	ING Pioneer High Yield Portfolio-Class I.
Pioneer High Yield Fund—Class A	ING Pioneer High Yield Portfolio—Class S.
Pioneer Mid Cap Value VCT Portfolio—Class I	ING Pioneer Mid Cap Value Portfolio—Class I.
Templeton Growth Fund, Inc.—Class A	ING Templeton Global Growth Portfolio—Class I.
UBS U.S. Small Cap Growth Fund—Class A	ING UBS U.S. Small Cap Growth Portfolio—Class S.
Fidelity VIP Asset Manager Portfolio—Initial Class	ING VP Balanced Portfolio, Inc.—Class I.
Fidelity VIP Overseas Portfolio—Initial Class	ING VP Index Plus International Equity Portfolio—Class S.
Lord Abbett Small-Cap Value Fund—Class A	ING Wells Fargo Small Cap Disciplined Portfolio—Class S.
Evergreen Special Values Fund—Class A	

Applicants also seek an order of exemption pursuant to Section 17(b) of the 1940 Act to permit certain in-kind redemptions and purchases in connection with the substitutions.

FILING DATE: The Application was filed on February 9, 2006. The Application was amended and restated on June 30, 2006, and July 18, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 14, 2006, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, J. Neil McMurdie, Esquire, ING Americas U.S. Legal Services, 151 Farmington Avenue, TS31, Hartford, CT 06156–8975.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Room 1580, Washington, DC 20549.

Applicants' Representations

1. Each of the Companies is an indirect wholly owned subsidiary of ING Groep, N.V. (''ING''). ING is a global financial services holding company based in The Netherlands which is active in the field of insurance, banking and asset management. As a result, each Company likely would be deemed to be an affiliate of the others.

2. ING Life Insurance and Annuity Company (''ING Life'') is a stock life insurance company organized under the laws of the State of Connecticut in 1976 as Forward Life Insurance Company. Through a December 31, 1976 merger, ING Life's operations include the business of Aetna Variable Annuity Life Insurance Company (formerly known as Participating Annuity Life Insurance Company). Through a December 31, 2005 merger, ING Life's operations include the business of ING Insurance Company of America (''ING America''). Prior to May 1, 2002, ING Life was known as Aetna Life Insurance and Annuity Company (''Aetna''). ING Life is principally engaged in the business of issuing life insurance and annuities.

3. ING USA Annuity and Life Insurance Company (''ING USA'') is an Iowa stock life insurance company which was originally organized in 1973 under the insurance laws of Minnesota. Through January 1, 2004 mergers, ING USA's operations include the business of Equitable Life Insurance Company of Iowa, United Life and Annuity

Insurance Company, and USG Annuity and Life Company. Prior to January 1, 2004, ING USA was known as Golden American Life Insurance Company (''Golden''). ING USA is principally engaged in the business of issuing life insurance and annuities.

4. ReliaStar Life Insurance Company (''ReliaStar'') is a stock life insurance company organized in 1885 and incorporated under the laws of the State of Minnesota. Through an October 1, 2002 merger, ReliaStar's operations include the business of Northern Life Insurance Company (''Northern''). ReliaStar is principally engaged in the business of issuing life insurance, annuities, employee benefits and retirement contracts.

5. Each of the Accounts is a segregated asset account of the Company that is the depositor of such Account, and is registered under the 1940 Act as a unit investment trust. Each of the respective Accounts is used by the Company of which it is a part to support the Contracts that it issues.

6. Variable Annuity Account B of ING Life Insurance and Annuity Company (''ING Life B'') (File No. 811–2512) was established by Aetna in 1976 as a continuation of the separate account established in 1974 under the laws of the State of Arkansas by Aetna Variable Annuity Life Insurance Company to support certain Contracts.

7. Variable Annuity Account C of ING Life Insurance and Annuity Company (''ING Life C''). ING Life C (formerly Variable Annuity Account C of Aetna Life Insurance and Annuity Co) (File No. 811–2513) was established by Aetna in 1976 as a continuation of the separate account established in 1974 in accordance with the laws of the State of Arkansas by Aetna Variable Annuity Life Insurance Company to support certain Contracts.

8. Variable Annuity Account I of ING Life Insurance and Annuity Company (''ING Life I''), (formerly ING Variable Annuity Account I of ING Insurance Company of America) (File No. 811–8582), was established by ING America (then known as Aetna Insurance Company of America) in 1994 under the laws of the State of Connecticut.

9. Separate Account B of ING USA Annuity and Life Insurance Company (''ING USA B'') (File No. 811–5626) was established by Golden in 1988 under the laws of the State of Minnesota.

10. Separate Account N of ReliaStar Life Insurance Company (''ReliaStar Separate Account N''), formerly Separate Account One of Northern Life Insurance Company (File No. 811–9002), was established by Northern in 1994 under the laws of the State of Washington.

11. Most of the Substitute Funds are series of ING Investors Trust and ING Partners, Inc. ING VP Balanced Portfolio is also a Substitute Fund.

12. ING Investors Trust, formerly known as the GCG Trust, was organized as a Massachusetts business trust on August 3, 1988. ING Investors Trust is registered under the 1940 Act as an open-end management investment company (File No. 811–5629).

13. ING Partners, Inc. (''ING Partners''), formerly known as Portfolio Partners, Inc., was organized as a Maryland Corporation in 1997 and commenced operations on November 28, 1997. ING Partners is registered under the 1940 Act as an open-end management investment company (File No. 811–08319).

14. ING VP Balanced Portfolio, Inc., formerly known as Aetna Investment Advisers Fund, Inc., was organized as a Maryland Corporation in 1988. ING VP Balanced Portfolio is registered under the 1940 Act as an open-end management investment company (File No. 811–05773).

15. Directed Services, Inc., ING Investments, LLC, and ING Life are registered as investment advisers under the Investment Adviser Act of 1940. Directed Services, Inc. provides or will provide overall management services for each series of the ING Investors Trust except for the ING VP Index Plus International Equity Portfolio. The ING VP Index Plus International Equity Portfolio and ING VP Balanced Portfolio, Inc. are advised by ING Investments, LLC. ING Life is the investment adviser for each ING Partners portfolio.

16. The terms and conditions, including charges and expenses, applicable to each Contract are described in the registration statements filed with the Commission for each. The Contracts may be issued as individual contracts or as group contracts where the owner is the employer, sponsor or trustee of a group retirement plan. In the case of group contracts, members of the group (''Participants'') acquire an interest in the contract and have certain rights as determined by the group contract and/or, if applicable, the retirement plan covering the Participants' interests. As each Contract is structured, owners of the Contract, or in the case of certain group contracts, the Participant (each a ''Contract Owner'') may select one or more of the investment options available under the Contract by allocating premiums and transferring account value to that subaccount of the relevant Account that corresponds to the investment option desired. Thereafter, the account value of the Contract Owner will vary based on the investment experience of the selected subaccount(s). Generally, a Contract Owner may, during the life of each Contract, make unlimited transfers of account values among the subaccounts available under the Contract, subject to any administrative and/or transfer fees applicable under the Contracts and any limits related to frequent or disruptive transfers.

Comparison of Fees and Expenses

17. The comparative fees and expenses for each fund in the proposed substitutions are as follows:

[In percent]

	Management fees	Distribution (12b–1) fees	Other expenses	Total annual expenses	Expense waivers	Net annual expenses
Substitute Fund:						
• ING Baron Asset Portfolio—S Class	0.95		[1] 0.46	1.41	0.11	1.30
Replaced Fund:						
• Baron Asset Fund	1.00	0.25	0.09	1.34		1.34
Substitute Fund:						
• ING Baron Small Cap Growth Portfolio—S Class	0.85		[2] 0.48	1.33	0.02	1.31
Replaced Fund:						
• Baron Growth Fund	1.00	0.25	0.06	1.31		1.31
Substitute Fund:						

[In percent]—Continued

	Management fees	Distribution (12b–1) fees	Other expenses	Total annual expenses	Expense waivers	Net annual expenses
• ING FMR Diversified Mid Cap Portfolio—Class S[3]	0.65		[4] 0.26	0.91		0.91
Replaced Fund:						
• Fidelity Advisor Mid Cap Fund—Class T	0.57	0.50	0.24	1.31		1.31
Substitute Fund:						
• ING FMR Earnings Growth Portfolio—Class I	0.57		0.15	0.72	0.05	0.67
Replaced Fund:						
• Fidelity VIP Growth Portfolio—Initial Class	0.57		0.10	0.67		0.67
Replaced Fund:						
• AIM V.I. Capital Appreciation Fund—Series I	0.61		0.29	0.90		0.90
Substitute Fund:						
• ING FMR Equity Income Portfolio—Class I	0.47		0.13	0.60	0.04	0.56
Replaced Fund:						
• Fidelity VIP Equity-Income Portfolio—Initial Class	0.47		0.09	0.56		0.56
Substitute Fund:						
• ING FMR Equity Income Portfolio—Class S	0.47		[5] 0.38	0.85	0.04	0.81
Replaced Fund:						
• Fidelity VIP Equity-Income Portfolio—Service Class 2	0.47	0.25	0.09	0.81		0.81
Substitute Fund:						
• ING JPMorgan Value Opportunities Portfolio—Class I	0.40		0.13	0.53		0.53
Replaced Fund:						
• AllianceBernstein Growth and Income Portfolio—Class A	0.55		0.04	0.59		0.59
Substitute Fund:						
• ING JPMorgan Value Opportunities Portfolio—Class S	0.40		[6] 0.38	0.78		0.78
Replaced Fund:						
• AllianceBernstein Growth and Income Fund—Class A	0.48	0.28	0.26	1.02		1.02
Substitute Fund:						
• ING Legg Mason Value Portfolio—Class S[7]	0.79		[8] 0.25	1.04		1.04
Replaced Fund:						
• Legg Mason Value Trust, Inc.—Primary Class	0.66	0.95	0.07	1.68		1.68
Substitute Fund:						
• ING Lord Abbett Affiliated Portfolio—Class I[9]	0.75			0.75		0.75
Replaced Fund:						
• Lord Abbett Series Fund—Growth and Income Portfolio—Class VC	0.48		0.41	0.89		0.89
Replaced Fund:						
• Lord Abbett Affiliated Fund—Class A	0.30	0.35	0.17	0.82		0.82
Substitute Fund:						
• ING MFS Total Return Portfolio—Class I[10]	0.64			0.64		0.64
Replaced Fund:						
• MFS Total Return Series—Initial Class	0.75		0.09	0.84		0.84
Substitute Fund:						
• ING Oppenheimer Global Portfolio—Class S	0.60		[11] 0.31	0.91		0.91
Replaced Fund:						
• Oppenheimer Global Fund—Class A	0.64	0.24	0.24	1.12		1.12
Substitute Fund:						
• ING Oppenheimer Main Street Portfolio—Class S[12]	0.63		[13] 0.26	0.89		0.89
Replaced Fund:						

[In percent]—Continued

	Management fees	Distribution (12b–1) fees	Other expenses	Total annual expenses	Expense waivers	Net annual expenses
• Oppenheimer Main Street Fund—Class A	0.46	0.24	0.22	0.92		0.92
Substitute Fund:						
• ING PIMCO High Yield Portfolio—Class I [14]	0.49		0.01	0.50		0.50
Replaced Fund:						
• Fidelity VIP High Income Portfolio—Initial Class	0.57		0.13	0.70		0.70
Substitute Fund:						
• ING Pioneer Equity Income Portfolio—Class I [15]	0.65		0.20	0.85	0.15	0.70
Replaced Fund:						
• Pioneer Equity Income VCT Portfolio—Class I	0.65		0.06	0.71		0.71
Substitute Fund:						
• ING Pioneer Fund Portfolio—Class I [16]	0.725		0.01	0.735	[17] 0.05	0.685
Replaced Fund:						
• Pioneer Fund VCT Portfolio—Class I	0.65		0.05	0.70		0.70
Substitute Fund:						
• ING Pioneer Fund Portfolio—Class S [18]	0.725		[19] 0.26	0.985	0.05	0.935
Replaced Fund:						
• Pioneer Fund—Class A	0.53	0.25	0.28	1.06		1.06
Substitute Fund:						
• ING Pioneer High Yield Portfolio—Class I	0.60		0.21	0.81	0.06	0.75
Replaced Fund:						
• Pioneer High Yield VCT Portfolio—Class I	0.65		0.12	0.77		0.77
Substitute Fund:						
• ING Pioneer High Yield Portfolio—Class S	0.60		[20] 0.46	1.06	0.06	1.00
Replaced Fund:						
• Pioneer High Yield Fund—Class A	0.61	0.25	0.20	1.06		1.06
Substitute Fund:						
• ING Pioneer Mid Cap Value Portfolio—Class I [21]	0.64		0.01	0.65		0.65
Replaced Fund:						
• Pioneer Mid Cap Value VCT Portfolio—Class I	0.65		0.06	0.71		0.71
Substitute Fund:						
• ING Templeton Global Growth Portfolio—Class I [22]	0.93		0.01	0.94		0.94
Replaced Fund:						
• Templeton Growth Fund, Inc.—Class A	0.58	0.25	0.23	1.06		1.06
Substitute Fund:						
• ING Pioneer Fund Portfolio—I Class [23]	0.725		0.01	0.735	0.05	0.685
Replaced Fund:						
• AIM V.I. Core Equity Fund—Series I	0.60		0.27	0.87		0.87
Substitute Fund:						
• ING UBS U.S. Small Cap Growth Portfolio—Class S	0.85		[24] 0.46	1.31	0.06	1.25
Replaced Fund:						
• UBS U.S. Small Cap Growth Fund—Class A	0.85	0.25	0.49	1.59	0.31	1.28
Substitute Fund:						
• ING VP Balanced Portfolio—Class I	0.50		0.10	0.60		0.60
Replaced Fund:						
• Fidelity VIP Asset Manager Portfolio—Initial Class	0.52		0.12	0.64		0.64
Substitute Fund:						
• ING VP Index Plus International Equity Portfolio—Class S	0.45		[25] 0.59	1.04	0.24	0.80

[In percent]—Continued

	Management fees	Distribution (12b–1) fees	Other expenses	Total annual expenses	Expense waivers	Net annual expenses
Replaced Fund:						
• Fidelity VIP Overseas Portfolio—Initial Class	0.72		0.17	0.89		0.89
Substitute Fund:						
• ING Wells Fargo Small Cap Disciplined Portfolio—Class S	0.72		[26] 0.46	1.18	0.06	1.12
Replaced Fund:						
• Lord Abbett Small-Cap Value Fund—Class A	0.72	0.30	0.21	1.23		1.23
Replaced Fund:						
• Evergreen Special Values Fund—Class A	0.78	0.25	0.34	1.37		1.37

[1] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[2] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[3] This Substitute Fund is subject to a unified fee arrangement.
[4] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[5] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[6] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[7] This Substitute Fund is subject to a unified fee arrangement.
[8] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[9] This Substitute Fund is subject to a unified fee arrangement.
[10] This Substitute Fund is subject to a unified fee arrangement.
[11] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[12] This Substitute Fund is subject to a unified fee arrangement.
[13] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[14] This Substitute Fund is subject to a unified fee arrangement.
[15] This portfolio is not yet operational but will be before the effective date of the substitutions. Fees and expenses on the Effective Date will be as shown.
[16] This Substitute Fund is subject to a unified fee arrangement.
[17] Directed Services, Inc. has agreed to a permanent expense cap on Management Fees and Other Expenses so that beginning on the Effective Date of the Substitutions the Total Net Annual Expenses for the Class I shares will never exceed 0.70%.
[18] This Substitute Fund is subject to a unified fee arrangement.
[19] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[20] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[21] This Substitute Fund is subject to a unified fee arrangement.
[22] This Substitute Fund is subject to a unified fee arrangement.
[23] This Substitute Fund is subject to a unified fee arrangement.
[24] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[25] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.
[26] The ''Other Expenses'' of this portfolio includes a Shareholder Services Fee of 0.25%.

Investment Objectives and Policies

The investment objectives of each Replaced and Substitute Fund follow:

18. ING Baron Asset Portfolio for the Baron Asset Fund. The ING Baron Asset Portfolio is patterned after the Baron Asset Fund and these two portfolios have the same investment objectives and policies. The investment objective of both portfolios is to seek capital appreciation.

19. ING Baron Small Cap Growth Portfolio for the Baron Growth Fund. The ING Baron Small Cap Growth Portfolio is patterned after the Baron Growth Fund and these two portfolios have the same investment objectives and policies. The investment objective of both portfolios is to seek capital appreciation.

20. ING FMR Diversified Mid Cap Portfolio for the Fidelity Advisor Mid Cap Fund. The ING FMR Diversified Mid Cap Portfolio and the Fidelity Advisor Mid Cap Fund have the same investment objective, to seek long-term growth of capital. Each fund intends to meet its objective by normally investing at least 80% of its assets in securities of companies with medium market capitalizations.

21. ING FMR Earnings Growth Portfolio for the Fidelity VIP Growth Portfolio. The investment objective of the ING FMR Earnings Growth Portfolio is to seek growth of capital over the long term. The investment objective of Fidelity VIP Growth Portfolio is to seek to achieve capital appreciation.

22. ING FMR Earnings Growth Portfolio for the AIM V.I. Capital Appreciation Fund. The investment objective of the ING FMR Earnings Growth Portfolio and the AIM V.I. Capital Appreciation Fund is to seek growth of capital over the long term.

23. ING FMR Equity Income Portfolio for the Fidelity VIP Equity-Income Portfolio. The ING FMR Equity Income Portfolio is patterned after the Fidelity VIP Equity-Income Portfolio and these two portfolios have the same investment objectives and policies. The investment objective of both portfolios is to seek capital appreciation and reasonable income.

24. ING JPMorgan Value Opportunities Portfolio for the AllianceBernstein Growth and Income Portfolio. The investment objective of the ING JPMorgan Value Opportunities Portfolio is to provide long-term capital appreciation. The investment objective of the AllianceBernstein Growth and Income Portfolio is to seek long-term growth of capital.

25. ING JPMorgan Value Opportunities Portfolio for the AllianceBernstein Growth and Income Fund. The investment objective of the ING JPMorgan Value Opportunities Portfolio is to provide long-term capital appreciation. The investment objective of the AllianceBernstein Growth and Income Fund is to seek long-term growth of capital.

26. ING Legg Mason Value Portfolio for the Legg Mason Value Trust, Inc. The ING Legg Mason Value Portfolio is patterned after the Legg Mason Value Trust, Inc., and these two portfolios have the same investment objectives and policies. The investment objective

of both portfolios is to seek long-term growth of capital.

27. ING Lord Abbett Affiliated Portfolio for the Lord Abbett Series Fund—Growth and Income Portfolio. The investment objective of the ING Lord Abbett Affiliated Portfolio is long-term growth of capital with current income a secondary objective. The Lord Abbett Series Fund—Growth and Income Portfolio has an investment objective that seeks long-term growth of capital and income.

28. ING Lord Abbett Affiliated Portfolio for the Lord Abbett Affiliated Fund. The ING Lord Abbett Affiliated Portfolio is patterned after the Lord Abbett Affiliated Fund and these two portfolios have the same investment objectives and policies. The investment objective of both portfolios is to seek long-term growth of capital and income.

29. ING MFS Total Return Portfolio for the MFS Total Return Series. The ING MFS Total Return Portfolio is patterned after the MFS Total Return Series and these two portfolios have the same investment objectives and policies. The investment objective of both portfolios is to seek above average income (compared to a portfolio entirely invested in equity securities) consistent with the prudent employment of capital.

30. ING Oppenheimer Global Portfolio for the Oppenheimer Global Portfolio. The investment objectives of the ING Oppenheimer Global Portfolio and the Oppenheimer Global Fund are the same. Each fund seeks capital appreciation.

31. ING Oppenheimer Main Street Portfolio for the Oppenheimer Main Street Fund. The investment objective of the ING Oppenheimer Main Street Portfolio is long-term growth of capital and future income. The investment objective of the Oppenheimer Main Street Fund is high total return (which includes growth in the value of its shares as well as current income) from equity and debt securities.

32. ING PIMCO High Yield Portfolio for the Fidelity VIP High Income Portfolio. The investment objective of the ING PIMCO High Yield Portfolio is to seek maximum total return, consistent with the preservation of capital and prudent investment management. The investment objective of Fidelity VIP High Income Portfolio is to seek a high level of current income, while also considering growth of capital.

33. ING Pioneer Equity Income Portfolio for the Pioneer Equity Income VCT Portfolio. The ING Pioneer Equity Income Portfolio is patterned after the Pioneer Equity Income VCT Portfolio and these two portfolios have the same investment objectives and policies. The investment objective of both portfolios is to seek current income and long-term growth of capital from a portfolio consisting primarily of income producing equity securities of U.S. corporations.

34. ING Pioneer Fund Portfolio for the Pioneer Fund VCT Portfolio. The ING Pioneer Fund Portfolio is patterned after the Pioneer Fund VCT Portfolio and these two funds have the same investment objectives and policies. The investment objective of both portfolios is to seek reasonable income and capital growth.

35. ING Pioneer Fund Portfolio for the Pioneer Fund. The ING Pioneer Fund Portfolio is patterned after the Pioneer Fund and these two funds have the same investment objectives and policies. The investment objective of both portfolios is to seek reasonable income and capital growth.

36. ING Pioneer High Yield Portfolio for the Pioneer High Yield VCT Portfolio. The ING Pioneer High Yield Portfolio is patterned after the Pioneer High Yield VCT Portfolio and these two portfolios have the same investment objectives and policies. The investment objective of both portfolios is to seek maximum total return through a combination of income and capital appreciation.

37. ING Pioneer High Yield Portfolio for the Pioneer High Yield Fund. The ING Pioneer High Yield Portfolio is patterned after the Pioneer High Yield Fund and these two funds have the same investment objectives and policies. The investment objective of both portfolios is to seek maximum total return through a combination of income and capital appreciation.

38. ING Pioneer Mid Cap Value Portfolio for the Pioneer Mid Cap Value VCT Portfolio. The ING Pioneer Mid Cap Value Portfolio is patterned after the Pioneer Mid Cap Value VCT Portfolio and these two funds have the same investment objectives and policies. The investment objective of both portfolios is to seek capital appreciation.

39. ING Templeton Global Growth Portfolio for the Templeton Growth Fund, Inc. The ING Templeton Global Growth Portfolio is patterned after the Templeton Growth Fund, Inc. and these two funds have similar investment objectives and policies. The investment objective of the ING Templeton Global Growth Portfolio is to seek capital appreciation. The Templeton Growth Fund, Inc. seeks long-term capital growth.

40. ING Pioneer Fund Portfolio for the AIM V.I. Core Equity Fund. The investment objective of the ING Pioneer Fund Portfolio is reasonable income and capital growth. The investment objective of the AIM V.I. Core Equity Series is growth of capital.

41. ING UBS U.S. Small Cap Growth Portfolio for the UBS U.S. Small Cap Growth Fund. The ING UBS U.S. Small Cap Growth Portfolio is patterned after the UBS Small Cap Growth Fund and these two funds have the same investment objectives and policies. The investment objective of both portfolios is to seek to provide long-term capital appreciation.

42. ING VP Balanced Portfolio, Inc. for the Fidelity VIP Asset Manager Portfolio. The investment objective of the ING VP Balanced Portfolio is to seek to maximize investment return, consistent with reasonable safety of principal, by investing in a diversified portfolio of one or more of the following asset classes: stocks, bonds and cash equivalents, based on the judgment of the portfolio's management, of which of those sectors or mix thereof offers the best investment prospects. The investment objective of Fidelity VIP II Asset Manager Portfolio is to seek to obtain high total return with reduced risk over the long-term by allocating its assets among stocks, bonds and short-term instruments.

43. ING VP Index Plus International Equity Portfolio for the Fidelity VIP Overseas Portfolio. The ING VP IndexPlus International Equity Portfolio seeks to outperform the total return performance of the Morgan Stanley Capital International EAFE Index (MSCI EAFE). The investment objective of the Fidelity VIP Overseas Portfolio is long-term growth of capital.

44. ING Wells Fargo Small Cap Disciplined Portfolio for the Lord Abbett Small-Cap Value Fund. The investment objective of both the ING Wells Fargo Small Cap Disciplined Portfolio and Lord Abbett Small-Cap Value Fund is long-term capital appreciation.

45. ING Wells Fargo Small Cap Disciplined Portfolio for the Evergreen Special Values Fund. The investment objective of the ING Wells Fargo Small Cap Disciplined Portfolio is long-term capital appreciation. The objective of the Evergreen Special Values Fund is to seek growth of capital.

Implementation of the Substitutions

46. Applicants will effect the Substitutions as soon as practicable following the issuance of the requested order. As of the Effective Date of the Substitutions, shares of each Replaced Fund will be redeemed for cash or in-kind. The Companies, on behalf of each Replaced Fund subaccount of each relevant Account, will simultaneously

place a redemption request with the Replaced Fund and a purchase order with the corresponding Substitute Fund so that the purchase of Substitute Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the applicable Substitute Fund.

47. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the 1940 Act) with no change in the amount of any Affected Contract Owner's (defined below) account value or death benefit, or in the dollar value of his or her investment in the applicable Account. Any in-kind redemption of shares of a Replaced Fund or in-kind purchase of shares of the corresponding Substitute Fund will, except as noted below, take place in substantial compliance with the conditions of Rule 17a–7 under the 1940 Act. No brokerage commissions, fees or other remuneration will be paid by either the Replaced Fund or the corresponding Substitute Fund or by Affected Contract Owners in connection with the Substitutions. The transactions comprising the Substitutions will be consistent with the policies of each investment company involved and with the general purposes of the 1940 Act.

48. Contract owners with interests in the subaccounts of each Replaced Fund (individually, an ''Affected Contract Owner'' and, collectively, ''Affected Contract Owners'') will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. In addition, the Substitutions will not impose any tax liability on Affected Contract Owners. The Substitutions will not cause the Contract fees and charges currently being paid by Affected Contract Owners to be greater after the Substitutions than before the Substitutions. Also, as described more fully below, after notification of the Substitutions and for 30 days after the Substitutions, Affected Contract Owners may reallocate to any other investment options available under their Contract the subaccount value of the Replaced Fund without incurring any administrative costs or allocation (transfer) charges.

49. All Affected Contract Owners were notified of this Application by means of supplements to the Contract prospectuses, shortly after the date of this Application. Among other information regarding the Substitutions, the supplements informed Affected Contract Owners that beginning on the date of the first supplement the Companies will not exercise any rights reserved by them under the Contracts to impose restrictions or fees on transfers from the Replaced Funds (other than restrictions related to frequent or disruptive transfers) until at least 30 days after the Effective Date of the Substitutions. Following the date the order requested by the Application is issued, but before the Effective Date, Affected Contract Owners will receive a second supplement to the Contract prospectus setting forth the Effective Date and advising Affected Contract Owners of their right, if they so choose, at any time prior to the Effective Date, to reallocate or withdraw accumulated value in the relevant Replaced Fund subaccounts under their Contracts or otherwise terminate their interest therein in accordance with the terms and conditions of their Contracts. If Affected Contract Owners reallocate account value prior to the Effective Date or within 30 days after the Effective Date, there will be no charge for the reallocation of accumulated value from each Replaced Fund subaccount and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. The Companies will not exercise any right they may have under the Contracts to impose additional restrictions or fees on transfers from the Replaced Funds under the Contracts (other than restrictions related to frequent or disruptive transfers) for a period of at least 30 days following the Effective Date of the Substitutions. Additionally, all current Contract Owners will be sent prospectuses of the Substitute Funds before the Effective Date.

50. Within five (5) business days after the Effective Date, Affected Contract Owners will be sent a written confirmation (''Post-Substitution Confirmation'') indicating that shares of the Replaced Funds have been redeemed and that the shares of Substitute Funds have been substituted. The Post-Substitution Confirmation will show how the allocation of the Affected Contract Owner's account value before and immediately following the Substitutions have changed as a result of the Substitutions and detail the transactions effected on behalf of the respective Affected Contract Owner because of the Substitutions.

Applicant's Legal Analysis

1. Applicants represent that each of the prospectuses for the Contracts expressly discloses the reservation of the Companies right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account.

2. Registrants state that the Companies reserved this right of substitution both to protect themselves and their Contract Owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts and to afford the opportunity to replace such shares where to do so could benefit the Contract Owners and Companies.

3. Applicants maintain that Contract Owners will be better served by the proposed Substitutions. Applicants anticipate that the replacement of certain Replaced Funds will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products in both wholesale and retail markets. For all of the proposed substitutions, each Substitute Fund (or sub-adviser managing a similar fund for those Substitute Funds without a performance history) generally has had comparable or more consistent investment performance than the corresponding Replaced Fund that it would replace. Moreover, each Substitute Fund has fees that are the same as or less than the corresponding Replaced Fund. Applicants state that for all of the proposed substitutions, the investment objective and policies of each Substitute Fund are the same as, similar to, or consistent with the investment objective and policies of the corresponding Replaced Fund.

4. Applicants anticipate that Contract Owners will be at least as well off with the proposed array of subaccounts to be offered after the proposed substitutions as they have been with the array of subaccounts offered before the substitutions. The proposed substitutions retain for Contract Owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract Owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the remaining subaccounts as they could before the proposed substitutions. The number of available subaccounts varies from

Contract to Contract, but the average number of available subaccounts in all Contracts is approximately 67 and the smallest number of available subaccounts in any one Contract after the Substitutions is 22, the same number of available subaccounts as before the Substitutions.

5. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract Owner with the right to exercise his or her own judgment and transfer contract values into other subaccounts. Moreover, the Contracts will offer Contract Owners the opportunity to transfer amounts out of the subaccounts which invest in the Replaced Funds into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

6. Applicants maintain that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific types of insurance coverages offered by the various Companies under the Contracts as well as numerous other rights and privileges set forth in each Contract. Contract Owners may also have considered the size, financial condition, type, and reputation of ING and the various Companies. These factors will not change because of the proposed substitutions.

7. Applicants maintain that the terms of the Substitutions, including the consideration to be paid and received by each Replaced Fund or Substitute Fund, are reasonable, fair and do not involve overreaching principally because the transactions do not cause owners' interests under a Contract to be diluted, and because the transactions will conform with the principal conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract Owner's contract value, cash value, accumulation value, account value or death benefit or in the dollar value of his or her investment in any of the Accounts.

8. Applicants submit that the Substitutions by the Companies are consistent with the policies of each Substitute Fund and each Replaced Fund, as recited in the current registration statements and reports filed by each under the 1940 Act.

9. Applicants submit that, to the extent that the Substitutions are deemed to involve principal transactions between affiliates, the procedures and terms and descriptions described in the Application demonstrate that neither the Replaced Funds, the Substitute Funds, the Accounts nor any other Applicant will be participating in the Substitutions on a basis less advantageous than that of any other participant. Even though the Applicants may not rely on Rule 17a–7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

10. The boards of trustees or directors, as applicable, of each Replaced Fund and ING Investors Trust, ING Partners, Inc., and ING VP Balanced Portfolio, Inc. have adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the portfolios or funds of each may purchase and sell securities to and from their affiliates. The Companies and the investment advisers will carry out the Substitutions in conformity with the principal conditions of Rule 17a–7 and each Replaced Fund's and the Substitute Fund's procedures thereunder. Also no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions.

11. Except as noted below, applicants state that the Substitutions will take place in accordance with the requirements enumerated in Rule 17a–7 under the 1940 Act and with the approval of the applicable board of ING Investors Trust, ING Partners, and ING VP Balanced Portfolio, Inc., except that the Substitutions may be effected in cash or in-kind.

12. With regard to the Substitutions involving in-kind transfers, the investment adviser of each Substitute Fund and the investment adviser to the corresponding Replaced Fund intend to value securities selected for transfer between the two funds in a manner that is consistent with the current methodology used to calculate the daily net asset value of the Replaced Fund. Where a Replaced Fund's investment adviser employs certain third party, independent pricing services to value securities held by the Replaced Fund (''Vendor Pricing''), the investment adviser of each Substitute Fund and the corresponding Replaced Fund's investment adviser intend to employ Vendor Pricing to value securities held by the Replaced Fund that are selected for transfer to the Substitute Fund. Vendor Pricing may be used in each of the Substitutions. Generally, the redemption of securities from the Replaced Fund and subsequent transfer to the Substitute Fund will be done on a pro-rata basis. In the event that a Replaced Fund holds illiquid or restricted securities or assets that are not otherwise readily distributable or if a pro-rata transfer of securities would result in the parties holding odd lots, the investment advisers may agree to have a Replaced Fund transfer to the Substitute Fund an equivalent amount of cash instead of securities.

13. Applicants submit that the Substitutions are consistent with the general purposes of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Contract Owners will be fully informed of the terms of the Substitutions through the supplements and the Post-Substitution Confirmation and will have an opportunity to withdraw from the Replaced Fund through reallocation to another subaccount or otherwise terminate their interest thereof in accordance with the terms and conditions of their Contract prior to the Effective Date.

Applicant's Conditions

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the substitutions described in the application will not be completed unless all of the following conditions are met:

1. Each Substitute Fund has an investment objective and investment policies that are the same as, similar to or consistent with the investment objective and policies of the corresponding Replaced Fund, so that the objective of the Affected Contract Owners can continue to be met.

2. For two years following the implementation of the Substitutions described herein, the net annual expenses of each Substitute Fund will not exceed the net annual expenses of the corresponding Replaced Fund immediately preceding the Substitutions except for the ING Pioneer Fund Portfolio where Directed Services, Inc. has agreed to a permanent expense cap on management fees and other expenses so that beginning on the

effective date of the Substitutions total net annual expenses for the Class I shares will never exceed 0.70%. To achieve these limitations, Directed Services, Inc., ING Investments, LLC and ING Life, as applicable, will waive fees or reimburse the appropriate Substitute Fund in certain amounts to maintain expenses at or below the limit. Any adjustments or reimbursements will be made at least on a quarterly basis. In addition, the Companies will not increase the Contract fees and charges, including asset based charges such as mortality and expense risk charges deducted from the subaccounts that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Substitutions.

3. Affected Contract Owners may reallocate amounts from any of the Replaced Funds without incurring a reallocation charge or limiting their number of future reallocations, or withdraw amounts under any affected Contract or otherwise terminate their interest therein at any time prior to the Effective Date and for a period of at least 30 days following the Effective Date in accordance with the terms and conditions of such Contract. Any such reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers.

4. The Substitutions will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by Applicants.

5. The Substitutions will take place at relative net asset value without change in the amount or value of any Contract held by Affected Contract Owners. Affected Contract Owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of the Companies under such Contracts be altered in any way. In addition, the Companies will not increase the Contract fees and charges currently being assessed under the Contracts for a period of at least two years following the Substitutions.

6. The Substitutions will be effected so that the investment of securities will be consistent with the investment objectives, policies and diversification requirements of the relevant Substitute Fund. No brokerage commissions, fees or other remuneration will be paid by any Replaced Fund or the corresponding Substitute Fund or Affected Contract Owners in connection with the Substitutions.

7. The Substitutions will not alter in any way the annuity, life or tax benefits afforded under the Contracts held by any Affected Contract Owner.

8. The Companies will send to their Affected Contract Owners within five (5) business days of the Substitutions a written Post-Substitution Confirmation which will include the before and after account values (which will not have changed as a result of the Substitutions) and detail the transactions effected on behalf of the respective Affected Contract Owner with regard to the Substitutions. With the Post-Substitution Confirmations the Companies will remind Affected Contract Owners that they may reallocate amounts from any of the Replaced Funds without incurring a reallocation charge or limiting their number of future reallocations for a period of at least 30 days following the Effective Date in accordance with the terms and conditions of their Contract.

9. Under the manager-of-managers relief granted to the ING Investors Trust, ING Partners and relied upon by certain of the other ING funds, a vote of the shareholders is not necessary to change a sub-adviser, except for changes involving an affiliated sub-adviser. Notwithstanding this, after the Effective Date of the Substitutions the Applicants agree not to change a Substitute Fund's sub-adviser without first obtaining shareholder approval of either: (a) The sub-adviser change or (b) the Applicants' continued ability to rely on their manager-of-managers relief.

10. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. In addition, the Substitutions will not impose any tax liability on Affected Contract Owners.

11. The Commission shall have issued an order: (a) Approving the Substitutions under Section 26(c) of the 1940 Act; and (b) exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

12. A registration statement for each Substitute Fund is effective, and the investment objectives and policies and fees and expenses for each of the Substitute Funds as described herein have been implemented.

13. Each Affected Contract Owner will have been sent a copy of: (a) A Contract prospectus supplement informing shareholders of this Application; (b) a prospectus for the appropriate Substitute Fund; and (c) a second supplement to the Contract prospectus setting forth the Effective Date and advising Affected Contract Owners of their right to reconsider the Substitutions and, if they so choose, any time prior to the Effective Date and for 30 days thereafter, to reallocate or withdraw amounts under their affected Contract or otherwise terminate their interest therein in accordance with the terms and conditions of their Contract.

14. The Companies shall have satisfied themselves, that: (a) The Contracts allow the substitution of investment company shares in the manner contemplated by the Substitutions and related transactions described herein; (b) the transactions can be consummated as described in this Application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sales have been complied with to the extent necessary to complete the transactions.

15. The Shareholder Services Fee of the Class S shares of the ING FMR Diversified Mid Cap Portfolio, the ING Legg Mason Value Portfolio, the ING Oppenheimer Main Street Portfolio and the ING Pioneer Fund Portfolio will be permanently capped at .25%.

Conclusion

Applicants assert that for the reasons summarized above the proposed substitutions and related transactions meet the standards of Section 26(c) of the 1940 Act and are consistent with the standards of Section 17(b) of the 1940 Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11978 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 71 FR 41484, July 21, 2006.

STATUS: Closed Meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, July 27, 2006 at 2 p.m.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Closed Meeting

on Thursday, July 27, 2006: An adjudicatory matter.

The Commission determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 25, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–6536 Filed 7–25–06; 11:14 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Solomon Alliance Group, Inc.; Order of Suspension of Trading

July 25, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solomon Alliance Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on July 25, 2006, through 11:59 p.m. EDT on August 7, 2006.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–6535 Filed 7–25–06; 11:27 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54181; File No. SR–Amex–2006–61]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Handling of Immediate or Cancel Orders in Options

July 20, 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 June 26, 2006, the American Stock Exchange LLC (''Amex'' 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 substantially prepared by the Exchange. On July 18, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange pursuant to Section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the appropriate handling of immediate or cancel (''IOC'') orders in options.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.amex.com,* at the Office of the Secretary of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to provide an interpretation in connection with the appropriate handling of IOC orders in options for the benefit of its members and the marketplace.

An IOC order in options, as set forth in Amex Rule 950—ANTE(e)(v), is defined as a market or limited price order which is to be executed in whole or in part as soon as such order is represented in the ANTE System. Any portion of an IOC order that is not so executed is treated as cancelled.

Consistent with Amex Rule 958A–ANTE (''Firm Quote Rule''), IOC orders must be executed as soon as they are represented in ANTE. Amex Rule 958A—ANTE(c) provides that the responsible broker or dealer[7] must execute customer orders in an amount up to their published quotation size. In connection with broker dealer orders, the responsible broker or dealer is obligated to execute broker-dealer orders up to the quotation size established by the Exchange, which quotation size must be at least one (1) contract.

The appropriate handling of IOC orders in a linked environment has become increasingly complex. Section 8(c) of the intermarket options linkage plan[8] (''Linkage Plan'' or ''Linkage'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to revise the proposed rule text to make it more clear.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to commence on July 18, 2006, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[7] Amex Rule 958A—ANTE(a)(ii) includes specialists and registered options traders in the definition of a responsible broker or dealer. Remote registered options traders and supplemental registered options traders are also included in the definition of responsible broker or dealer, subject to certain conditions.

[8] *See* Plan for the Purpose of Creating and Operating an Intermarket Options Linkage, Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Amex, CBOE and ISE); 43573 (November 14, 2000), 65 FR 70851 (November 28, 2000) (Phlx); 43574

Continued

and Amex Rule 942(a)(1) both provide that, absent reasonable justification and during normal market conditions, members should not effect trade-throughs. A recent change to the Linkage Plan and Amex Rule 940 provides a limited exception to trade-through liability under ''trade and ship.'' [9] Under ''trade and ship,'' an Amex member may trade an order at a price that is one-tick inferior to the national best bid or offer (''NBBO'') if the member contemporaneously transmits to the market(s) disseminating the NBBO, Linkage Order(s) [10] to satisfy all interest at the NBBO price. Any execution the member receives from the NBBO market must then (pursuant to agency obligations) be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. As a result, if an executable order is received when the Amex is not the NBBO, the specialist is required to either ''step-up'' and execute at the NBBO, use the ''trade or ship'' option or route the order away, via the Linkage, to the options exchange(s) disseminating the NBBO. The ''trade or ship'' option may be of limited use because the member may be unwilling to trade at a price one-tick inferior to the NBBO and ''take out'' the NBBO market. In addition, because of the IOC condition, the Exchange believes routing the order to another options exchange quoting at the NBBO would not be consistent with the obligation to provide an immediate execution, while executing the order at the Amex best bid or offer would result in a trade-through.[11]

Both the Linkage Plan and related Amex Rule 942 provide that, absent reasonable justification and during normal market conditions, Exchange members should not effect trade-throughs. Therefore, a pattern or practice of trading through bids and offers will subject a member to disciplinary action pursuant to Amex Rule 942(d).

Currently, when an IOC order is routed to the specialist, ANTE will cancel the order if it is not marketable.[12] However, if the order is marketable on the Amex but would result in a trade-through because the Amex is not at the NBBO when the order is represented, such order will be routed to the ANTE display book for manual handling by the specialist. At this point, if the specialist is not willing to ''step up'' and match the NBBO or employ ''trade and ship,'' the specialist is faced with the choice of either trading-through the away market or not executing the order, in violation of the Commission's Quote Rule. Consistent with the ''immediate'' condition of an IOC order, the Exchange believes that the specialist should have the ability to cancel such orders if the responsible broker or dealer is not willing to match the NBBO or ''trade and ship.'' The Exchange believes that this interpretation is consistent with the definition and expected operation of IOC order types. Accordingly, the proposed interpretation of the definition of an options IOC order would clarify that such a cancellation is permissible. Because of the dual obligations to honor disseminated quotes and to avoid a pattern or practice of effecting trade-throughs of superior bids and offers, the Exchange believes this interpretation is warranted.

The amendment to paragraph (v) of Amex Rule 950—ANTE(e) would provide legal and regulatory certainty for IOC orders to be cancelled when they are represented in the ANTE system, if the Amex were not quoting at the NBBO.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [13] in general and furthers the objectives of Section 6(b)(5) [14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Because the foregoing proposed rule change relates to a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [15] and Rule 19b–4(f)(1) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–61 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–Amex–2006–61. This file number should be included on the subject line if e-mail is used. To help the

(November 16, 2000), 65 FR 70850 (November 28, 2000) (PCX n/k/a NYSEArca) and 49198 (February 5, 2004) 69 FR 7029 (February 12, 2004) (BSE).

[9] *See* Securities Exchange Act Release No. 52414 (September 13, 2005), 70 FR 55186 (September 20, 2005).

[10] A ''Linkage Order'' is defined in Amex Rule 940(b)(10) to mean an immediate or cancel order routed through the Linkage as permitted under the Linkage Plan.

[11] A trade through is defined in Amex Rule 940(b)(19) as a transaction in an options series at a price that is inferior to the NBBO, but shall not include a transaction that occurs at a price one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant Exchange disseminating the NBBO for the full size of the Participant Exchange's bid (offer) that represents the NBBO.

[12] The ANTE system immediately executes marketable IOC orders that are routed to the specialist book. If an IOC order is not marketable, ANTE will cancel the order.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(1).

[17] *See supra* at note 6.

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–Amex–2006–61 and should be submitted on or before August 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–11986 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–54183; File No. SR–Amex–2006–68]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Applying the Allocation Algorithm in Rule 935(a)(4)—ANTE to Supplemental Registered Options Traders

July 20, 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 July 13, 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 substantially 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 apply the allocation algorithm in Amex Rule 935(a)(4)—ANTE to a Supplemental Registered Options Trader (''SROT'') interacting with its own firm's orders. 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 Amex Rule 935—ANTE were approved.[6]

The Exchange seeks to apply the allocation algorithm set forth in Amex Rule 935—ANTE to an SROT interacting with its own firm's orders. The Exchange proposes that after non-broker dealer customer orders are executed, the ANTE system would allocate to SROTs the greater of either 40% of the contracts, or the amount the SROT would be entitled to receive pursuant to the allocation algorithm set forth in Amex Rule 935(a)(4)—ANTE. The balance of the contracts would be allocated to the specialist, registered options traders, RROTs, or other SROTs, pursuant to Amex Rule 935(a)(4)—ANTE.

If the SROT receives contracts pursuant to proposed paragraph (a)(7)(i) of Amex Rule 935—ANTE, then the specialist, registered options trader, RROT, or any other SROT would receive contracts pursuant to the allocation algorithm in Amex Rule 935(a)(4)—ANTE. In particular, whenever an SROT interacts with its own firm's orders, the specialist would not be entitled to the specialist guarantee set forth in Amex Rule 935(a)(5)—ANTE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.

[18] 17 CFR 200.30–3(a)(12).

[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* Securities Exchange Act Release No. 53798 (May 12, 2006), 71 FR 29193 (May 19, 2006) (SR–Amex–2006–25).

[6] *See* Securities Exchange Act Release Nos. 53635 (April 12, 2006), 71 FR 20144 (April 19, 2006) (SR–Amex–2005–075) (establishing a new class of registered options trader called an SROT) and 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (SR–Amex–2005–100) (establishing a new class of registered options trader called a Remote Registered Options Trader (''RROT'')).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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; and (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.

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. 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 the rule change. The Commission believes that because the proposal would extend the current allocation algorithm to the Exchange's new class of market participants, SROTs, the proposal raises no new regulatory concerns. 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]

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] Amex provided the Commission with written notice of its intent to file the proposed rule change three days 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).

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–2006–68 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–2006–68. 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–2006–68 and should be submitted on or before August 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–11988 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54184; File No. SR–CBOE–2006–66]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Market-Maker Appointments

July 20, 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 July 11, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 8.3 relating to Market-Maker appointments. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the CBOE'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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CBOE Rule 8.3 with respect to Market-Maker appointments. Currently, pursuant to CBOE Rule 8.1, a Market-Maker is by definition an individual (either a member or nominee of a member organization) who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Exchange.[3] Under CBOE Rule 8.3, an individual Market-Maker's appointment(s) are in the name of the Market-Maker even if the Market-Maker is a nominee of a member organization or has registered the Market-Maker's membership for a member organization.

CBOE proposes to amend CBOE Rule 8.3 to provide that in the event a Market-Maker is a nominee of a member organization or has registered the Market-Maker's membership for a member organization, the member organization with which the Market-Maker is associated would be permitted to request that the Exchange deem all class appointments be made to the member organization instead of to the individual Market-Maker. In such a case, if an individual Market-Maker were no longer associated with a member organization, the class appointments would continue to be held by the member organization and not the individual Market-Maker. A member organization, however, would not be required to make such a request. In the event a member organization did not request that the class appointments be held by the member organization, a Market-Maker's class appointments would continue to be held in the name of the individual Market-Maker and not the member organization with which the Market-Maker is associated.

Additionally, CBOE proposes to amend CBOE Rule 8.3 to provide that if such a request is made by a member organization, CBOE would consider that the submission of electronic quotations and orders would be made by and on behalf of the member organization with which the individual Market-Maker is associated. However, CBOE Rule 8.3, as proposed to be amended, states that the individual Market-Maker would continue to have all of the obligations of a Market-Maker under Exchange rules in these circumstances.

Finally, CBOE proposes to replace various references to ''appropriate Market Performance Committee'' with the ''Exchange'' in CBOE Rule 8.3. Certain of these changes make the rule consistent with current practice and procedures. Additionally, CBOE would be permitted to continue to delegate to the appropriate Market Performance Committee various duties and responsibilities.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act[4] 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.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

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 CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–66 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–CBOE–2006–66. 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 CBOE. 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–CBOE–2006–66 and should be submitted on or before August 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11983 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

[3] An RMM, on the other hand, can be either an individual member or a member organization. *See* CBOE Rule 8.4(a).

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54182; File No. SR–CBOE–2006–51]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding Market Maker Appointments

July 20, 2006.

I. Introduction

On May 19, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make the Market-Maker appointment process similar to the process applicable to Remote Market-Maker (''RMM'') appointments. The proposed rule change was published for comment in the **Federal Register** on June 20, 2006.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposal would allow a Market-Maker to create a Virtual Trading Crowd (''VTC'') appointment, which would confer the right to quote electronically in an appropriate number of Hybrid 2.0 Classes (as defined in CBOE Rule 1.1(aaa)) selected from ''tiers'' that have been structured according to trading volume statistics. Each class within a specific tier would be assigned an ''appointment cost'' depending upon its tier location, which would be identical to the tiers and appointment costs set forth in CBOE Rule 8.4(d) that have been structured for purposes of RMM appointments.

With respect to Hybrid Classes (as defined in CBOE Rule 1.1(aaa)), CBOE proposes to allow a Market-Maker to quote electronically in Hybrid Classes that are located at one trading station. CBOE proposes to assign an appointment cost of .01 to each Hybrid Class.

With regard to trading in open outcry, CBOE proposes to amend CBOE Rule 8.3 to provide that a Market-Maker has an appointment to trade in open outcry in all Hybrid and Hybrid 2.0 Classes traded on the Exchange. A Market-Maker would be required to be physically present in the trading crowd where an option class is located in order to trade in open outcry in that option class. A Market-Maker would be permitted to submit electronic quotations into any of his/her appointed Hybrid or Hybrid 2.0 Classes while the Market-Maker is trading in open outcry.

For non-Hybrid and non-Hybrid 2.0 Classes (collectively ''Non-Hybrid Classes''), CBOE proposes to allow a Market-Maker to select as his appointment one or more Non-Hybrid Classes traded on the Exchange, which would confer the right to trade in open outcry in Non-Hybrid Classes.

As is the case for RMMs, each membership owned or leased by a Market-Maker would have an appointment credit of 1.0. A Market-Maker would be permitted to select for each Exchange membership it owns or leases any combination of Hybrid 2.0 Classes, Hybrid Classes which are located at one trading station, and Non-Hybrid Classes, whose aggregate ''appointment cost'' does not exceed 1.0. The Exchange would rebalance the ''tiers'' (excluding the ''AA'' and ''A+'' tiers) set forth in paragraph (c)(i) of CBOE Rule 8.3 once each calendar quarter, which may result in additions or deletions to their composition. When a class changes tiers, it would be assigned the appointment cost of that tier. Upon rebalancing, each Market-Maker with a VTC appointment would be required to own or lease the appropriate number of Exchange memberships reflecting the revised appointment costs of the Hybrid and Hybrid 2.0 Classes constituting its appointment.

In new paragraph (c)(vi) of CBOE Rule 8.3, CBOE proposes to continue and modify slightly an existing Pilot Program in effect until March 24, 2007, which allows a Market-Maker to quote remotely. The existing Pilot Program provides that a Market-Maker may submit electronic quotations in his/her appointed Hybrid and Hybrid 2.0 Classes from outside of his/her appointed trading station.[4] Because CBOE is proposing to allow Market-Makers to create a VTC consisting of Hybrid 2.0 Classes, CBOE proposes to modify the Pilot Program such that it provides Market-Makers with the ability to quote remotely away from CBOE's trading floor in their appointed Hybrid and Hybrid 2.0 option classes. While on the trading floor, there would be no requirement that a Market-Maker must be present in a particular trading station in order to stream electronic quotations into his/her appointed classes.

CBOE also proposes to continue two existing Pilot Programs set forth in CBOE Rules 8.4(c)(i) and 8.93(vii), which are in effect until September 14, 2006, and which provide that an RMM or e-DPM in an option class can have one Market-Maker affiliated with the RMM or e-DPM trading in the option class. CBOE Rule 8.3(c) would continue to require that the affiliated Market-Maker can submit electronic quotations in any class in which the affiliated e-DPM or RMM has an appointment only if the Market-Maker is present in the trading station where the class is located. CBOE also notes in paragraph (c)(vii) to CBOE Rule 8.3 that a Market-Maker and an affiliated e-DPM or affiliated RMM can operate as multiple aggregation units under the criteria set forth in CBOE Rule 8.4(c)(ii), pursuant to a Pilot Program that expires on March 14, 2007.

In new paragraph (c)(viii) to CBOE Rule 8.3, CBOE notes that pursuant to a Pilot Program that expires on March 14, 2007, two affiliated Market-Makers can hold an appointment in the same class provided both Market-Makers operate as multiple aggregation units under the criteria set forth in CBOE Rule 8.4(c)(ii). This provision is consistent with current CBOE Rule 8.3(c)(iii).

As provided in new Interpretation .01 to CBOE Rule 8.3, in the event the total appointment cost for all of the Hybrid 2.0 Classes, Hybrid Classes, and/or Non-Hybrid Classes, constituting a Market-Maker's appointment on the approval date of this rule change exceed 1.0, CBOE proposes to grant the Market-Maker six months from the date of the approval of this rule change to comply with the provisions of CBOE Rule 8.3(c)(v) that provide a Market-Maker's appointed classes cannot have a total appointment cost in excess of 1.0. During these six months, any Market-Maker whose total appointment cost exceeds 1.0 would be ineligible to request an appointment in any other option class until the Market-Maker's total appointment cost has been reduced to less than 1.0. The preceding limited exemption to CBOE Rule 8.3(c)(v) would be available only to those Market-Makers whose total appointment cost for all of the Hybrid 2.0 Classes, Hybrid Classes, and/or Non-Hybrid Classes constituting a Market-Maker's appointment would have exceeded 1.0 on April 24, 2006, if the rule had been in effect on that date.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53975 (June 12, 2006), 71 FR 35471.

[4] Prior to the Pilot Program, a Market-Maker could stream electronic quotes into an option class only when he/she was physically present in his/her appointed trading station.

III. Discussion

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 and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder.[6] The Commission specifically finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal to move to VTC appointments should allow Market-Makers additional flexibility in choosing their appointed classes.

The Commission also believes that the proposed amendments to the pilot program that would allow Market-Makers to quote remotely away from CBOE's trading floor in their appointed Hybrid and Hybrid 2.0 option classes, instead of from outside of his/her appointed trading station, are a reasonable extension of the pilot. The Commission notes that RMMs and e-DPMs in an option class would continue to be permitted, on a pilot basis, to have an affiliated Market-Maker in that class. CBOE Rule 8.3(c) would continue to require that the affiliated Market-Maker can submit electronic quotations in any class in which the affiliated e-DPM or RMM has an appointment only if the Market-Maker is present in the trading station where the class is located. The Commission believes that requiring that the Market-Maker affiliated with the e-DPM or RMM be present in the trading station where the class is located is reasonable, given the allocation algorithm adopted by the Exchange.

The Commission also notes that Market-Makers and affiliated RMMs or e-DPMs would continue to be permitted, on a pilot basis, to operate as multiple aggregation units under the criteria set forth in CBOE Rule 8.4(c)(ii). In addition, the Commission notes that two affiliated Market-Makers would continue to be permitted to hold an appointment in the same class provided both Market-Makers operate as multiple aggregation units under the criteria set forth in CBOE Rule 8.4(c)(ii). However, an affiliated Market-Maker and DPM would not be permitted to hold an appointment in the same class.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2006–51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–11987 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54185; File No. SR–CHX–2005–34]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Regarding Cancellation of the Stock Leg of a Stock-Option Order

July 20, 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 November 14, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On July 11, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit cancellation of the stock leg of a stock-option order if market conditions in a non-Exchange market prevent the options leg of the order from being executed at the agreed-upon price.

The text of the proposed rule change is available on CHX's Web site (*http://www.chx.com*), at the CHX'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, the CHX 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

According to the Exchange, stock-option orders are relied on frequently by options market makers as part of their legitimate hedging strategies. The typical stock-option order involves an order to buy or sell a stated number of shares of an underlying security, coupled with the purchase or sale of option contracts, puts or calls on the opposite side of the market from the underlying security.

Certain CHX floor participants receive stock-option related order flow from off-floor participants who are options market makers on options exchanges such as the Chicago Board Options Exchange (''CBOE''). Specifically, the stock leg of a stock-option order is routed to the CHX for execution, while the options leg(s) is executed on an options exchange.

The CHX states that, because stock-option orders are complex transactions (often with multiple parties) and markets are volatile, with quotations moving quickly and often, many times the options leg of the transaction does not occur, in which case the off-floor participant requests that the CHX floor participant cancel the transaction's stock leg. The proposed rule change would permit cancellation of the stock leg of a stock-option order if market conditions in the non-Exchange market prevented the execution of the options leg of a transaction.[4] The proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CHX made minor revisions to the proposed rule text and clarified certain details of its proposal.

[4] The types of market conditions that would be sufficient to justify cancellation of the Exchange leg of a multi-market order include a sudden change in the price of the options involved in the transaction prior to execution of the trade and a trading halt or systems failure that precludes immediate

Continued

is based on (and virtually identical to) CBOE Rule 6.48(b)(ii), which permits cancellation of the options leg of a stock-option order.[5]

It is important to note that the proposed rule change would require that the CHX floor participant maintain records ''sufficient to establish that market conditions in a non-Exchange market prevented the execution of the option leg(s).'' The CHX believes this requirement would give the CHX Department of Market Regulation the ability to oversee the cancellation of stock leg orders, to ensure against abusive trade reporting practices.[6]

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] 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 by promoting consistency between the Exchange and options markets relating to cancellation of the components of stock-option orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition.

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. 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 CHX consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2005–34 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–CHX–2005–34. 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 publicly available. All submissions should refer to File Number SR–CHX–2005–34 and should be submitted on or before August 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–11980 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

execution of the options leg at the agreed upon price.

[5] According to CHX, the stock leg of a stock-option order is always presented to the CHX with an identified buyer and seller who have agreed to the terms of the trade. Both buyer and seller are aware of the possibility that the stock leg of a stock-option order may be cancelled on the CHX if the corresponding options leg is cancelled on an options market. The CHX states that, because both the buyer and seller would be identified when the stock leg is presented to the CHX, there would be no possibility that another CHX member's order could be matched against a stock-option order. Accordingly, the CHX believes that there would be no risk that an investor's order could be involuntarily cancelled without notice to the investor; the CHX thus believes that this pattern and practice amply satisfies the requirements of proposed Interpretation and Policy .01(d).

[6] The recordkeeping requirement would permit the CHX Department of Market Regulation to monitor patterns that may develop, as well as the overall quantity of trade cancellations, to help deter members from simply canceling orders for the sake of convenience. The Exchange believes that the recordkeeping requirement would help ensure that the volume of transactions reported is accurate and complete and not overstated.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54159; File No. SR–NASD–2006–058]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Regarding Pricing for Non-Members Using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities

July 17, 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 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On June 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq amended the description of the proposed rule change to indicate that when a market participant enters an order into Nasdaq's Brut or INET systems that is sent to a Nasdaq Market Center market participant that charges an access fee to Brut or INET, the market participant entering the order shall be charged (i) the applicable execution fee of the Nasdaq Facilities, or (ii) in the case of executions against

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and at the same time is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This filing relates to the pricing for non-members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities. The filing will apply to these non-members the same rule change that Nasdaq is instituting for members.[4] Nasdaq seeks approval to implement the proposed rule change retroactively as of May 1, 2006. The text of the proposed rule change is below. Proposed new language is in *italics.*[5]

7010. System Services

(a)–(h) No change.

(i) Nasdaq Market Center and Brut Facility Order Execution.

(1)–(7) No change.

(8) The fees applicable to non-members using Nasdaq's Brut and Inet Facilities shall be the fees established for members under Rule 7010(i), as amended by SR–NASD–2005–019, SR–NASD–2005–035, SR–NASD–2005–048, SR–NASD–2005–071, SR–NASD–2005–125, SR–NASD–2005–137, SR–NASD–2005–154, SR–NASD–2006–013, SR–NASD–2006–023, [and] SR–NASD–2006–031, *and SR–NASD–2006–057*, and as applied to non-members by SR–NASD–2005–020, SR–NASD–2005–038, SR–NASD–2005–049, SR–NASD–2005–072, SR–NASD–2005–126, SR–NASD–2005–138, SR–NASD–2005–155, SR–NASD–2006–014, SR–NASD–2006–024, [and]SR–NASD–2006–032, *and SR–NASD–2006–058.*

(j)–(w) No change.

* * * * *

Quotes/Orders at less than $1.00 per share, a pass-through of the access fee charged to Brut or INET.

[4] *See* Securities Exchange Act Release No. 34–54160 (July 17, 2006). Notice of filing and immediate effectiveness of proposed rule change regarding the pricing schedule for NASD members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities.

[5] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*, as amended by SR–NASD–2006–013 (January 30, 2006). The NASDAQ Stock Market LLC (''NASDAQ LLC'') will not file conforming changes to its rules with regard to order execution and routing by non-members, since persons that are not members of NASDAQ LLC will not be permitted to use its order execution and routing systems.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is reducing its fees for market participants routing orders from its three trading platforms—the Nasdaq Market Center, Brut, and Inet—to the American Stock Exchange (''Amex''). Specifically, whereas Nasdaq previously charged $0.01 per share executed for routing such orders, the fee is be reduced to $0.003 per share executed. However, an additional fee of $0.01 will be charged in cases where the Amex specialist charges a fee to execute the order (which generally occurs when the order remains on the specialist book for more than a certain amount of time before being executed).

Nasdaq is also broadening the conditions under which a market participant may qualify for a reduced fee of $0.0028 per share executed to access liquidity and route orders in Nasdaq-listed securities and exchange-traded funds. Currently, market participants qualify for the $0.0028 fee (a reduction from the otherwise applicable fee of $0.003 per share executed) if they (i) provide an daily average of more than 30 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 50 million shares of liquidity during a month. With the proposed rule change, the reduced fee would also be available to market participants that (i) provide a daily average of more than 20 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 60 million shares of liquidity during a month. Thus, the change will broaden the availability of the reduced fee to market participants that provide comparatively less liquidity but access and/or route comparatively more liquidity.

Nasdaq is also adding rule text to clarify the application of its current fee schedule to orders that are entered into Brut or Inet, routed to the Nasdaq Market Center for execution, and then delivered for execution to an ECN that receives orders through the order delivery functionality of the Nasdaq Market Center. Because the current fee schedule is ambiguous as to the treatment of such orders, Nasdaq believes that the rule text should be clarified to reflect Nasdaq's interpretation of the fee schedule. Because the orders are transmitted using Brut/Inet routing technology and then transmitted again for execution through the systems of a third party, Nasdaq believes that it is most appropriate to categorize these orders as routed orders. Accordingly, routing fees, which range from $0.001 to $0.004 per share executed, apply rather than order execution or delivery fees.

SR–NASD–2006–057[6] applied these changes to NASD members on an immediately effective basis. Nasdaq is submitting this filing to apply these changes to non-members, who Nasdaq anticipates will be allowed to continue to use the Brut and Inet facilities until NASDAQ LLC begins to operate as a national securities exchange.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[6] *See supra* note 4.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–058 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–NASD–2006–058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–058 and should be submitted on or before August 17, 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 self-regulatory organization.[9] Specifically, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,[10] which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would retroactively modify pricing for non-NASD members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities that would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective May 1, 2006, pursuant to SR–NASD–2006–057.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR–NASD–2006–057, which implemented those fees for NASD members and which became effective as of May 1, 2006. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[11] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, as amended, (File No. SR–NASD–2006–058) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–11981 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

[9] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54160; File No. SR–NASD–2006–057]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding the Pricing Schedule for NASD Members Using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities

July 17, 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 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice, as amended, 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

Nasdaq proposes to modify the pricing for NASD members using the Nasdaq Market Center and Nasdaq's Brut and INET Facilities (the ''Nasdaq Facilities''). Nasdaq implemented the proposed rule change on May 1, 2006.

The text of the proposed rule change, as amended, is available on the NASD's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq amended proposed Rule 7010(i)(7) to indicate that when a market participant enters an order into Nasdaq's Brut or INET systems that is sent to a Nasdaq Market Center market participant that charges an access fee to Brut or INET, the market participant entering the order shall be charged (i) the applicable execution fee of the Nasdaq Facilities, or (ii) in the case of executions against Quotes/Orders at less than $1.00 per share, a pass-through of the access fee charged to Brut or INET. Nasdaq also made conforming changes to the description of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

Web site (*http://www.nasd.com*), at the NASD'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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to reduce its fees for routing orders from its three trading platforms—the Nasdaq Market Center, Brut, and INET—to the American Stock Exchange (''Amex''). Specifically, whereas Nasdaq now charges $0.01 per share executed for routing such orders, the fee will be reduced to $0.003 per share executed. However, an additional fee of $0.01 would be charged in cases where the Amex specialist charges a fee to execute the order (which generally occurs when the order remains on the specialist book for more than a certain amount of time before being executed).

Nasdaq is also broadening the conditions under which a member may qualify for a reduced fee of $0.0028 per share executed to access liquidity and route orders in Nasdaq-listed securities and exchange-traded funds. Currently, members qualify for the $0.0028 fee (a reduction from the otherwise applicable fee of $0.003 per share executed) if they (i) provide an daily average of more than 30 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 50 million shares of liquidity during a month. With the proposed rule change, the reduced fee would also be available to members that (i) provide a daily average of more than 20 million shares of liquidity during a month and (ii) access and/or route a daily average of more than 60 million shares of liquidity during a month. Thus, the change will broaden the availability of the reduced fee to members that provide comparatively less liquidity but access and/or route comparatively more liquidity.

Nasdaq is also adding rule text to clarify the fee to be charged with respect to orders that are entered into Brut or INET and then sent to a Nasdaq Market Center participant that charges an access fee to Brut or INET. When the execution price of the stock is greater than $1.00, Nasdaq charges its usual order execution fee of $0.0028 or $0.003, which will generally approximate the access fee charged to Brut or INET. In the case of stocks price at $1.00 or less, Nasdaq's order execution fee of 0.1% of the total transaction cost would not allow it to recoup the access fee charged to Brut or INET. Accordingly, in those cases, Nasdaq passes through the ECN access fee to the market participant that entered the order into Brut or INET.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. ''The proposed rule change reduces fees for routing to Amex in most cases, broadens the availability of a reduced fee to access liquidity and route orders, and clarifies the fee charged with respect to orders entered into Brut or INET and sent for execution to a Nasdaq Market Center participant that charges an access fee.''

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–057 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–NASD–2006–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] The effective date of the original proposed rule change is May 1, 2006 and the effective date of the amendment is June 12, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 12, 2006, the date on which the NASD submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–057 and should be submitted on or before August 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–11982 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54186; File No. SR–NASD–2006–081]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Adopt New NASD Rule 5150 Relating to Trade-Throughs

July 20, 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 July 11, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing to adopt, in anticipation of The NASDAQ Stock Market LLC (the ''Nasdaq Exchange'') beginning to trade non-Nasdaq exchange-listed securities on an unlisted trading privileges (''UTP'') basis, new NASD Rule 5150 to require an NASD member that is registered as a market maker with the Nasdaq Exchange in a non-Nasdaq exchange-listed security to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to the NASD. Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

5000. Other Nasdaq and NASD Markets

* * * * *

5150. Applicability of Trade-Through Rule to Nasdaq Market Makers

An NASD member shall comply with the provisions of Rule 5262 (Trade-Throughs), as if it were an ITS/CAES market maker, for purposes of transactions that are reported to NASD in any ITS Security, as that term is defined in Rule 5210(c), in which such member is registered as a market maker with The NASDAQ Stock Market LLC. For purposes of this Rule 5150, the term ''Block Transaction'' under Rule 5262(a)(7)(B) shall mean any trade that involves 10,000 or more shares of an ITS security or a quantity of any such security having a market value of $200,000 or more.

* * * * *

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is filed in anticipation of the Nasdaq Exchange operating as a national securities exchange for purposes of trading non-Nasdaq exchange-listed securities on a UTP basis. The NASD is proposing a new rule to require an NASD member that is registered as a market maker with the Nasdaq Exchange in an ITS Security, as defined Rule 5210(c), to comply with the provisions of NASD Rule 5262 (Trade-Throughs) with respect to that security for trades reported to the NASD.

Background

On July 11, 2005, the NASD filed with the Commission proposed rule change SR–NASD–2005–087, which, among other things, proposed amendments to the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, NASD By-Laws and NASD rules to reflect The Nasdaq Stock Market, Inc.'s (''Nasdaq'') separation from the NASD upon the Nasdaq Exchange's operation as a national securities exchange.[3] On June 15, 2006, the NASD filed Amendment No. 1 to SR–NASD–2005–087, which, among other things, proposed the NASD's and Nasdaq's implementation strategy for Nasdaq's operation as a national securities exchange. On June 30, 2006, the Commission approved SR–NASD–2005–087, as amended, the effective date of which will be the date upon which the Nasdaq Exchange operates as an exchange for Nasdaq-listed securities.[4] The NASD intends to file a second proposed rule change proposing an NASD facility for over-the-counter quoting and trading of non-Nasdaq exchange-listed securities, to be made available when the Nasdaq Exchange begins to trade such securities on a UTP basis.

Currently, NASD Rule 5262, also known as the Trade-Through Rule, restricts a member registered as an NASD ITS/CAES Market Maker[5] in an ITS/CAES security[6] from purchasing or selling such security, whether as principal or agent, at a price that is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker. Current NASD Rule 5262 applies to all over-the-counter trading by NASD ITS/CAES Market Makers in that security, including trades executed outside of CAES and reported to the NASD.

The Nasdaq Exchange established a substantially similar rule, Nasdaq Rule 5262, which, by its terms, would apply to market makers registered with the Nasdaq Exchange (''Nasdaq market

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved the Nasdaq Exchange application on January 13, 2006. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[4] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

[5] For purposes of NASD Rule 5262, ''ITS/CAES Market Maker'' is defined in NASD Rule 5210(e) as a member that is registered as a market maker for the purposes of participating in the Intermarket Trading System (''ITS'') through the Computer Assisted Execution System (''CAES'') with respect to one or more specified ITS securities in which the member is then actively registered. The term also includes members that meet the definition of electronic communications network or alternative trading network. CAES is an automated system that is currently operated by The Nasdaq Stock Market, Inc. NASD members can direct agency and principal orders in exchange-listed securities to CAES for automated execution in the third market.

[6] The term ''ITS Security'' is defined in NASD Rule 5210(c) as ''any security which may be traded through the [ITS] System by an ITS/CAES Market Maker.''

makers'') in ITS Securities. However, because the ITS Plan does not require the Nasdaq Exchange, or any other exchange, to have a trade-through rule applicable to its individual market participants, the Nasdaq Exchange has proposed to delete the rule upon integration of the Nasdaq Market Center and Nasdaq's Brut and INET systems into a single book.[7] If approved, the Nasdaq Exchange's rule would be replaced with a trade-through obligation imposed on the Nasdaq Exchange itself.

Further, once the Nasdaq Exchange is operating as an exchange for non-Nasdaq exchange-listed securities, it is expected that some of the current NASD ITS/CAES Market Makers will no longer be registered with the NASD in this capacity, but instead will become registered solely as Nasdaq Market Makers. As such, no trade-through rule would apply to over-the-counter trading activity by these Nasdaq market makers that are not also registered as NASD ITS/CAES market makers. Specifically, NASD Rule 5262 only applies to trading by NASD ITS/CAES market makers. Nasdaq Rule 5262 would be similarly limited in its application to Nasdaq market makers trading on or through the Nasdaq Exchange, and is expected to be eliminated altogether upon approval of the Nasdaq Exchange's system integration.

Proposed New NASD Rule 5150

The NASD is proposing new NASD Rule 5150[8] that would subject an NASD member registered as a market maker with the Nasdaq Exchange in an ITS Security to the provisions of NASD Rule 5262 for purposes of trades in that ITS Security reported to the NASD, as if such market maker were an ITS/CAES Market Maker. Thus, an NASD member that is a Nasdaq market maker trading ITS Securities otherwise than on an exchange—for example, through the Trade Reporting Facility approved as part of SR–NASD–2005–087—would be subject to the provisions of NASD Rule 5262, including its trade-through complaint procedures.

All of the exclusions to the Trade-Through Rule applicable under NASD Rule 5262(a) would be available to Nasdaq market makers subject to proposed NASD Rule 5150 and would apply as they do today to ITS/CAES Market Makers, with one limited exception. The NASD is proposing that, for purposes of applying the term ''Block Transaction'' under NASD Rule 5262(a)(7)(B) to Nasdaq market makers that are not NASD ITS/CAES Market Makers, the term mean any trade that involves 10,000 or more shares of an ITS security or a quantity of any such security having a market value of $200,000 or more. This limitation makes the term consistent with the definition of ''block size'' in Regulation NMS Rule 600, which currently serves to exempt certain NASD members from a requirement to become NASD ITS/CAES Market Makers under certain circumstances. As such, Nasdaq market makers that are not also NASD ITS/CAES Market Makers would not be subject to the requirement in Rule 5264(a) to send commitments to other venues when executing block size trades or the other block transaction requirements in NASD Rule 5264(b)(2) and (3), such as the requirement to effect a block trade as a cross or at a price other than the ITS/CAES Market Maker's quote.

The NASD believes proposed NASD Rule 5150 is necessary to maintain the application of the Trade-Through Rule until implementation of Regulation NMS, and specifically the Order Protection Rule mandating intermarket protection against trade-throughs for all Nasdaq and exchange-listed securities.[9] Effective upon the implementation of the Order Protection Rule, the NASD would repeal NASD Rule 5150 in favor of a more general rule complying with Regulation NMS.

The effective date of the proposed rule change will be the date upon which the Nasdaq Exchange begins to trade non-Nasdaq exchange-listed securities on a UTP basis.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will enhance investor protection by maintaining trade through protection for over-the-counter trades in exchange-listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–081 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–NASD–2006–081. 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

[7] *See* Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 (April 14, 2006) (SR–NASDAQ–2006–001).

[8] Pursuant to SR–NASD–2005–087, the NASD Rule 5000 Series will be renamed ''Trading Otherwise Than On An Exchange'' and for purposes of the NASD Rule 5000 Series, ''otherwise than on an exchange'' will mean a trade effected by an NASD member otherwise than on or through a national securities exchange.

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Final Rule). The effective date for NMS Rule 611, the Order Protection Rule, was August 29, 2005; however, the initial compliance date has been extended from June 29, 2006 to a series of five dates, beginning on October 16, 2006. *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

[10] 15 U.S.C. 78o–3(b)(6).

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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–081 and should be submitted on or before August 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11984 Filed 7–26–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54177; File No. SR–NYSE–2006–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To List and Trade Index-Linked Notes of Barclays Bank PLC Linked to the Performance of the Goldman Sachs Crude Oil Total Return Index™

July 19, 2006.

I. Introduction

On March 13, 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 (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade Index-Linked Securities (the ''Notes'') of Barclays Bank PLC (''Barclays'') linked to the performance of the Goldman Sachs Crude Oil Total Return Index™ (the ''Index''). On March 27, 2006, NYSE filed Amendment No. 1 to the proposed rule change.[3] On May 26, 2006, NYSE filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended was published for comment in the **Federal Register** on June 16, 2006 for a 15-day comment period.[5] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE proposes to list and trade the Notes that will track the performance of the Index pursuant to § 703.19 (''Other Securities'') of the NYSE Listed Company Manual (''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,[6] 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.[7] 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 in 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.[8]

Description of ''GSCI'' and the Index

The investment objective of the Notes is to track the Index, The Index is a sub-index of the Goldman Sachs Commodity Index® (the ''GSCI®'') and reflects the excess returns that are potentially available through an unleveraged investment in the contracts comprising the relevant components of the Index (which currently includes only the WTI Crude Oil futures contract traded on the NYMEX), plus the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.[9] Both indexes are

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange noted Supplementary Material to NYSE Rule 1301B, which set forth the guidelines in NYSE Rules 1300B(b) and 1301 for specialists applicable to this product. The Exchange also made clarifying and technical change to this proposal in Amendment No. 1.

[4] In Amendment No. 2, the Exchange inserted in the ''Purpose'' section of the Form 19b–4: (i) A description of the process by which the West Texas Intermediate (''WTI'') crude oil futures contract traded on the New York Mercantile Exchange (the ''NYMEX'') that is included in the Index changes on a monthly basis to the contract with the closest expiration date; and (ii) a continued listing standard stating that the Exchange will delist the Notes if the Index ceases in whole or in part to be based on the WTI Crude Oil futures contract traded on the NYMEX.

[5] *See* Securities Exchange Act Release No. 53967 (June 9, 2006), 71 FR 34976 (June 16, 2006) (SR–NYSE–2006–19) (''Notice'').

[6] 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'').

[7] *See* Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990) (SR–NYSE–90–30).

[8] April 11 Telephone Conference.

[9] The Treasury Bill rate of interest used for purposes of calculating the index on any day is the 91-day auction high rate for U.S. Treasury Bills, as reported on Telerate page 56, or any successor page, on the most recent of the weekly auction dates prior to such day.

described below and in more detail in the Notice.[10]

The value of the Index, on any given day, reflects (i) the price levels of the contracts included in the Goldman Sachs Crude Oil Total Return Index(tm) (which represents the value of the Goldman Sachs Crude Oil Total Return Index(tm) (*e.g.,* the WTI Crude Oil contracts)); (ii) the ''contract daily return,'' which is the percentage change in the total dollar weight of the Goldman Sachs Crude Oil Total Return Index(tm) (*e.g.,* the WTI Crude Oil contracts) from the previous day to the current day; and (iii) the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.

In addition to the criteria described below, in order to qualify for inclusion in the Index, the contract must be related to WTI Crude Oil. As presently constituted, the only contract used to calculate the Index is the WTI Crude Oil futures contract traded on the NYMEX.[11]

The WTI Crude Oil futures contract included in the Index changes each month because the contract included in the Index at any given time is currently required to be the WTI Crude Oil futures contract traded on the NYMEX with the closest expiration date (the ''front-month contract''). The front-month contract expires each month on the third business day prior to the 25th calendar day of the month. The Index incorporates a methodology for rolling into the contract with the next closest expiration date (the ''next-month contract'') each month. The Index gradually reduces the weighting of the front-month contract and increases the weighting of the next-month contract over a five business day period commencing on the fifth business day of the month, so that on the first day of the roll-over the front-month contract represents 80% and the next-month contract represents 20% of the Index, and on the fifth day of the roll-over period (*i.e.*, the ninth business day of the month) the next-month contract represents 100% of the Index. Over time, this monthly roll-over leads to the inclusion of many different individual WTI Crude Oil futures contracts in the Index. The commodities industry utilizes single-component indices because the purpose of a commodities index is generally to reflect the current market price of the index components by including the front-month futures contract with respect to each component, necessitating a continuous monthly roll-over to a new front-month contract. As the underlying commodity is not static but rather is represented by constantly changing contracts, a single commodity index actually contains a changing series of components and is regarded by commodities industry professionals as a valuable tool in tracking the change in the value of the underlying commodity over time.[12]

The GSCI®, which includes the WTI Crude Oil futures contract, is a proprietary index on a production-weighted basket of futures contracts on physical commodities traded on futures exchanges in major industrialized countries.[13] The fluctuations in the value of the GSCI® are intended generally to correlate with changes in the prices of such physical commodities in global markets. Futures contracts on the GSCI®, and options on such futures contracts, are currently listed for trading on the Chicago Mercantile Exchange. The index methodology for selection and weighting of the futures contract components of the GSCI is described in the Notice.[14]

The value of the GSCI® on any given day is equal to the total dollar weight of the GSCI® divided by a normalizing constant that assures the continuity of the GSCI® over time. The total dollar weight of the GSCI® is the sum of the dollar weight of each index component. The dollar weight of each such index component on any given day is equal to:

- The daily contract reference price,
- Multiplied by the appropriate contract production weights (''CPWs''), and
- During a roll period, the appropriate ''roll weights'' (discussed below).[15]

These factors, along with the contract daily return for the Index, are described in more detail in the Notice. Additionally, this information is publicly available each business day on the Index Sponsor's Web site at *www.gs.com/gsci*[16] and the relevant futures exchanges, and/or from major market data vendors.

The composition of the GSCI® is reviewed on a monthly basis by the Index Sponsor and, if the multiple of any contract is below the prescribed threshold, the composition of the GSCI is reevaluated, based on the criteria and weighting procedures.[17] In addition, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the GSCI® at the conclusion of each year, based on the above criteria. Other commodities that satisfy such criteria, if any, will be added to the GSCI®. Commodities included in the GSCI®

[10] The methodology for determining the composition and weighting of the GSCI® and for calculating its value is described in more detail in the Notice. *See, supra,* note 5.

[11] If the Index Sponsor includes another commodity, other than WTI as described herein, 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. *See* ''Continued Listing Criteria,'' *infra.* Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 10, 2006 (''April 10 Telephone Conference'').

[12] *See* Amendment No. 2, *supra*, note 4.

[13] The criteria for index composition, contract expirations, component replacements, and valuation are set forth in more detail in the Notice. *See* Notice, *supra*, note 5. Currently, Index components trade on U.S. futures exchanges, the London Metals Exchange (''LME''), or the Intercontinental Exchange (formerly known as the International Petroleum Exchange, which now operates its futures business through ICE Futures), with whom NYSE has comprehensive surveillance sharing arrangements.

[14] See GSCI® Manual at *www.gs.com/gsci.* Goldman, Sachs & Co. is the Index Sponsor for both the Index and the GSCI®. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 13, 2006 (''April 13 Telephone Conference''). *See* Notice, *supra*, note 5.

[15] If the price is not made available or corrected by 4 p.m. New York time, the Index Sponsor, if it deems such action to be appropriate under the circumstances, will determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GSCI® calculation. If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission staff and, as necessary, file a proposed rule change pursuant to Rule 19b–4, seeking Commission approval to continue to trade the Notes. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* ''Continued Listing Criteria,'' *infra.* April 10 Telephone Conference.

[16] The CPWs are available in the GSCI® manual on the GSCI® Web site (*www.gs.com/gsci*) and are published on Reuters. The roll weights are not published but can be determined from the rules in the GSCI Manual. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, John Carey, Assistant General Counsel, Exchange, on May 18, 2006 (''May 18 Telephone Conference'').

[17] The Index Sponsor, Goldman, Sachs & Co., which calculates and maintains the GSCI® and the Index, is a broker-dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustment to an index and the trading personnel of the broker-dealer. Accordingly, the Index Sponsor has represented that it (i) has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, 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) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information. Telephone conversation between Florence Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006 (''April 14 Telephone Conference'') and May 18 Telephone Conference.

which no longer satisfy such criteria, if any, will be deleted.

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI®.[18] The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI®, the effectiveness of the GSCI® as a measure of commodity futures market performance, and the need for changes in the composition or the methodology of the GSCI®. The Exchange states that the Policy Committee acts solely in an advisory and consultative capacity. All decisions with respect to the composition, calculation and operation of the GSCI® and the Index are made by the Index Sponsor.[19]

The Index Sponsor makes the official calculations of the GSCI®. While the intraday and closing values of the GSCI® (and the Index) are calculated by Goldman, Sachs & Co., a broker-dealer, a number of factors provide for the independent verification of these intraday and closing values.[20] This calculation is performed continuously and is reported on Reuters page GSCI® (or any successor or replacement page) and will be updated on Reuters at least every 15 seconds during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a ''GSCI Business Day'').[21] The settlement price for the Index is also reported on Reuters page GSCI® (or any successor or replacement page) on each GSCI Business Day between 4 p.m. and 6 p.m., New York time.

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.[22] Additionally, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at *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 Index Sponsor.
- 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 (WTI Crude Oil futures contract) between the close of trading of the futures contract at the NYMEX and the close of trading on the NYSE at 4 p.m. ET. The value of the Notes may accordingly be influenced by non-concurrent trading hours between the NYSE and the NYMEX. While the Notes will trade on the NYSE from 9:30 a.m. to 4:15 p.m. ET, WTI Crude Oil futures (the futures contracts underlying the Index) will trade on the NYMEX from 10 a.m. to 2:30 p.m. ET.

While the market for futures trading WTI Crude Oil futures 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 Indicative Value disseminated during the NYSE trading hours should not be viewed as a real time update of the redemption value.

Valuation and Redemption of Notes

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 index factor on the Final Valuation Date will be equal to the final index level 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 on a Redemption Date, such holder will receive a cash payment on such 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

[18] The component selections for the GSCI® would obviously affect the Index. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 12, 2006 (''April 12 Telephone Conference'').

[19] The Policy Committee members are subject to written policies with respect to material, non-public information. Telephone conference between Florence Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on May 15, 2006 (''May 15 Telephone Conference'').

[20] The Index Sponsor calculates the level of the Index intraday and at the end of the day. The intraday calculation is based on feeds of real-time data relating to the underlying commodities and updates intermittently at least every 15 seconds. In the GSCI market, trades are quoted or settled against the end-of-day value, not against the value at any other particular time of the day. With respect to the end-of-day closing level of the index, the Index Sponsor uses independent feeds from at least two vendors for each of the underlying commodities in the index to verify closing prices and limit moves. A number of commodities market participants independently verify the correctness of the disseminated intraday Index value and closing Index value. Additionally, the closing Index values are audited by a major independent accounting firm. May 18 Telephone Conference.

[21] Additionally, this intraday index value of the Index will be updated and disseminated at least every 15 seconds by a major market data vendor during the time the Notes trade on the Exchange. April 13 Telephone Conference. The intraday information with respect to the Index (and GSCI®) reported on Reuters is derived solely from trading prices on the principal trading markets for the various Index and GSCI components.

[22] The Exchange states that the Indicative Value calculation will be provided for reference purposes only.

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 (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.[23] 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.[24]

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. New York time 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. New York time 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. New York time on the applicable Redemption Date (the third business day following the Valuation Date).[25]

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. 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]

Continued Listing Criteria

The Exchange 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, the Notes have more than 60 days remaining until maturity and (i) 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 every 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;
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable; or
- If the Index ceases in whole or in part to be based on the WTI Crude Oil futures contract traded on the NYMEX.[29]

Exchange Filing Obligations

The Exchange will file a proposed rule change pursuant to Rule 19b–4 [30] under the Act, which the Commission must approve, to permit continued trading of the Notes, if:

- The Index Sponsor substantially changes either the Index component selection methodology or the weighting methodology; [31]
- If a new component is added to the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement; [32]
- 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; [33] or
- If a ''market disruption event'' occurs that is of more than a temporary nature.

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. New York time and will be subject to the equity margin rules of the Exchange.[34]

(1) Trading Halts

The Exchange will cease trading the Notes if there is a halt or disruption in the dissemination of the Index value or the Indicative Value.[35] The Exchange will also cease trading the Notes if a ''market disruption event'' occurs that is of more than a temporary nature.[36] In the event that the Exchange is open for business on a day that is not a GSCI

[23] Barclays will serve as the initial calculation agent for the Notes.

[24] If a ''market disruption event'' (which affects the Valuation Date) is of more than a temporary nature, 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. *See* ''Continued Listing Criteria,'' *infra.* April 10 Telephone Conference.

[25] April 10 Telephone Conference.

[26] *See* ''Continued Listing Criteria,'' *infra.* April 10 Telephone Conference.

[27] 17 CFR 240.10A–3; *see also* 15 U.S.C. 78a.

[28] The Exchange confirmed that the Index value (along with the GSCI® 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 these indexes have daily settlement values that are widely disclosed. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 13, 2006; telephone conference between Michou H.M. Nguyen, Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on June 8, 2006.

[29] *See* Amendment No. 2, *supra,* note 4.

[30] 17 CFR 240.19b–4.

[31] This would include inclusion in the Index of instruments traded on an electronic platform, rather than a traditional futures exchange.

[32] The Exchange will contact the Commission staff whenever the Index Sponsor adds a new component to the Index using pricing information from a market with which the Exchange does not have a previously existing information sharing agreement or switches to using pricing information from such a market with respect to an existing component. However, as noted above, since this product is based on the WTI Crude Oil futures contract traded on NYMEX, the Exchange is obligated to commence delisting proceeding if a new Index component is added or substituted, unless otherwise approved for continued trading pursuant to a proposed rule change filed pursuant to Rule 19b–-4. April 10 Telephone Conversation.

[33] *Id.*

[34] *See* NYSE Rule 431.

[35] 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.

[36] 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.

Business Day, the Exchange will not permit trading of the Notes on that day.

(2) Specialist Trading Obligations

Pursuant to new Supplementary Material .10 to NYSE Rule 1301B, the provisions of NYSE Rules 1300B(b) and 1301B would be applied to certain securities listed on the Exchange pursuant to Section 703.19 (''Other Securities'') of the Exchange's Manual. Specifically, NYSE Rules 1300B(b) and 1301B will apply to securities listed under Section 703.19 of the Manual where the price of such securities 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 (a) 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); (b) 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 (c) 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.

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 Rule 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 securities, 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 both the GSCI components and the WTI Crude Oil futures contract (traded on NYMEX) component of the Index, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYMEX, the Kansas City Board of Trade, ICE Futures, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current GSCI and Index components are traded 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.[37]

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.[38] With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (a) To determine that such transaction is suitable for the customer; and (b) 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.

[37] April 14 Telephone Conference.

[38] 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.

Information Memorandum

The Exchange will, prior to trading the Notes, distribute an Information Memorandum to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes. The Information 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,[39] and during any subsequent distribution of the Notes, NYSE members will deliver a prospectus to investors purchasing from such distributors.[40]

The Information Memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the Information 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 Information 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 Information 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, such as crude oil, 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.[41]

The Information Bulletin will also discuss other exemptive or no-action relief under the Act provided by the Commission staff.[42]

III. 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.[43] 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,[44] 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 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 agreement with the NYMEX for the purpose of providing information in connection with trading of the Notes and the WTI Crude Oil contracts traded on the NYMEX, currently the only Index component, create the basis for the NYSE 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), unless otherwise approved for continued trading by the Commission.

Moreover, NYSE Rules 476 and 1301B requires Exchange specialists, upon the Exchange's request, 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 securities, commodities, futures, options on futures, or other derivative instruments. Furthermore, the Exchange believes that it also has the authority to request any other information from its member—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 exist for obtaining reliable information so that investors in the Notes can monitor the underlying Index relative to the Indicative Value of their Notes. There is a considerable amount of information about the Index (and its WTI Crude Oil futures contracts components) available through public Web sites and professional subscription services, including Reuters and Bloomberg. Real time information about the trading of the component futures contracts and their daily settlement prices are available from one or more major market data vendors, and in some cases, the underlying futures exchanges. The official calculation of the Index made by the Index Sponsor is performed continuously and is reported on Reuters page GSCI (or any successor or replacement page) and will be updated on Reuters at least 15 seconds during business hours during the time the Notes trade on the Exchange. The settlement price for the Index is also reported on Reuters page GSCI (or any successor or replacement page) on each GSCI Business Day between 4:00 p.m. and 6:00 p.m., New York time. While the Index is calculated by a broker-dealer, a number of independent sources verify both the intraday and closing Index values. The calculation methodology is public and transparent, and the factors included in the Index calculation, such as the CPWs, are available in the GSCI Manual found on GSCI's Web site at *www.gs.com/gsci* and are published on Reuters. The roll weights are not published, but can be determined from the rules in the GSCI Manual.[45]

While the Indicative Value will not reflect price changes of an underlying commodity between the close of trading of the futures contract on NYMEX and the close of trading on the NYSE at 4 p.m. New York time, the Exchange represents that the Indicative Value will be calculated and published via the facilities of the CTA at least every 15 seconds throughout the NYSE trading day on each day the Notes are traded on the Exchange. In addition, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at *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. The Notes will trade as equity securities subject to NYSE rules including, among others, rules governing equity margins, specialist responsibilities, account opening, and customer suitability requirements. The Commission believes that the listing and

[39] The Registration Statement reserves the right to do subsequent distributions of these Notes.

[40] April 10 Telephone Conference.

[41] April 14 Telephone Conference.

[42] April 10 Telephone Conference.

[43] 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).

[44] 15 U.S.C. 78f(b)(5).

[45] May 18 Telephone Conference.

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,[46] (which must be approved for continued trading of the Notes) if the Index Sponsor materially changes the composition of the GSCI®, the Index, the methodology of calculating the value of the GSCI® or the Index, or any other policies relevant to the Index. Finally, the Commission notes that the Information Memorandum that the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Notes, including their prospectus delivery obligations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2006–19), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11985 Filed 7–26–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54190; File No. SR–Phlx–2006–30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating To Reducing Staffing Requirements for Options Specialist Units

July 21, 2006.

On May 4, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 501(d) to reduce the mandatory staffing requirement to be approved as an options or foreign currency options specialist unit and to retain such status, while continuing to enable the Exchange's Options Allocation, Evaluation and Securities Committee (''Options Allocation Committee'') to require a unit to obtain additional staffing. On June 6, 2006, Phlx filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 20, 2006.[4] The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

Currently, Phlx Rule 501(d) requires that to be approved as an options or foreign currency options specialist unit and retain such status, the specialist unit must have at each quarter turret or trading post one head specialist, two assistant specialists (at least one of whom must be associated with the specialist unit), and one specialist clerk.[5] However, as the Exchange and member organizations continue to enhance options trading technology and options orders are now automatically executed on the Exchange over 90% of the time, the Exchange believes that the need to maintain the present required staffing levels for every specialist unit is significantly reduced. The Exchange believes that, in light of such technological advances, and in conjunction with requests from specialist units for greater staffing flexibility, requiring only one assistant specialist and eliminating the requirement for a specialist clerk is warranted.[6] Furthermore, the Phlx believes that the number of foreign currency option orders executed on the Exchange does not warrant the continued level of staffing.[7]

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.[8] In particular, the Commission believes that the proposal, as amended, is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest. Specifically, the proposed rule change, as amended, should provide flexibility in options and foreign currency options specialist unit staffing by reducing the mandatory staffing requirement. At the same time, Phlx Rule 501(d) will continue to provide the Options Allocation Committee with the ability to require a specialist unit to obtain additional staffing depending upon the number of assigned options classes and associated order flow.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Phlx–2006–30), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–12002 Filed 7–26–06; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 5476]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Serbia Youth Leadership Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–07–04.

Catalog of Federal Domestic Assistance Number: 00.000

Application Deadline: September 21, 2006.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Serbia Youth Leadership Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth and adult participants in Serbia and to provide the participants with U.S.-based exchange projects focused on civic education and leadership.

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[46] 17 CFR 240.19b–4.

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified the rationale for reducing staffing for foreign currency options and made non-substantive changes to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 53979 (June 14, 2006), 71 FR 35475 (the ''Notice'').

[5] The Exchange is also proposing to make non-substantive changes to Phlx Rule 501(d) such as deletion of obsolete references to quarter turrets, which are no longer used on the floor.

[6] The changes proposed in Phlx Rule 501(d) herein are not intended to alter other specialist unit obligations established by Phlx rules.

[7] In the Notice, the Exchange represented that in 2005, the number of foreign currency options orders executed on the Exchange was less than one percent of the overall number of option orders executed on the Exchange.

[8] 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).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program is provided through the Support for East European Democracy (SEED) Act (1989).

Overview

The Serbia Youth Leadership Program will enable teenagers (ages 15–17) and adult educators to participate in intensive, thematic, month-long projects that involve a practical examination of the principles of democracy and civil society as practiced in the United States and provide participants with training that allows them to develop their leadership skills. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, seminars, and other activities that are designed to achieve the projects' stated goals and objectives. Opportunities for participants to interact with American youth and educators will be included whenever appropriate.

The goals of the programs are:

(1) To develop a cadre of young adults in Serbia who have a strong sense of civic responsibility and commitment to community development;

(2) To foster relationships among youth from different ethnic, religious, and national groups;

(3) To promote mutual understanding between the United States and the people of other countries.

Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

With the specific focus of this program, the following outcomes will indicate a successful project:

• Participants will demonstrate critical thinking and leadership skills.

• Participants will demonstrate a better understanding of the elements of a participatory democracy as practiced in the United States.

• Participants will demonstrate skill at developing project ideas and planning a course of action to bring the projects to fruition.

The Bureau intends to support three discrete projects, each funded at approximately $212,000 and each focusing on a different theme. Organizations may apply to implement one, two, or all three projects. The six themes that showcase U.S. governance and society will be woven through each project. These are listed in no particular order.

(1) Grassroots activism

(2) Rule of law and the judiciary

(3) Religious freedom in the United States

(4) The role of local and municipal governments

(5) Ethnic tolerance and living in a multi-ethnic society

(6) Student activism/student government.

Each of the three projects must address each of the six themes in some way. In addition, for each project applicants must choose one of the themes and develop it into the primary focus of the project; that is, a project will have one dominant theme, and five minor themes. The applicant must then present a program plan that allows the participants to thoroughly explore the dominant theme in a creative, memorable, and practical way, with a particular ''hook'' or angle. For instance, the participants may engage in a research project or simulation or case study in order to examine the theme in depth. All activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home. The Bureau expects these three proposed projects to be sophisticated and challenging. They will offer bright and ambitious youth and teachers who work with youth with the opportunity to develop their personal characteristics and skills in a positive and productive way.

The total amount of funding available is $636,000. Proposals must clearly indicate the project theme(s) and budgets should be matched to the projects. For instance, if an applicant submits a proposal for one project, its grant request should be approximately $212,000. For two, a request would be for approximately $424,000, and for all three projects, $636,000. Since cost effectiveness is one of the proposal review criteria, the number of participants that can be accommodated in a project will be a factor in the proposal review process, though this will be balanced with program quality and a realistic budget.

Organizational Capacity: Applicant organizations must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working with Europe and/or Eurasia. Applicants must have the organizational capacity in Serbia necessary to implement the in-country activities, or it must partner with an organization or institution with the requisite capacity to recruit and select participants for the program and to provide follow-on activities.

Organizations applying to implement more than one of the three projects must convincingly demonstrate their capacity to manage a complex, multi-phase program with two or three separate projects. While the applicant may find ways to effectively combine recruitment and selection processes, the exchange projects in the United States need to remain distinct both thematically and temporally. The organization's ability to administer more than one project successfully must be thoroughly discussed and proven in the proposal.

Guidelines: The grant(s) will begin on or about December 1, 2006. The grant period will be 12 to 20 months in duration, as appropriate for the applicant's program design. The four-week exchange in the United States may take place any time during 2007. Applicants must propose the period of the exchange, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient.

The grant recipient will be responsible for the following:

• Recruitment and selection of youth and adult educators from diverse geographic regions in Serbia.

• Provision of orientations for exchange participants and participants in the host communities.

• Designing and planning of activities that provide a substantive project on the selected theme, as well as on leadership development, civic education, and community service. Some activities should be school and/or community-based, as feasible, and the projects will involve as much interaction with American peers as possible.

• Logistical arrangements, homestay arrangements and other accommodations, disbursement of stipends/per diem, international and domestic travel.

• Follow-on activities in Serbia that reinforce the ideas, values and skills imparted during the U.S. program.

Recruitment and Selection: The grant recipient(s) will manage the recruitment and merit-based selection of participants in cooperation with the Public Affairs office at the U.S. Embassy in Belgrade. Organizers must strive for the broadest regional, socio-economic, and ethnic diversity. The Department of State and/or its overseas representatives reserve final approval of all selected delegations. Note: Individuals from Montenegro or Kosovo are not eligible for this program.

Participants: The participants will be teenagers 15 to 17 years old at the start of the exchange who have demonstrated leadership aptitude, an interest in community service, and have at least one year of high school remaining after the exchange. The exchange participants will also include adults who are teachers, school administrators, and/or community leaders who work with youth. The ratio of students to adults will be approximately 5:1.

Criteria for selection of participants will be leadership skills, an interest in service to the community, strong academic and social skills, overall composure, openness and flexibility and English proficiency. It is desirable that 2–3 participants attend the same school or live in the same community so that they can support each other upon their return home.

U.S. Program: The month-long projects may take place in one or two communities and should offer the participants exposure to the variety of American life. The program should focus primarily on interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a civil society, community service, respect for diversity, and building leadership skills. Activities may include training sessions, site visits, roundtable discussions, simulations, volunteer service activities, and leadership exercises. While the educators will join the students for many activities during the exchange, there should also be some program activities arranged to meet their needs as adults who are helping teenagers develop their potential and to offer opportunities for them to meet and work with their peers. All programming should include American participants wherever possible. Cultural, social, and recreational activities will balance the schedule. Participants will live with American families in homestays for at least half of the project period.

Follow-on Activities and In-Country Programming: Follow-on programming for alumni is essential, so that the exchange is not an isolated event. In-country activities that help to support alumni in their post-exchange activities are required. U.S. staff should travel to Serbia several months after the exchange to conduct trainings that reinforce the themes of the exchange; they may be accompanied by American teenagers. Applicants should present creative and effective ways to address the project themes, for both program participants and their peers, as a means to amplify the program impact.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations for the International Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Grant Agreement

Fiscal Year Funds: FY–2006/2007 SEED Act funds transferred to ECA for obligation

Approximate Total Funding: $636,000

Approximate Number of Awards: One to three

Anticipated Award Date: December 1, 2006.

Anticipated Project Completion Date: 12–20 months after start date, to be specified by applicant based on project plan Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew these grants for two additional fiscal years before openly competing them again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: a. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding grant in amounts over $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203–7505, Fax (202) 203–7529, e-mail: *LantzCS@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–07–04) located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI)

document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 form that is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the Responsible Officer for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If the applicant organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss its record of compliance with 22 CFR 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. Fax: (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and

how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed the amount specified. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants applying to implement more than one project must provide separate sub-budgets for each.

Please refer to the other documents in the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods of Submission

Application Deadline Date: September 21, 2006.

Reference Number: ECA/PE/C/PY–07–04.

Methods of Submission

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original, one fully-tabbed copy, and six copies of the application with Tabs A–E (for a total of 8 copies) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–07–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

Applicants must also submit the executive summary, proposal narrative, budget section, and any important appendices as e-mail attachments in Microsoft Word and Excel to the following e-mail address: *LantzCS@state.gov*. In the e-mail message subject line, include the name of the applicant organization and the partner country. The Bureau will transmit these files electronically to the Public Affairs office of the U.S. Embassy in Belgrade for its review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) Washington, DC time of the closing date to ensure that their entire application has been uploaded to the grants.gov site. Applications uploaded

to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Please see the review criteria in the accompanying Project Objectives, Goals, and Implementation (POGI) document.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Interim reports, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three workdays prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203–7505, Fax (202) 203–7529, e-mail: *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–07–04.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: July 18, 2006.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs Department of State.

[FR Doc. E6–12043 Filed 7–26–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5475]

International Joint Commission; Public Comment Period Extended for Lake Ontario-St. Lawrence Water Levels Study

The International Joint Commission (IJC) has extended the period for public comment on the report of its International Lake Ontario-St. Lawrence

River Study Board until September 15, 2006 following the release of the Annexes to the report. The Study Board reviewed the regulation of water levels and flows in the Lake Ontario-St. Lawrence River system, taking into account the impact of regulation on affected interests. The Annexes provide the Technical Work Group summaries, descriptions of the new candidate regulation plans, discussion of mitigation and adaptive management action plans, and the pertinent background documents.

The Commission will consider the options as potential replacements for the current regulation plan, Plan 1958–D, and will also consider revising its Orders of Approval for regulation of Lake Ontario outflows. The public is welcome to provide comments on the Study Board report, the Annexes to the report, or any other relevant matters, to assist the Commission in its deliberations. Copies of the Study Board report and Annexes are available from either address below, or online at *WWW.IJC.ORG*. Comments by letter, fax or e-mail must be received by September 15, 2006 at either address below:

U.S. Section Secretary, International Joint Commission, 1250 23rd Street NW, Suite 100, Washington, DC 20440. Tel: (202) 736–9024, Fax: (202) 467–0746, *Commission@washington.ijc.org.*

Canadian Section Secretary, International Joint Commission, 234 Laurier Avenue West, 22nd Floor, Ottawa, ON K1P 6K6. Tel: (613) 995–0088, Fax: (613) 993–5583, *Commission@ottawa.ijc.org.*

Written public comments will become part of a public record that may be posted on the IJC's Web site or otherwise made available to the public. The IJC requests that people who submit comments provide contact information so that the IJC can inform them of the outcome of the process. To protect the privacy of any person submitting comment, the IJC will remove the following identifying information from the incoming communication before making the comment available to the public: e-mail address, street address, post office box, zip code, postal code, telephone number and fax number. The following identifying information will remain part of the record that is made available to the public: name, organizational affiliation, city, and state/province.

The Commission will hold public hearings after making a preliminary decision on changes to the current regulation plan and Orders of Approval. The times and locations will be announced. For more information, visit the Commission's Web site at: *WWW.IJC.ORG.*

For more information, contact Frank Bevacqua: (202) 736–9024; *bevacquaF@washington.ijc.org*

Dated: July 20, 2006.

James Chandler,

Legal Advisor, U.S. Section, International Joint Commission, Department of State.

[FR Doc. E6–12054 Filed 7–26–06; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting, Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

SUMMARY: The FAA is issuing this notice to advise the public of a first meeting of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

DATES: The meeting will be held August 22–23, 2006, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 209 meeting. The Special Committee 211 task is to revise DO–293—Minimum Operational Performance Standards for Nickel-Cadmium and Lead Acid Batteries and will develop Minimum Operational Performance Standards for Rechargeable Lithium Batteries. The committee will address the design, performance, operational and testing issues associated with Special Committee 211. The chairmen are: William Johnson, U.S. Navy and Hector Silberman, The Boeing Company. The agenda will include:

- *August 22:*
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview)
- RTCA Overview
- Previous Battery Committee History
- Current Committee Scope, Terms of Reference Overview
  - Presentation, Discussion, Recommendations
- Review and Resolve Existing Comments to DO–293
- *August 23:*
- Agenda Overview
- Discuss and decide if the Lithium Rechargeable Batteries Special Requirements can be added to DO–293 or a new separated standards as needed.
- Discussion, Recommendations. Evaluation of the task scope and schedule.
  - Organization of Work, Assign Tasks, and Workgroups
  - Assignment of Responsibilities
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-Registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 20, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–6508 Filed 7–26–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2006–24840]

The Union Pacific Railroad Company (UP) is initiating a program to implement ''Remote Authority'' technology, designed to permit

authorized users in the field to request, be granted, or release on-track authority. To facilitate the implementation of this technology, UP is requesting that FRA suspend compliance with certain rules in accordance with the provisions contained in 49 CFR 211.51.

The Remote Authority is a web-based application that will permit authorized users to request, be granted, or release Foul Time, Track Permit, Track & Time or Track Warrant authority to occupy a main track or other controlled track. The central office component consists of one or more Remote Authority servers that will receive requests from authorized users for on-track authority or requests to release on-track authority. If the user is authorized to request or release on-track authority, and the request meets established criteria, the request is forwarded to the Union Pacific's Computer Aided Dispatching system for further processing. Requests that do not meet established criteria are rejected at this point in the process, and the user is provided the opportunity to change or cancel the request.

Requests for on-track authority are received by the dispatching system and must meet established criteria to be eligible for issuance by the dispatching system without dispatcher intervention. If the established criteria are not satisfied, the request is placed in the appropriate authority request queue, and the train dispatcher is notified.

In this regard, the UP requests relief to permit the dispatching system to grant or release on-track authority in response to a valid request from an authorized user without intervention on the part of the train dispatcher or control operator who controls train movements on that track. The UP hereby seeks relief from 49 CFR 214.321(a)(1), which requires a track occupancy authority for working limits to be issued to the roadway worker in charge by the train dispatcher or control operator who controls train movements on that track.

Access to the Remote Authority application within the UP network requires the user to present valid credentials consisting of standard user identification and secret password. For off-network access, a Virtual Private Network (VPN) connection must be established by the employee before presenting valid credentials. Within the Remote Authority application, individual users are further restricted in the functions they may perform.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. Although FRA does not anticipate scheduling a public hearing in connection with this proceeding, if any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (FRA–2006–24840) and may be submitted 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: 202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Docket Management Facility, 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.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78). The statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC, on July 20, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–11964 Filed 7–26–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2005–23281, Notice No. 1]

Safety of Private Highway-Rail Grade Crossings; Notice of Safety Inquiry

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety inquiry.

SUMMARY: FRA announces its intent to conduct a series of open meetings throughout the United States, in cooperation with appropriate State agencies, to consider issues related to the safety of private highway-rail grade crossings. At each open meeting, FRA intends to solicit oral statements from private crossing owners, railroads and other interested parties on issues related to the safety of private highway-rail grade crossings, which will include, but not be limited to, current practices concerning responsibility for safety at private grade crossings, the adequacy of warning devices at private crossings, and the relative merits of a more uniform approach to improving safety at private crossings. FRA has also opened a public docket on these issues, so that interested parties may submit written comments for public review and consideration.

DATES: The initial public meeting will be held in Fort Snelling, Minnesota on August 30, 2006 at the Bishop Henry Whipple Federal Building. Persons wishing to participate are requested to provide their names, organizational affiliation and contact information to Michelle Silva, Docket Clerk, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6030) by July 31, 2006. Persons needing sign language interpretation or other reasonable accommodation for disability are also encouraged to contact Michelle Silva, FRA Docket Clerk, at (202) 493–6030 by July 31, 2006. Additional public meetings will be announced over the next three months.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6299); Miriam Kloeppel, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION: There are currently over 94,000 private highway-

rail grade crossings (private crossings) in the United States. Each year, about 400 accidents and between 30–40 fatalities occur at these crossings. In most years, the number of deaths occurring at private crossings exceeded the number of on-duty deaths among railroad employees in all rail operations. While accidents and injuries at public highway-rail grade crossings have declined by between one-third and one-half in the past decade, accidents at private crossings have declined by only 10 percent, and the number of injuries in private crossing accidents has actually increased by 1 percent. Figures 1 and 2 show the accident, fatality, and injury trends occurring at private and public grade crossings, respectively.

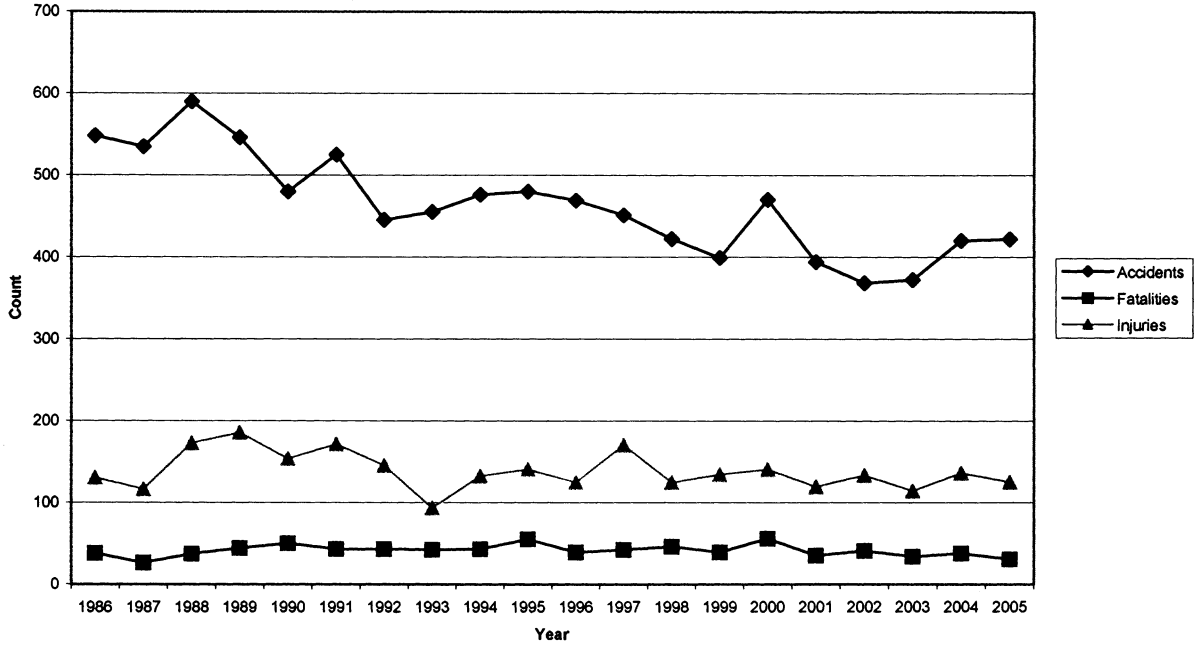

Figure 1. Accidents, fatalities, and injuries occurring at *private* highway-railroad grade crossings between 1986 and 2005.

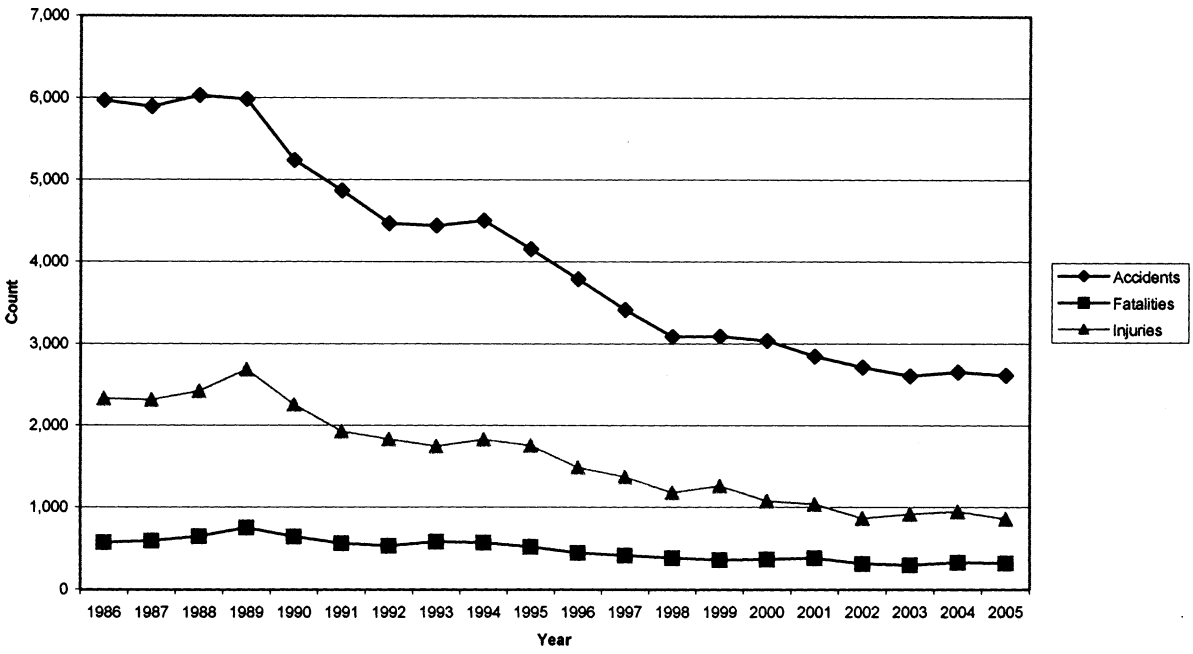

Figure 2. Accidents, fatalities, and injuries occurring at *public* highway-railroad grade crossings between 1986 and 2005.

Private highway-rail grade crossing safety has therefore been a matter of concern to the U.S. Department of Transportation and the National Transportation Safety Board (NTSB). FRA hosted an open meeting to initiate industry-wide discussions concerning private highway-rail grade crossing safety on July 15, 1993. In its 1994 Rail-Highway Crossing Safety Action Plan, the United States Department of Transportation proposed to ''develop and provide national, minimum safety standards for private crossings, and to eliminate the potential impediment to high speed rail operations posed by private crossings.'' In its 1997 study on Safety at Passive Grade Crossings, the National Transportation Safety Board (NTSB) highlighted the need for some system to improve safety at private highway-railroad grade crossings, recommending that the DOT, in conjunction with the States, should determine governmental oversight responsibility for safety at private highway-rail grade crossings. In 1999, the NTSB weighed in again on the issue of safety at private crossings in its report on a private grade crossing accident in Portage, Indiana. In this case, the NTSB recommended that the U.S. Department of Transportation ''eliminate any differences between private and public highway-rail grade crossings with regard to providing funding for, or requiring the implementation of, safety improvements.'' In 2004, the Department of Transportation published an updated Highway-Rail Crossing Safety and Trespass Prevention Action Plan (*http://www.fra.dot.gov/downloads/safety/action_plan_2004.pdf*) (*Secretary's Action Plan*). In this plan the FRA has committed to lead an effort to define responsibility for safety at private highway-rail grade crossings. This effort is intended to include a determination of minimum criteria for signage, and also to identify safety needs.

Private crossings present a safety challenge precisely because their non-public character can influence their design and maintenance. The 94,000 private crossings that remain on the national rail system serve the needs of a very large and disparate population of individuals, small businesses and large corporations that are holders of the right or privilege to traverse the railroad. Their circumstances differ in many ways:

1. *Degree of need for private crossings and their use.* The policy of the U.S. Department of Transportation seeks elimination of unnecessary and particularly hazardous highway-rail grade crossings, whether public or private. *Secretary's Action Plan* at 41. Some private crossings are essential for access to the holder's property and failure to provide access would render the property much less valuable. Other private crossings are situated along roads that could easily provide access via other public or private crossings. Some private crossings are heavily used, while others are used only seasonally (e.g., certain agricultural crossings used only for movement of agricultural equipment such as tractors and combines). Some crossings are used only for routine personal use or occasional use by business guests (e.g., personal residences). Other private crossings are used extensively for private business purposes, and motor vehicle operators are typically employees, contractors, and suppliers (e.g., access to industries, rock quarries, etc.) In still other cases, private crossings may be used very heavily by the public to enter commercial facilities.

2. *Engineering.* Some private crossings providing access to commercial properties have well-maintained surfaces and excellent signage comparable to that contemplated by the Manual for Uniform Traffic Control Devices. According to the National Highway-Rail Crossing Inventory, active warning devices are provided at 1,078 private crossings. More typically, many private crossings are marked only by crossbuck signs without advance warning signs, or not at all; and surface may be irregular. Sight distances at private crossings without active warning devices vary widely. Neither the Federal Government nor the States, with extremely few exceptions, provide financial assistance for engineering improvements at private crossings. In

these few instances, funding for private crossings may be provided for specific corridor projects, most commonly the high speed rail corridors.

3. *Legal status.* Private crossing rights vary from ownership of the fee simple (outright ownership of the underlying property), to documented easements, to prescriptive easements (where recognized), to documented licenses under contract, to verbal licenses subject to revocation without notice. The entities enjoying rights under these arrangements may be referred to as ''holders'' of the right to cross. Increasingly over the past 15 years, railroads have sought to establish maximum control over these intermodal intersections by requiring crossing holders to purchase insurance or provide other protection in the event a holder, railroad or a third party experiences a loss due to a collision. Contracts or other legal instruments may further define responsibilities (e.g., for maintenance of the crossing surface or providing notifications under stated conditions).

4. *Extent of regulation.* In general, private crossings are not subject to regulation at the State or Federal level. FRA's requirements for inspection, test and maintenance of active warning devices (49 CFR part 234) apply to the railroad where active warning has been installed; but there is no Federal mandate for providing such warning.[1] A handful of States require that railroads place crossbucks or special signage (in some cases a stop sign and a crossbuck on the same post) at private crossings. The subject of private crossings is otherwise largely unregulated. Accordingly, such recognized responsibilities as exist with respect to the safety of private crossings are generally the product of contracts and common law. (For a general description of responsibilities related to crossing safety, see Safety Advisory 2005–03; Highway-Rail Grade Crossing Safety (70 FR 22750; May 2, 2005)).

Request for Comments

While FRA solicits discussion and comments on all areas of safety at private highway-rail grade crossings, we particularly encourage comments on the following topics:

- At-grade highway-rail crossings present inherent risks to users, including the railroad and its employees, and to other persons in the vicinity should a train derail into an occupied area or release hazardous materials. When passenger trains are involved, the risks are heightened. From the standpoint of public policy, how do we determine whether creation or continuation of a private crossing is justified?
- Is the current assignment of responsibility for safety at private crossings effective? To what extent do risk management practices associated with insurance arrangements result in ''regulation'' of safety at private crossings?
- How should improvement and/or maintenance costs associated with private crossing be allocated?
- Is there a need for alternative dispute resolution mechanisms to handle disputes that may arise between private crossing owners and the railroads?
- Should the State or Federal government assume greater responsibility for safety at private crossings?
- Should there be Nationwide standards for warning devices at private crossings, or for intersection design of new private grade crossings?
- How do we determine when a private crossing has a 'public purpose' and is subject to public use?
- Should some crossings be categorized as 'commercial crossings', rather than as 'private crossings'?
- Are there innovative traffic control treatments that could improve safety at private crossings on major rail corridors, including those on which passenger service is provided?
- Should the Department of Transportation request enactment of legislation to address private crossings? If so, what should it include?

Issued in Washington, DC, on July 20, 2006.

Joseph H. Boardman,

Administrator.

[FR Doc. 06–6501 Filed 7–26–06; 8:45 am]

BILLING CODE 4910–06–P

[1] Other FRA regulations applicable to the railroad are intended to address safety at private crossings, as well as public crossings, particularly requirements for alerting lights (49 CFR 219.125) and reflectorization of rail rolling stock (49 CFR part 224) to make trains more conspicuous.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2006–25457]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 25, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Franklin, Maritime Administration, (MAR–610), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2628, fax: 202–366–3954; or e-mail: *michael.franklin@dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Automated Mutual-Assistance Vessel Rescue System (AMVER).

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0025.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information. This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes.

Need and Use of the Information: This information collection is necessary for maintaining a current plot of U.S.-flag and U.S.-owned vessels.

Description of Respondents: Respondents are U.S.-flag and U.S. citizen-owned vessels.

Annual Responses: 29,280 responses.

Annual Burden: 2,342 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except

Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: July 21, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–12033 Filed 7–26–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2006–25364]

Availability of a Draft Environmental Assessment

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Notice of the Availability of a draft Environmental Assessment.

SUMMARY: The purpose of this Notice is to make available to the public the draft Environmental Assessment (EA) for the Removal of Non-Retention Vessels from the Suisun Bay Reserve Fleet. The draft EA analyzes the impacts associated with removal of all non-retention vessels for eventual disposal through various means such as recycling, museum donations, artificial reef creation, and/or military and civilian uses.

DATES: Comments on this draft Environmental Assessment must be received by August 28, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2006–25364] by any of the following methods:

- *Web Site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this action. 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 to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Daniel E. Yuska, Jr., Environmental Protection Specialist, Office of Environmental Activities, U.S. Maritime Administration, 400 Seventh Street, SW., Washington, DC. 20590; telephone (202) 366–0714, fax (202) 366–6988.

SUPPLEMENTARY INFORMATION: An electronic version of this document and all documents entered into this docket are available at *http://dms.dot.gov*. In addition, copies of the draft EA are available for public viewing at the Benicia Public Library in Benicia, California.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: July 21, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–12032 Filed 7–26–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–98–4470]

Pipeline Safety: Meeting of the Technical Pipeline Safety Standards Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of PHMSA's Technical Pipeline Safety Standards Committee (TPSSC) to vote on a proposed rule requiring pipeline operators to consider internal corrosion when designing and constructing new and replaced gas transmission pipelines.

DATES: The TPSSC will meet on Thursday, August 24, 2006, from 1 p.m. to 3 p.m., EST.

ADDRESSES: The Committee members will participate via telephone conference call. Members of the public may attend the meeting at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, in room 3246 A.

FOR FURTHER INFORMATION CONTACT: For additional information regarding this meeting contact Cheryl Whetsel at (202) 366–4431, or by e-mail at *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

1. Meeting Details

Members of the public may attend the meeting. PHMSA will post any additional information or changes on its Web page (*http://phmsa.dot.gov*).

Members of the public may make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Cheryl Whetsel no later than August 21 of the topic and the length of the presentation. The presiding officer at the meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver them to the Dockets Facility by August 24, 2006, at the U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically by logging onto the Web page *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number PHMSA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Cheryl Whetsel at (202) 366–4431 by August 21, 2006.

2. TPSSC Background

The TPSSC is a statutorily mandated advisory committee that advises PHMSA on proposed safety standards for gas pipelines. The TPSSC was established under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—five each representing government, industry, and the public. The TPSSC is tasked with determining reasonableness, cost-effectiveness, and practicability of regulatory initiatives.

Federal law requires PHMSA to submit cost-benefit analyses and risk assessment information on each proposed safety standard to the advisory committees. The TPSSC evaluates the merits of the data and, when appropriate, provides recommendations on the adequacy of the cost-benefit analyses.

3. Background on the Proposed Rule

On December 15, 2005, PHMSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (70 FR 74262) on the control of internal corrosion when designing and constructing new and replaced gas transmission pipelines. PHMSA's pipeline safety regulations now require operators to have operation and maintenance practices to control internal corrosion. The NPRM proposed to require operators to address the risk of internal corrosion at a much earlier stage; namely when designing and constructing new and replaced gas transmission pipelines.

PHMSA presented the NPRM to the TPSSC at a meeting on June 28, 2006. Members expressed concern about the enforceability of the NPRM and the extent of its recordkeeping requirements. The TPSSC requested postponement of consideration of the NPRM and additional information before a vote on it. The TPSSC will be voting on the reasonableness, cost-effectiveness, and practicability of the NPRM at the meeting scheduled in this notice. PHMSA will provide additional information to the members prior to the meeting.

PHMSA will issue a final rule based on the proposed rule, the comments received from the public, and the vote and comments of the advisory committee.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on July 21, 2006.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. E6–12034 Filed 7–26–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34813]

New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.—Corporate Family Transaction Exemption

New York New Jersey Rail LLC (NYNJR) and New York Cross Harbor Railroad Terminal Corp. (NYCH) (collectively, petitioners) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family.[1] Under the proposed transaction, NYCH will transfer its operating rights and common carrier obligations to NYNJR. NYNJR will assume all of NYCH's rights and obligations to provide rail service as a common carrier.

NYCH, a Class III short line railroad, owns, leases and operates railroad tracks and facilities at Greenville, NJ,[2] Jersey City, NJ, and Brooklyn, NY, and operates between these points by means of a car float across New York Harbor. NYNJR is a newly formed limited liability company established and owned by Mid Atlantic New England Rail, LLC (MANER),[3] an entity owned and controlled by Gordon Reger (Mr. Reger), a noncarrier individual. Entities controlled by Mr. Reger own a majority of NYCH's outstanding stock and, by reason of that ownership, indirectly control NYCH. Mr. Reger currently controls one other short line railroad, New Amsterdam & Seneca Railroad Company, LLC.[4]

The transaction was scheduled to be consummated on or after March 3, 2006 (7 days after the amended notice of exemption was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). According to the parties, the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family. Petitioners state that the proposed corporate changes will be limited to entities controlled by Mr. Reger.[5] Petitioners also state that the proposed transfer of NYCH's rights and obligations to NYNJR will facilitate better access to equity and debt capital which will enable the improvement of the Greenville, NJ, and Brooklyn, NY rail yards and the condition of NYCH's equipment, create a safer working environment for railroad employees, and increase the railroad's ability to serve the freight transportation needs of the public in the New York, New Jersey, New England, and Mid Atlantic markets.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the amended verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34813, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036.

[1] Petitioners originally filed their notice of exemption on December 22, 2005. By decision served on January 10, 2006, the Board, at the request of petitioners, held the proceeding in abeyance until further notice to allow Consolidated Rail Corporation (Conrail) to discuss its concerns with petitioners regarding the effect of the proposed transaction on NYCH's contractual obligations to Conrail. After reaching an agreement with Conrail, petitioners filed an amended notice on February 24, 2006. Subsequently, the New York City Economic Development Corp. (NYCEDC), acting in its capabity as contractor to the City of New York (the City), filed a motion to request that the Board hold the proceeding in abeyance until the City had confirmation from petitioners that the City's rights, pursuant to a permit dated September 1, 1984, would not be compromised, altered or otherwise modified by the proposed transaction. On July 11, 2006, NYCEDC withdrew its request to hold the proceeding in abeyance. By letter filed on July 12, 2006, petitioners indicated that their exemption request is now unopposed and requet that the Board proceed with notice of the proposed transaction.

[2] NYCH leases Conrail's Greenville Yard, pursuant to an agreement dated December 15, 2002.

[3] MANER established NYNJR to facililtate the acquisition of and/or investment in short line and regional railroad companies, such as NYNJR.

[4] *See Gordon Reger—Continuance in Control Exemption—New Amsterdam & Seneca Railroad Company, LLC,* STB Finance Docket No. 34825 (STB served Feb. 23, 2006).

[5] NYCH states that it will not transfer to NYNJR its Greenville Yard lease until it obtains Conrail's consent. Furthermore, NYCH's ability to transfer its assets to NYNJR is subject to the terms of its 2002 Greenville Yard lease with Conrail and its settlement agreement with Conrail.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 21, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–12041 Filed 7–26–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 670X)]

CSX Transportation, Inc.—Abandonment Exemption—in Middlesex County, MA

On July 7, 2006, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 2.39-mile line between milepost QBX 0.15 and the end of the line at milepost QBX 2.54, in the Northern Region, Albany Division, Boston Subdivision, in Middlesex County, MA. The line, known as the Saxonville Industrial Track, traverses United States Postal Service Zip Codes 55230, 55229, and 55228 and includes no stations.

CSXT states that, based on information in its possession, the line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 25, 2006.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 16, 2006. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 670X), and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Steven C. Armbrust, 500 Water Street-J150, Jacksonville, FL 32202. Replies to CSXT's petition are due on or before August 16, 2006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 18, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–11800 Filed 7–26–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Currency Transaction Report

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Financial Crimes Enforcement Network (FinCEN) invites comment on the proposed extension, without change, of the Currency Transaction Report (CTR), FinCEN Form 104. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before September 25, 2006.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention: PRA Comments—CTR Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov*, again with a caption, in the body of the text, ''Attention: PRA Comments—CTR Form.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division, at (800) 949–2732.

SUPPLEMENTARY INFORMATION:

Title: Currency Transaction Report (CTR).

OMB Number: 1506–0004.

Form Number: FinCEN Form 104.

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107–56.

been delegated to the Director of FinCEN.

Section 5313(a) of the Bank Secrecy Act authorizes the Secretary to issue regulations that require a report when ''a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes.'' Regulations implementing section 5313(a) are found at 31 CFR 103.22. In general, the regulations require the reporting of transactions in currency to, by, or through a financial institution in excess of $10,000 by or on behalf of any one person in any one business day. Financial institutions, as defined in 31 CFR 103.11(n), are subject to the currency transaction reporting requirement. The Currency Transaction Report, FinCEN Form 104, is the form that financial institutions (other than casinos) use to comply with the currency transaction reporting requirements.

Action: This is an extension, without change, of a currently approved collection. A copy of the Currency Transaction Report, FinCEN Form 104, may be obtained from the FinCEN Web site at *http://www.fincen.gov/forms/fin104_ctr.pdf*, or by calling (800) 949–2732 and selecting option 5.

Type of Review: Regular review of a currently approved information collection.

Affected Public: Business or other for-profit and non-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 20 minutes per response. Form recordkeeping average of five (5) minutes per response, for a total of 25 minutes.

Estimated number of respondents: 54,524.

Estimated Total Annual Responses: 15,090,000.

Estimated Total Annual Burden Hours: 6,287,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained pursuant to the Bank Secrecy Act must be retained for five years.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 20, 2006.

Robert W. Werner,

Director, Financial Crimes Enforcement Network.

[FR Doc. E6–12045 Filed 7–26–06; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals and Entities Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Secretary of the Treasury of the individual identified in this notice pursuant to Executive Order 13224 is effective on July 20, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation,Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the

Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On, July 20, 2006, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security, the Attorney General, and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The additional designee is as follows:

1. ''ABD AL-RAZZIQ'', Abu Sufian al-Salamabi Muhammed Ahmed (a.k.a. ABD AL RAZEQ, Abu Sufian; a.k.a. ABDELRAZEK, Abousofian; a.k.a. ABDELRAZIK, Abousfian Salman; a.k.a. ABDELRAZIK, Abousofian; a.k.a. ABDELRAZIK, Abousofiane; a.k.a. ABDELRAZIK, Sofian; a.k.a. ''ABOU EL LAYTH''; a.k.a. ''ABOULAIL''; a.k.a. ''ABU JUIRIAH''; a.k.a. ''ABU SUFIAN''; a.k.a. ''ABULAIL''; a.k.a. ''DJOLAIBA THE SUDANESE''; a.k.a. ''JOLAIBA''; a.k.a. ''OULD EL SAYEIGH''); DOB 6 Aug 1962; POB Al-Bawgah, Sudan alt. POB Albaouga, Sudan; nationality Canada alt. Sudan; Passport BC166787 (Canada)

Dated: July 21, 2006.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E6–11976 Filed 7–26–06; 8:45 am]

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Federal Register

Thursday,
July 27, 2006

Part II

Environmental Protection Agency

40 CFR Part 63

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0155; FRL–8200–2]

RIN 2060–AK18

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating revised standards to limit emissions of perchloroethylene (PCE) from existing and new dry cleaning facilities. On September 22, 1993, EPA promulgated technology-based emission standards to control emissions of PCE from dry cleaning facilities. EPA has reviewed these standards and is promulgating revisions to take into account new developments in production practices, processes, and control technologies. In addition, EPA has evaluated the remaining risk to public health and the environment following implementation of the technology-based rule and is promulgating more stringent standards for major sources in order to protect public health with an ample margin of safety. The final standards are expected to provide further reductions of PCE beyond the 1993 national emission standards for hazardous air pollutants (NESHAP), based on application of equipment and work practice standards and, in certain situations, disallowing the use of PCE at dry cleaning facilities. In addition, EPA is taking this opportunity to make some technical corrections to the 1993 Dry Cleaning NESHAP.

DATES: *Effective Date:* This final rule is effective July 27, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0155. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available (*e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2005–0155, EPA West Building, Room B–102, 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 and Radiation Docket is (202) 566–1742.

At this time, the EPA/DC's Public Reading Room is closed until further notice due to flooding. Fax numbers for Docket offices in the EPA/DC are temporarily unavailable. EPA visitors are required to show photographic identification and sign the EPA visitor log. After processing through the X-ray and magnetometer machines, visitors will be given an EPA/DC badge that must be visible at all times.

Informational updates will be provided via the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* as they are available.

FOR FURTHER INFORMATION CONTACT: For questions about the final rule amendments, contact Mr. Warren Johnson, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–5124; fax number (919) 541–3470; e-mail address: *johnson.warren@epa.gov.* For questions on the residual risk analysis, contact Mr. Neal Fann, EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Benefits Cost Group (C439–02), Research Triangle Park, NC 27711; telephone number (919) 541–0209; fax number (919) 541–0839; e-mail address: *fann.neal@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule are industrial and commercial PCE dry cleaners. The final rule affects the following categories of sources:

Category	NAICS [1] code	Examples of potentially regulated entities
Coin-operated Laundries and Dry Cleaners	812310	Dry-to-dry machines Transfer machines.
Dry Cleaning and Laundry Services (except coin-operated)	812320	Dry-to-dry machines Transfer machines.
Industrial Launderers	812332	Dry-to-dry machines Transfer machines.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the final rule. To determine whether your facility is regulated by the final rule, you should examine the applicability criteria in 40 CFR 63.320 of subpart M (1993 Dry Cleaning NESHAP). If you have any questions regarding the applicability of the final rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the National PCE Air Emission Standards for Dry Cleaning Facilities (40 CFR part 63, subpart M) is Docket ID No. EPA–HQ–OAR–2005–0155.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW. Following the Administrator's signature, a copy of the final rule will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 25, 2006. Under CAA section 307(d)(7)(B), only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''only 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 EPA to convene a proceeding for reconsideration, ''if the person raising the objection can demonstrate to the EPA that it was impracticable to raise such an 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.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What Is the Statutory Authority for Regulating Hazardous Air Pollutants?

Section 112 of the CAA requires us to regulate hazardous air pollutants (HAP) emitted by categories of stationary sources. For ''major'' sources of HAP, the CAA directs us to first establish technology-based standards reflecting maximum achievable control technology (''MACT''), and to second establish residual risk standards if such standards are required in order to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. For non-major ''area'' sources of HAP, the CAA allows us to establish standards reflecting generally available control technology (''GACT''), in lieu of MACT and residual risk standards. The HAP we must regulate are listed at CAA section 112(b). The types of technology-based standards we must promulgate differ based on whether the regulated sources are ''major'' sources or ''area'' sources. Under CAA section 112(a)(1), major sources are those that emit or have the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, including fugitive emissions. Section 112(a)(2) of the CAA provides that area sources are all other non-major stationary sources of HAP. For major sources, our initial technology-based standards must reflect maximum achievable control technology (MACT) as set forth in CAA sections 112(d)(2)–(3). For area sources, we may set less stringent standards based on generally available control technology (GACT) under CAA section 112(d)(5). For both MACT and GACT, CAA section 112(h) allows us to establish design, equipment, work practice, or operational standards where we determine it is not feasible to prescribe or enforce an emission standard.

Section 112(f)(2) of the CAA requires us to determine for each category of major sources regulated under CAA section 112(d) whether the MACT standard protects public health with an ample margin of safety, eight years after we promulgate MACT for that source category. Section 112(f)(5) of the CAA provides that we are not required to conduct this review for categories of area sources regulated by GACT standards. If the MACT standards for HAP classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million, we must promulgate ''residual risk'' standards under CAA section 112(f) for the source category (or subcategory) as necessary to protect public health with an ample margin of safety. We must also adopt more stringent standards if required to prevent an ''adverse environmental effect'' as defined in CAA section 112(a)(7), after considering costs, energy, safety, and other relevant factors.

We are also required by CAA section 112(d)(6) to periodically review all standards we promulgate under CAA section 112 and to revise them as necessary, taking into account developments in practices, processes and control technologies. The first such review must occur eight years after we promulgate MACT and GACT standards, and can be combined with the residual risk review performed under CAA section 112(f)(2). The section CAA 112(d)(6) review is thereafter to be repeated no less frequently than every eight years.

B. What Are PCE Dry Cleaning Facilities?

Most dry cleaners use PCE in a dry cleaning machine to clean all types of garments, including clothes, gloves, leather garments, blankets, and absorbent materials. There are approximately 34,000 dry cleaning facilities in the United States, approximately 28,000 of which use PCE. Of the 28,000 PCE-using dry cleaners, 12 of the facilities are major sources and the remainder are area sources. As defined in the 1993 Dry Cleaning NESHAP, major source PCE dry cleaners are those that purchase more than 2,100 gallons (gal) of PCE per year (1,800 gal per year if the facility uses transfer machines). In the 1993 Dry Cleaning NESHAP, area sources were defined as either large or small, with large area sources defined as facilities that use between 140 to 2,100 gal of PCE per year (or 140 to 1,800 gal per year if the facility uses transfer machines) and small area sources defined as those facilities using less than 140 gal per year. Some area sources are located in the same buildings where people live. In the 1993 Dry Cleaning NESHAP we did not specifically discuss these sources, but in this notice we refer to them as co-residential dry cleaners. A co-residential dry cleaning facility is located in a building in which people reside. Co-residential facilities are located primarily in urban areas.

In general, PCE dry cleaning facilities can be classified into three types: Commercial, industrial, and leather. Commercial facilities typically clean household items such as suits, dresses, coats, pants, comforters, curtains, and formal wear. Industrial dry cleaners clean heavily-stained articles such as work gloves, uniforms, mechanics' overalls, mops, and shop rags. Leather cleaners mostly clean household leather products like jackets and other leather clothing. The 12 major sources include seven industrial facilities and five commercial facilities. The commercial facilities are each the central plant for a chain of retail storefronts. We do not expect any new PCE dry cleaning facilities constructed in the future to be major sources. Based on the emission rates of current PCE dry cleaning machines and the typical business models used in the industrial and commercial dry cleaning sectors, it is unlikely that any new sources that are constructed will emit PCE at major source levels, or that any existing area sources will become major sources due to business growth.

PCE dry cleaning machines can be classified into two types: Transfer and dry-to-dry. Similar to residential washing machines and dryers, transfer machines have a unit for washing/extracting and another unit for drying. Following the wash cycle, PCE containing articles are manually transferred from the washer/extractor to the dryer. The transfer of wet fabrics is the predominant source of PCE emissions in these systems. Dry-to-dry machines wash, extract, and dry the articles in the same drum in a single machine, so the articles enter and exit the machine dry. Because the transfer step is eliminated, dry-to-dry machines have much lower emissions than transfer machines.

New transfer machines are effectively prohibited at major and area sources due to the 1993 Dry Cleaning NESHAP requirement that new dry cleaning systems eliminate any emissions of PCE while transferring articles from the washer to the dryer. Therefore, transfer machines are no longer sold. Existing transfer machines are becoming an increasingly smaller segment of the dry cleaning population as these machines reach the end of their useful lives and are replaced by dry-to-dry machines. There are approximately 200 transfer machines currently being used, all at area sources.

The primary sources of PCE emissions from dry-to-dry machines are the drying cycle and fugitive emissions from the dry cleaning equipment (including equipment used to recycle PCE and dispose of PCE containing waste). Machines are designed to be either vented or non-vented during the drying cycle. Approximately 200 dry cleaners (1 percent) use vented machines, and the remaining facilities use the lower-polluting, non-vented machines. (For both major and area sources, the 1993 Dry Cleaning NESHAP prohibits new dry cleaning machines that vent to the atmosphere while the dry cleaning drum is rotating.) In vented machines, the majority of emissions from the drying cycle are vented outside the building. In non-vented machines, dryer emissions are released when the door is opened to remove garments. Currently, the largest sources of emissions from dry cleaning are from equipment leaks, which come from leaking valves and seals, and the loading and unloading of garments.

C. What Are the Health Effects of PCE?

The main effects of PCE in humans are neurological, liver, and kidney damage following acute (short-term) and chronic (long-term) inhalation exposure. The results of epidemiological studies evaluating the relative risk of cancer associated with PCE exposure have been mixed; some studies reported an increased incidence of a variety of tumors, while other studies did not report any carcinogenic effects. Animal studies have reported an increased incidence of liver cancer in mice, via inhalation and gavage (experimentally placing the chemical in the stomach), and kidney and mononuclear cell leukemia in rats.

Although PCE has not yet been reassessed under the Agency's recently revised Guidelines for Cancer Risk assessment, it was considered in one review by the EPA's Science Advisory Board to be intermediate between a ''probable'' and ''possible'' human carcinogen (Group B/C) when assessed under the previous 1986 Guidelines. Since that time, the U.S. Department of Health and Human Services has concluded that PCE is ''reasonably anticipated to be a human carcinogen,'' and the International Agency for Research on Cancer has concluded that PCE is ''probably carcinogenic to humans.''

Effects other than cancer associated with long-term inhalation of PCE in worker or animal studies include neurotoxicity, liver and kidney damage, and, at higher levels, developmental effects. To characterize noncancer hazard in lieu of the completed Integrated Risk Information System (IRIS) assessment, which is being revised, we used the Agency for Toxic Substances and Disease Registry's (ATSDR) Minimum Risk Level (MRL). This value is based on a study of neurological effects in workers in dry cleaning shops, and is derived in a manner similar to EPA's method for derivation of reference concentrations, including scientific and public review.

The Agency's IRIS chemical assessment for PCE is currently being revised. A final IRIS determination on PCE is not expected until 2008. Because EPA has not yet issued a final IRIS document for PCE, to estimate cancer risk, we used the California EPA (CalEPA) unit risk estimate (URE) as well as a URE value developed by the EPA's Office of Prevention, Pesticides and Toxics (OPPTS) in 1998. The final IRIS reassessment may result in a URE that is different than these two values. Among the available Acute Reference Levels (ARL), the one-hour California Reference Exposure Level (REL) was considered the most appropriate to use in the assessment because it may be used to characterize acute risk for exposure an exposure duration of one hour. In contrast, the ATSDR acute MRL is appropriate to characterize acute risk for up to 14 days of exposure.

See the risk characterization memorandum in the public docket for additional information regarding the health effects of PCE.

D. What Does the 1993 NESHAP Require?

The 1993 NESHAP prescribes a combination of equipment, work practices, and operational requirements. The requirements for process controls are summarized in table 1 of this preamble. The 1993 Dry Cleaning NESHAP defines major and area sources based on the annual PCE purchases for all machines at a facility. The consumption criterion (which affects the amount of PCE purchased) varies depending on whether the facility has dry-to-dry machines only, transfer machines only, or a combination of both. The affected source is each individual dry cleaning system. Consequently, under the 1993 Dry Cleaning NESHAP, a single dry cleaning facility could be comprised of multiple affected sources, if it has multiple dry cleaning systems onsite. As a result, some of a facility's systems could be subject to ''new'' source requirements under the NESHAP, and some could be ''existing'' sources, depending upon when they were placed into service.

TABLE 1.—SUMMARY OF THE 1993 DRY CLEANING NESHAP PROCESS CONTROLS

Sources	Annual PCE purchased	New [1] (installed after 12/9/91)	Existing [2]
Major Sources	Dry-to-dry only > 2,100 gal/yr Transfer only >1,800 gal/yr Dry-to-dry and Transfer > 1,800 gal/yr	Closed-loop, dry-to-dry machines with a refrigerated condenser, and carbon adsorber operated immediately before or as the door is opened.	Dry-to-dry machines: Must have refrigerated condenser.[3] Transfer machines: Must be enclosed in a room exhausting to a dedicated carbon adsorber.
Large Area Sources	Dry-to-dry only 140 to 2,100 gal/yr Transfer only 200 to 1,800 gal/yr Dry-to-dry and Transfer 140 to 1,800 gal/yr	Closed-loop, dry-to-dry machines with a refrigerated condenser..	Dry-to-dry machines: Must have a refrigerated condenser [3] Transfer machines: No controls required.
Small Area Sources	Dry-to-dry ONLY < 140 gal/yr Transfer ONLY < 200 gal/yr Dry-to-dry AND Transfer < 140 gal/yr	Same as large area sources	No controls required.

[1] No new transfer machines are allowed after 9/23/93.
[2] Compliance date = 9/23/96.
[3] Alternatively, carbon adsorber is allowed only if installed before 9/22/93.

In addition, all sources must comply with certain operating requirements, including recording PCE purchases, storing PCE and PCE-containing waste in non-leaking containers, and inspecting for perceptible leaks. Owners or operators are required to operate and maintain the control equipment according to procedures specified in the 1993 Dry Cleaning NESHAP and to use pollution prevention procedures, such as good operation and maintenance, for both dry cleaning machines and auxiliary equipment (such as filter, muck cookers, stills, and solvent tanks) to prevent liquid and vapor leaks of PCE from these sources.

II. Summary of the Proposed Rule

A. What Were the Proposed Requirements for Major Sources?

Under the proposal, the requirements for all new and existing major sources were the same. The proposed requirements included the implementation of an enhanced leak detection and repair (LDAR) program and the use of dry-to-dry machines that do not vent to the atmosphere (closed-loop) during any phase of the dry cleaning cycle. A refrigerated condenser and a secondary carbon adsorber were proposed for all machines.

Under the proposed enhanced LDAR program, the facility owner or operator would be required to use a PCE gas analyzer (photoionization detector, flame ionization detector, or infrared analyzer) and perform leak checks according to EPA Method 21 on a monthly basis. The facility owner or operator would also continue the weekly perceptible leak check according to the requirements of the 1993 Dry Cleaning NESHAP.

B. What Were the Proposed Requirements for Area Sources?

For existing area sources (large and small), the proposed requirements included implementation of an enhanced LDAR program and a prohibition on the use of existing transfer machines. For new area sources (large and small), the proposed requirements included implementation of an enhanced LDAR program and use of a non-vented dry-to-dry machine with a refrigerated condenser and secondary carbon adsorber.

The enhanced LDAR program for area sources would require facilities to use a halogenated leak detector (instead of a more costly gas analyzer proposed for major sources) to perform leak checks on a monthly basis. The facility would also continue to inspect for perceptible leaks biweekly for small area sources and weekly for large area sources according to the requirements of the 1993 Dry Cleaning NESHAP.

For co-residential area sources, we proposed two options. The first option would effectively prohibit new PCE sources from locating in residential buildings by requiring that owners or operators eliminate PCE emissions from the dry cleaning process. Existing co-residential sources, under this proposed option, would be subject to the same requirements proposed for all other existing area sources (*i.e.*, enhanced LDAR and elimination of transfer machines). Instead of a prohibition on new co-residential sources, the second option would require that existing and new co-residential sources comply with standards based on those required by New York State Department of Environmental Conservation (NYSDEC) in their Title 6 New York Conservation Rules and Regulations (NYCRR) Part 232 rules, which include using machines equipped with refrigerated condensers and carbon adsorbers, enclosed in a vapor barrier to help prevent exposures to PCE emissions.

C. What Were the Proposed Requirements for Transfer Machines at Major and Area Sources?

The proposed rule included a prohibition on the use of all existing transfer machines 90 days after publication of the final rule by requiring owners or operators to eliminate any PCE emissions from clothing transfer between the washer and dryer. The installation of new transfer machines was prohibited by the 1993 Dry Cleaning NESHAP.

III. Summary of the Final Rule

A. What are the Requirements for Major Sources?

Under the final rule revisions, the requirements for all new and existing major sources are the same. In addition to the previous 1993 NESHAP requirements, the final revisions require the implementation of an enhanced LDAR program. Under the enhanced LDAR program, the facility owner or operator must use a PCE gas analyzer (photoionization detector, flame ionization detector, or infrared analyzer) and perform leak checks according to EPA Method 21 on a monthly basis. The facility owner or operator is also required to continue the weekly perceptible leak check according to the

requirements of the 1993 Dry Cleaning NESHAP.

B. What Are the Requirements for Area Sources?

For existing area sources (large and small), in addition to the previous 1993 NESHAP requirements, the final rule revisions require implementation of an enhanced LDAR program and prohibit the use of existing transfer machines. This requirement and prohibition apply to all types of existing area sources, including co-residential sources (for the remaining time in which the latter are permitted to use PCE at all).

For new area sources (large and small), the final rule revisions add to the previous 1993 NESHAP by requiring implementation of an enhanced LDAR program and use of a non-vented dry-to-dry machine with a refrigerated condenser and secondary carbon adsorber. These added requirements do not apply to new co-residential sources since these sources are prohibited from using PCE, as discussed later in this notice. The enhanced LDAR program for new and existing area sources requires facilities to use a halogenated leak detector (instead of a more costly gas analyzer for major sources) to perform leak checks on a monthly basis. The facility is also required to continue to inspect for perceptible leaks biweekly for small area sources and weekly for large area sources according to the requirements of the 1993 Dry Cleaning NESHAP.

C. What Are the Requirements for Transfer Machines at Existing Major and Area Sources?

The final rule prohibits the use of all existing transfer machines two years from the effective date of the final rule by requiring owners or operators to eliminate any PCE emissions from clothing transfer between the washer and dryer. The installation of new transfer machines was prohibited by the 1993 Dry Cleaning NESHAP. We estimate that about 200 transfer machines remain in use within the population of 28,000 PCE dry cleaning sources. Most of these machines are near the end of their useful economic lives. The typical useful life of a dry cleaning machine is 10 to 15 years. By the end of 2008, the newest transfer machines in the industry will be 15 years old.

D. What Are the Requirements for Co-residential Sources?

For co-residential area sources, the final rule effectively prohibits new PCE machines in residential buildings by requiring that owners or operators eliminate PCE emissions from dry cleaning systems that are installed after December 21, 2005. This requirement applies to any newly installed dry cleaning system that is located in a building with a residence, regardless of whether the dry cleaning system is a newly fabricated system or one that is relocated from another facility. In addition, the final rule revisions include a ''sunset date'' for the use of PCE at currently operating co-residential sources: All existing PCE machines in co-residential facilities are prohibited after December 21, 2020. This sunset date allows owners of existing co-residential sources to operate their machines for their maximum estimated useful life, 15 years, assuming they were first installed no later than the date of the proposed rule. We have concluded that it is reasonable to establish the sunset date at that point to allow such owners to recoup the cost of their investment in their current machines. We also decided not to allow for a later sunset date since on the date of our proposal owners were first placed on notice that we were considering a sunset provision for co-residential sources. This sunset period, during which existing machines will be required to comply with the same revised requirements that apply to other existing area sources, will provide adequate time for source owners and operators to switch to non-PCE equipment or move their PCE equipment to a non-residential location. In the interim before the sunset date, existing co-residential sources are subject to the same requirements that apply to all other existing area sources under the final rule revisions (*i.e.,* enhanced LDAR and elimination of transfer machines).

IV. Responses to Significant Comments

A. Statutory Authority

Comment: Two commenters questioned whether we have the legal authority to impose risk-based standards on area sources that are regulated under GACT. The commenters quoted sections of the Congressional Record (appropriate sections were attached to the comments) concerning this point and provided analysis to demonstrate a legislative intent to exempt area sources, specifically, dry cleaners from residual risk standards.

Response: While we do not concede that the commenter's interpretation of our authority under section 112(f) to impose risk based standards on area sources regulated under GACT is correct, we note that since we are not relying upon CAA section 112(f) as the authority for any of the requirements promulgated in this action for area sources, the commenters' arguments are moot for purposes of this final rulemaking.

Under CAA section 112(d)(6), we are required to conduct a review and, if appropriate, revise the dry cleaning standard as necessary to reflect advances in practices, processes, and control technologies. At proposal, we evaluated the emission reductions that could be achieved under CAA section 112(d)(6). After assessing advances in control technologies and considering the public comments, we have determined that, given the current knowledge of the health effects of PCE, additional requirements we proposed under the combined authorities of CAA sections 112(f)(2) and (d)(6) for area sources are equally supportable under CAA section 112(d)(6) alone. In light of public comments we received regarding possible risks posed by area sources, and EPA's pending IRIS review of PCE, we have determined that we are able to address the risks posed by area sources by revising our standards under the authority of section 112(d)(6). The standards for all area sources in this final rule are promulgated under the authority of CAA section 112(d)(6), and fulfill the Agency's statutory requirements under this authority for these sources.

The Agency's Office of Research and Development is currently re-evaluating the available information on human health effects of PCE as part of a hazard and dose-response assessment for the Agency's IRIS, which may result in revised metrics which are different enough from those used in our current assessment to warrant a re-assessment of risks from these sources. The project schedule for completion of the IRIS assessment is available at *http://cfpub.epa.gov/iristrac/index.cfm.* Also, additional information is needed to accurately estimate chronic and short-term exposures and risks to individuals located next to area sources other than co-residential (*e.g.,* sources co-located with schools and day care centers). While we received some information on measured PCE concentrations at such area sources in public comments, much of these data were collected based on complaints and may not be representative of PCE exposures from sources in compliance with the relevant regulations. EPA is aware of other data collected to support a peer-reviewed article; however, these data represent a very limited number of samples and sampling locations. As the results of the Agency's final PCE health assessment and additional scientifically peer

reviewed data become available, we may choose to further assess PCE risks and may re-evaluate our decision for area sources.

B. Methods Used for the Risk Assessment

Comment: A commenter requested that EPA account for any uncertainty in the ATSDR MRL and the OPPTS provisional Reference Concentration (RfC) by providing a greater margin of (public) safety when selecting a dose-response value for PCE. Two commenters requested EPA to use the New York State Department of Health (NYSDOH) non-cancer reference value. Many commenters questioned the use of the CalEPA and OPPTS URE in the absence of the revised IRIS re-assessment number. Several hundred commenters, using a form letter, questioned the carcinogenicity of PCE and referenced a Nordic study.

Response: The ATSDR MRL and the OPPTS provisional RfC, both based on 1992 occupational studies indicating effects at essentially identical exposure levels, are within a factor of two of each other, which, given the precision of the underlying data, is not a large difference. Additionally, a recent document by the World Health Organization (World Health Organization. 2006. Concise International Chemical Assessment Document 68.TETRACHLOROETHENE Wissenchaftliche Verlagsgesellschaft mbH, Stuttgart, Germany, available on-line at *http://www.who.int/ipcs/publications/cicad/cicad68.pdf*) included the derivation of a noncancer value termed a ''tolerable concentration'' which falls intermediate between the OPPTS provisional RfC and the ATSDR MRL. With regard to addressing uncertainty in the underlying database, both the ATSDR and OPPTS values (and the WHO value) were derived using similar approaches which rely on the inclusion of uncertainty factors to account for recognized uncertainties in the extrapolations from the experimental data conditions to an estimate appropriate to the assumed human scenario. The method employed by NYSDOH to derive their criterion differs from that employed by ATSDR, which is consistent with EPA methodology.

As the Agency has not yet completed its own cancer assessment for PCE, we have evaluated PCE cancer risk based on consideration of both the CalEPA and OPPTS cancer dose-response assessments, as well as more recently available data. Data are available from the Japanese Industrial Safety Association (1993) for rodent cancer bioassays by inhalation, which were not considered in either the CalEPA or OPPTS assessments. These data were considered in a recent WHO document, which presented a range of inhalation cancer unit risk estimates derived using the various available data sets and default methods for extrapolation to humans. The highest unit risk estimate derived from these data was quite similar to the CalEPA estimate, while the lowest was about an order of magnitude lower, similar to the OPPTS URE. While the Nordic study did not find an association between PCE exposures of the study population and cancer risk, this study needs to be thoroughly evaluated in the context of all epidemiological studies to determine whether or not it will change the weight of evidence evaluation. The EPA IRIS reassessment will include consideration of this study as well. Since the last EPA assessment of PCE carcinogenicity, the United States Department of Health and Human Services has concluded that PCE is ''reasonably anticipated to be a human carcinogen'' and the International Agency for Research on Cancer has concluded that PCE is ''probably carcinogenic to humans.''

C. Compliance Dates

1. Two Years for Existing Sources

Comment: Most of the comments received on compliance dates for the regulation were in favor of extending the date to more than 90 days. Some commenters asked for a one year extension, while others asked that the date be extended to three years. The commenters cited references in the CAA that stated that CAA section 112(i)(3)(A) governs the compliance times for CAA section 112, including residual risk standards, and that compliance is required as expeditiously as possible, but in no event later than three years from the effective date of the standard. The commenters added that CAA section 112(f)(4) merely states that EPA may not set a compliance date earlier than 90 days. The commenters believe that the CAA section 112(f)(4)(b) provision for waivers of up to two years would apply only in cases where the rule established a compliance date of more than 90 days but less than two years.

Another commenter, a State representative, recommended that the compliance deadline for area sources that need to purchase new machines should be extended to one year, because State agencies need time to conduct outreach. States do not have lists of area source dry cleaners and will need to collect this information during facility inspections.

Response: As we have recently explained in another rulemaking, the National Emission Standards for Hazardous Air Pollutants for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry; Proposed Rule, published on June 14, 2006 (71 FR 34422), we have since revisited our prior view regarding which CAA provisions govern compliance dates for residual risk rules. We hereby incorporate that discussion by reference. In response to the commenters, we are adopting different compliance deadlines for the existing source requirements than we proposed. We interpret CAA section 112(i) as providing the comprehensive framework for compliance deadlines for all rules adopted under CAA section 112, even where the provisions of CAA section 112(f)(4) may appear to conflict with those of CAA section 112(i).

As explained in the proposed residual risk rule for the HON source category, for new sources, CAA section 112(i)(1) requires that after the effective date of any standard under subsections (d), (f) or (h), no new source may be constructed or reconstructed except in compliance with the standard, as determined by EPA or the applicable permitting authority under title V of the CAA. A new source, under CAA section 112(a)(4), is any stationary source that commences construction or reconstruction after EPA proposes regulations applicable to the source category under CAA section 112. Sections 112(e)(10) and (f)(3) of the CAA provide that CAA section 112(d)(6) and residual risk standards, respectively, become effective immediately upon promulgation. This means generally that a new source that is constructed after a proposed rule is issued must comply with the final standard, when promulgated, immediately upon the rule's effective date or upon startup, which ever occurs later.

Sections 112(i)(7) and 112(i)(2)(A)–(B) of the CAA provide some exceptions to this general rule. The former provision essentially ensures that new sources that are built in compliance with MACT but before a residual risk rule is proposed will not be forced to undergo modifications to comply with a residual risk rule unreasonably early. The second set of provisions essentially treats new sources as if they are existing sources, where a final standard is more stringent than its proposed version and a source constructs after proposal but before final promulgation: Such sources have three years to comply with the final standard,

provided they comply with the standard as proposed in the meantime.

For existing sources, CAA section 112(i)(3) allows EPA to set compliance deadlines of up to three years for ''any emission standard, limitation or regulation promulgated under this section.'' This up-to-3-year compliance period matches the 3-year period provided under CAA section 112(i)(2), which potentially applies to any standard issued under CAA sections 112(d), (f) or (h). There is also an exception to the 3-year deadline for existing sources: CAA section 112(i)(3)(B) allows EPA or a State title V permitting authority to issue a permit granting an existing source an additional year to comply with standards under subsection (d), if it is necessary for the installation of controls. We believe that this reference to only subsection (d) was accidental on Congress's part and presents a conflict with the rest of the statutory scheme Congress enacted in 1990 to govern compliance deadlines under CAA section 112.

In addition to adding section 112(i) in the 1990 CAA Amendments, the amended CAA section 112 included provisions in section 112(f) left over from the previous version of CAA section 112 that in several ways differ from those in CAA section 112(i). First, CAA section 112(f)(4) includes a requirement that new sources comply immediately with CAA section 112(f) final rules, which is redundant with CAA section 112(i). This provision also fails to account for the allowable exceptions to the immediate compliance requirement in CAA section 112(i) and fails to refer to the new title V implementation mechanism added in the 1990 CAA Amendments. In light of the overall statutory scheme regarding compliance deadlines for new sources reflected in CAA section 112(i), we believe that where those provisions conflict with the provisions of CAA section 112(f)(4), the most reasonable approach is to view CAA section 112(i) as controlling.

In addition, for existing sources, CAA section 112(f)(4)(A) imposes a 90-day compliance deadline following promulgation of residual risk rules. Section 112(f)(4)(B) of the CAA then states that EPA, without reference to a title V permitting authority, may grant a waiver for up to two years if such period is necessary for the installation of controls. Both of these provisions conflict with CAA section 112(i). The 90-day deadline conflicts with the up-to-3-year deadline available for existing sources under ''any'' rule adopted under CAA section 112 and has the result of imposing a shorter deadline on existing sources than may apply for new sources under CAA section 112(i)(2). The CAA section 112(f)(4)(B) waiver provision also fails to rely upon the new title V implementation mechanism, even though, of course, residual risk rules are required to be reflected in title V permits to the same extent as MACT rules to which CAA section 112(i)(3) clearly applies.

Notwithstanding CAA section 112(i)(3)(B)'s limited reference to standards adopted under subsection (d), we interpret CAA section 112(i)(3) as applying to ''any'' standards promulgated under CAA section 112, including those under CAA section 112(f), since CAA section 112(i)(3)(A) uses the term ''any'' without limitation. Moreover, it is clear that Congress intended the CAA section 112(i) provisions applicable to new sources to govern compliance under CAA section 112(f) standards, notwithstanding the language of CAA section 112(f)(4), based on their explicit reference to such standards. Reading CAA section 112(i)(3)(B) as reaching only subsection (d) standards, conversely, with CAA section 112(f)(4)(B) governing subsection (f) standards, would leave unanswered the question of which provision applies to subsection (h) standards, which may also require the installation of controls. A narrow reading of the scope of CAA section 112(i)(3) would also ignore the fact that in many cases, including this rule, the enabling authority will be both CAA sections 112(f)(2) and 112(d)(6). We conclude that the only reasonable way to avoid a conflict in the provisions addressing compliance deadlines for existing sources in these situations is to read the more specific and comprehensive set of provisions in CAA section 112(i) as govern both the CAA section 112(d) and CAA section 112(f) aspects of the regulation.

In our proposed rule, we asked for comments on the issue of whether a 90-day compliance deadline was sufficient for our proposed elimination of transfer machines. In response to this, and in response to our proposed deadlines for other requirements for existing sources, we received significant comments on this compliance deadline issue generally. Therefore, we believe that our approach promulgated in this action is a logical outgrowth of our proposed rule. In anticipation of an objection claiming that our resolution of the conflict between CAA sections 112(i) and 112(f)(4) was not adequately noticed in our proposal, we note that the same 2-year compliance deadline we are adopting for existing sources in the final rule is also fully supported under an alternative interpretation that CAA section 112(f)(4)(A)–(B) controls. This is because CAA section 112(f)(4) would allow us to grant a 2-year extension of the compliance deadline for existing sources, on top of the 90-day compliance deadline otherwise required. Since we find that the 2-year total compliance deadline is necessary for the installation of controls at existing dry cleaners that would have to replace transfer machines with equipment compliant with new source standards (as further discussed below), and as the total 2-year compliance deadline falls within the 2-year plus 90-day period that would be allowed under CAA section 112(f)(4)(A)–(B), the final rule deadline is within the permissible range of CAA section 112(f)(4), if it applies. In addition, since we explicitly asked for comment on the 90-day deadline proposed under CAA section 112(f)(4) for eliminating transfer machines and received substantial comments on this issue and on the compliance deadline issue in general, our final decision, to the extent it must rely on the authority of CAA section 112(f)(4), is also a logical outgrowth of our proposal.

We agree with the commenters that existing sources will need more than 90 days to fully implement the requirements of the rule. Existing area sources will require up to two years to comply with the revised standards. Approximately 200 facilities will need to replace their transfer machines with dry-to-dry machines. These facilities generally are small proprietorships that will need a sufficient amount of time to save the money to purchase new machines. Also, due to the large number of area sources in the U.S., time is needed for outreach to inform these facilities about the rule changes. Moreover, there could be a supply shortage if 28,000 area sources were required to obtain a leak detection instruments within 90 days of promulgation. Similarly, major sources will need additional time to obtain leak detection equipment and fully implement enhanced LDAR requirements.

2. Clarification of New Source Requirements

Comment: One commenter requested clarification on whether the proposed revisions for new sources apply to those constructed after the proposal date of the original NESHAP or of the date of the current proposal.

Response: The revised requirements for new sources apply only to new dry cleaning machines that are constructed or reconstructed after December 21,

2005. Under the general provisions, a new source is any affected source that commences construction or reconstruction after the date that a relevant emission standard is proposed in the **Federal Register**. Therefore, new dry cleaning machines build after the proposal date of the original rule but before December 21, 2005, are subject to the new source requirements of the original rule, and to any additional requirements of the revised rule that would apply to existing sources. New machines built after December 21, 2005, are subject to the requirements of the rule as revised upon the effective date of the final rule or upon their startup, whichever occurs later.

D. Control Requirements for Major Sources

Comment: Most comments received about the requirements for major sources supported EPA's proposed requirements of non-venting machines with refrigerated condenser, secondary carbon adsorber, and an enhanced LDAR program. Most major sources were estimated to incur an annual cost savings by implementing these requirements. We received a few comments that asked us to require more stringent requirements. These commenters asked us to require all major sources to upgrade their machines with a PCE analyzer and lockout and another asked to ban new PCE machines at major sources, require PCE sensor and lockout equipment for existing machines, and adopt an equipment standard that prohibits the use of PCE machines more than 15 years old. One commenter, a major source stated that they would face substantial negative economic impacts if required to replace their existing equipment with closed-loop systems with refrigerated condensers and carbon adsorbers as proposed.

Response: Since proposal, 3 major source facilities, including the proposal MIR facility, have been removed from our risk analysis, which has affected our risk estimates for existing major sources. The MIR facility ceased operation due to a change in ownership to a company that does not use PCE in the cleaning process. One additional facility ceased operation, and another was determined to have been an area source prior to the compliance date for the original NESHAP, and is therefore not subject to major source requirements. The resulting cancer risks at baseline for the remaining facilities range between 50 and 400 in-1-million.

In assessing the appropriate level of control to address these risks, we revisited the proposal level of control, which included enhanced LDAR, along with the requirements to use dry-to-dry machines that do not vent to the atmosphere (closed loop) during any phase of the dry cleaning cycle, and to have refrigerated condensers and secondary carbon adsorbers to control the PCE emissions during the final stage of the dry cleaning cycle immediately before and as the drum door is opened. Enhanced LDAR alone, which will require owners and operators to use a PCE gas analyzer and perform leak checks according to EPA Method 21 on a monthly basis (as well as continue weekly perceptible leak checks), is expected to reduce MIR from existing major sources to between 20 and 200 in-a-million. We have determined that this range of MIR levels is acceptable within the meaning of the Benzene NESHAP decision framework. In arriving at this determination we considered the MIR levels and other factors in making our determination of acceptability, as directed by the 1989 Benzene NESHAP. Nearly all of the population living within 10 km of each remaining major source facility is estimated to be exposed at risk levels of less than 1-in-1 million at this level of control. Considering the very small number of individuals that are estimated to be exposed at risk levels greater than 100-in-1 million cancer risk coupled with the exposure and dose response assessment methodology that was conservatively health protective, it is likely that no actual persons are exposed to PCE emissions from major sources causing cancer risk levels above 100-in-1 million. Among the exposed population of 9 million individuals, a maximum of 2 people are estimated to be exposed at risk levels of more than 100-in-1 million. In addition, no significant non-cancer health effects are predicted. The maximum HQ would be reduced from 0.3 to 0.06, and no adverse ecological impacts are predicted from exposure to emissions at this level of control. We expect that PCE usage will continue to drop as has been the trend over the past 10 years. This trend has been caused by the greater use of alternative solvents, older machines at the end of their useful lives being replaced with newer, lower emitting dry-to-dry machines with refrigerated condensers and secondary carbon adsorbers, and State and industry programs that improve machine efficiency and reduce PCE consumption. All of these factors will cause risks to continue to decrease in the future in the absence of further Federal regulatory requirements. Therefore, we have determined that the risks associated with enhanced LDAR at existing major sources are acceptable after considering MIR, the population exposed at different risk levels, and the projected decline in PCE usage. While not relevant in the analysis of acceptable level of risks, the costs for this option include a capital cost of approximately $30,000, and an annual cost savings of approximately $250,000.

In the second step of the residual risk process, we determined whether a standard more stringent than enhanced LDAR is warranted to protect public health with an ample margin of safety. We considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors, consistent with the approach of the 1989 Benzene NESHAP. The requirements to use closed loop dry-to-dry machines and for machines to be controlled with refrigerated condensers and carbon adsorbers as proposed would further reduce MIR to between 10 and 100 in-a-million. However, the additional costs and associated impacts from application of these controls at existing major sources do not warrant the level of incremental risk reductions this option would achieve, especially when considering the distribution of costs, emissions and risk reductions among the affected facilities. For example, of the seven existing facilities with major sources that would be impacted by this additional level of control, the bulk of the costs are incurred by one facility, and would result in minimal risk reductions from the facility. This facility would incur costs of approximately $2 million to replace equipment which could not be retrofitted to meet this level of control. Annual costs for this facility would be approximately $200,000. The risk range associated with this facility upon implementation of enhanced LDAR is estimated to be between 5 and 50 in-1 million. The risk range with the additional level of controls of closed loop dry-to-dry machines and refrigerated condenser and carbon adsorber would be between 2 and 20-in-1 million. While two of the remaining six facilities would achieve somewhat higher risk reductions that would be realized from the example facility, the remaining four are expected to only achieve minimal risk reductions, as represented by the range of incremental emissions reductions from the added layer of control (between 0 and 4 tons per year). The capital costs to achieve these emissions and risk

reductions would be $2.3 million, with annual costs of $53,000. Consequently, we have determined that the risks associated with enhanced LDAR at existing major sources represent an ample margin of safety after considering costs, remaining risks and population cancer risk.

As proposed, new major sources would be required to perform enhanced LDAR in addition to the 1993 NESHAP requirement of closed-loop, dry-to-dry systems with refrigerated condensers and carbon adsorbers. As explained in the proposal, we do not expect that any new major sources will be built, or that any existing area sources will increase PCE usage to major source levels. However, if this situation occurs, the additional LDAR requirements will continue to reduce emissions from equipment leaks. The risks posed by major sources do not warrant further control given the costs and the relatively low levels of emission and risk reduction that would be achieved by these additional controls. The available data indicated that closed-loop systems with refrigerated condensers and carbon adsorbers, as well as PCE analyzer and lockout costs were unreasonably high considering the range of impacts across facilities. Consequently, we determined that requiring these additional controls was not a reasonable or economically feasible option for all major sources. The costs to eliminate PCE usage at major sources would require a capital cost to the industry of approximately $8.2 million. This estimate was based on the total costs of replacing all PCE machines with machines using hydrocarbon solvent, the most common and lowest cost alternative in large-scale operations.

1. Risks From Major Sources

Comment: One commenter stated that the risk assessment is biased and does not represent all sources. Data regarding the performance of pollution control equipment used at each facility is critical. The commenter stated that the control technology at their facility is unlike that at any other facility. They believe the risk assessment for the group of major sources is invalid because it depended heavily on the risk of one outlier facility, ALAC, which recently closed. Therefore, they contend ALAC greatly increased the MIR for all major sources.

Response: We disagree with the commenter that the risk assessment is biased and is driven by the results of the assessment for a single facility. While we did use this facility's MIR at the time of proposal, we assessed risks using data from major source facilities that we concluded were representative of all major sources. Our final regulatory decision is based on a revised MIR for major sources, which ranges between 50-in-1 million and 400-in-1 million, after excluding data from sources that have ceased operation, such as the ALAC facility. This revised MIR supports our decision for major source under both sections 112(f) and 112(d)(6) of the CAA.

For the risk assessment, major sources were subdivided into three cleaning specializations-commercial, industrial and leather. EPA collected site-specific information from 10 of the 15 facilities (9 surveys and 1 site visit) to develop a cross-section of the three specializations within the source category. Facilities within each specialization tend to be homogenous with respect to factors that affect the emissions, pollutant dispersion, and population size in the modeling radius, allowing EPA to extrapolate risks from the facilities it modeled to those it did not.

The information EPA collected included:

- Source locations and emission points,
- Building dimensions,
- PCE consumption,
- Annual disposal of PCE in sludge or residual waste (still bottoms),
- Annual facility operating hours, and
- Locations of sensitive receptors, including neighboring houses.

Based on these survey and site-visit data, we estimated annual and hourly emissions by performing a mass balance calculation on PCE concentrations. Using this mass balance data, we then estimated annual average emission rates. Finally, we estimated maximum one-hour emissions by dividing the total emissions level by the total number of operational hours at that facility and then accounting for hourly variation in these emissions.

Comment: One commenter stated that EPA should have informed the public that two major sources recently ceased operations.

Response: The largest major source ceased operations in June 2005. One other source ceased dry cleaning operations and another source was determined to have been an area source. By the time we learned of the closures, the proposed rule package was at the later stages of senior-level Agency review. Since proposal, we re-evaluated the risk assessment without these sources. The baseline estimate for MIR eliminating the sources that ceased operation ranges between 50 in-one-million to 400 in-one-million. The MIR at the level of control promulgated in this final rule is between 20 in-one-million and about 200 in-one-million.

2. Site Specific Risk Assessment

Comment: Two commenters supported the concept of incorporating a site-specific risk assessment (SSRA) for both major and area sources. The commenters believe that substantial flexibility is needed to improve the cost-effectiveness of the rules and to avoid potentially adverse impacts on specific sources. They believe that EPA has published adequate guidance on conducting an SSRA. The commenters believe that the SSRA should be used both to demonstrate equivalence to specific emission reduction requirements and to determine applicability to the residual risk requirements. The commenters believe that the CAA allows EPA to focus the applicability of the residual risk requirements only on those sources whose remaining risks after application of MACT do not provide an ample margin of safety (citing Senate Report language to support their case).

Response: We have decided not to adopt an SSRA option for major or area sources as part of this action. As a result of the revised risk analysis for major source given the elimination of 3 sources from the analysis, including the MIR facility, baseline risks from major sources are much lower than estimated for proposal, and the associated risk reduction measures are less stringent than originally proposed. Major sources are required to perform enhanced LDAR, which is expected to reduce MIR from between 50 and 400 in a million, to between 20 and 200 in a million, which the Agency has determined meets ample margin of safety considering cost, population cancer risk at different control levels and other factors. Furthermore, an annual cost savings of about $250,000 is estimated for major sources from implementing enhanced LDAR. Similarly, an annual cost savings of about $2.7 million is estimated for area sources from implementing enhanced LDAR programs and eliminating existing transfer machines. We believe these requirements will be cost-effective. Therefore, we have determined that an option for major or area sources to perform an SSRA is not necessary.

For co-residential sources, we are promulgating a ban on new sources and a sunset date for existing sources. An option for co-residential sources to perform an SSRA to determine low risk and avoid these requirements is not feasible as part of this action. There is no established protocol for self assessment for co-residential sources

which would account for exposures inside of co-located apartments. Traditional methods of dispersion modeling of emissions would not accurately assess risks in this exposure scenario, as no modeling methodology exists that could determine dispersion patterns throughout buildings. Also, there may be practical difficulties for these small businesses to pay for, perform or obtain monitored samples of PCE concentrations in private residences, to be used as part of an SSRA in the absence of a modeling methodology. Therefore, an option for an SSRA is not included in this action.

3. PCE Analyzer and Lockout

Comment: Six commenters recommended that EPA require major sources to install a PCE sensor and lockout to further reduce health risk. Among the six commenters, two commenters suggested that if EPA receives additional information they should revisit the cost-effectiveness analysis. Another commenter stated that 40 tons per year of PCE removed by this control option at cost of $17,000 per ton would be worthwhile. One commenter stated that the sensor and lockout will help to reduce the PCE emissions from operator error, which is, along with poorly maintained older machines, the cause of the majority of emissions.

One commenter, a vendor of dry cleaning machines, advised EPA to be cautious regarding the use PCE analyzers inside the drum because of their high sensitivity to humidity, heat, and vibration which necessitates frequent recalibration. Another commenter, a major source, noted that a lockout system would increase cycle times significantly thereby increasing operating costs.

Response: Based on the revised risk assessment for major sources post proposal and the resulting cancer and non-cancer risk estimates, we have determined that the requirement for enhanced LDAR in addition to the existing requirements in the 1993 NESHAP are sufficient to protect public health with an ample margin of safety. We considered a variety of other factors in making our determination, as directed by the 1989 Benzene NESHAP (described above). Consequently, we believe that the additional costs of further controls are not warranted.

We agree with the commenter about the effect of operator error on emissions. Because our estimated emission reductions are based on subjective estimates by industry experts of typical performance over time, variations in operations have been taken into account in the emissions estimate. We also agree with the comment about the potential for unreliable readings from improperly calibrated PCE analyzers. While PCE analyzers are sometimes employed as PCE sensors, PCE analyzers are typically more advanced than sensors, as the analyzers typically employ technologies such as single-beam infrared photometers, and tend to be more sensitive instruments than those used as sensors. We did not take into account any additional costs associated with performing periodic calibration tests. As a result, the cost of the technology may be more than what we estimated. Due to the interlock, a high reading from a PCE analyzer can unnecessarily prevent the completion of a load. In a high-throughput operation, such increases in cycle time can impose a considerable decrease in production.

4. Economic Analysis

Comment: One major source commenter stated that financial impacts for his facility are much higher than what EPA estimated. The commenter contends that the Economic Impact Analysis is based on underestimated costs and revenue that is more than double the company's actual revenue. The commenter also contends that his company's machines cannot be retrofitted with a refrigerated condenser and would need to be replaced, that the cost to replace the machines has been estimated by EPA to be $1.9 million, that substantial lost revenue while machines are under construction was not considered, and that estimated financing and permitting costs were also not considered. This commenter strenuously disagreed with the conclusion of the Economic Impact Analysis that no negative impact would be incurred by major sources, and contends that EPA used incorrect revenue estimates. According to this commenter, the requirements of the proposed rule, if implemented within 90 days of promulgation, would result in the closure of this facility and the loss of 120 jobs in economically desolate Detroit, Michigan.

Response: Our economic analysis of the impacts associated with the proposed level of control for major sources from implementing the rule is based on comparing the estimated annualized compliance costs to the estimated revenues for the parent firm. The estimate for the rule is annualized compliance costs of 0.4 percent of the firm's sales (or cost per sales hereafter). This estimate is contingent on the accuracy of the compliance costs and the revenue estimate for the firm. Our revenue estimate is from 2002 fiscal year data collected for the firm. We collected this data for 2002 to be consistent with the year for which the costs are estimated. This is consistent with how EPA has estimated economic impacts in a variety of recent rulemakings for residual risk and other standards. Thus, the comment that the revenue estimate is incorrect is not accurate. If we were to recalculate the compliance costs for this facility assuming that all of their machines would need to be replaced, then the cost per sales will be 1.65 percent given the annualized costs of about $240,000 for the rule.

We have also adopted a 2-year compliance schedule in the final rule. This compliance schedule should provide adequate time for this facility fully implement requirements for enhanced LDAR.

We have not concluded that there is no negative economic impact on major sources resulting from the final rule. Rather, we have stated that there is not a significant economic impact to a substantial number of small entities (or SISNOSE). The commenter's facility is not a small business according to the SBA definition. While estimated cost savings are expected for a number of firms that are major dry cleaning sources, some firms are likely to experience some negative economic impacts. The Agency does not believe that such impacts are likely to be unreasonable for the affected major source-owning firms, however. This statement is based on our impact estimates that most of the affected major source-owning firms have annualized compliance cost to sales of less than 1 percent. These estimates can be found in the economic impact analysis for this final rule.

5. Performance-Based Standard for Existing Major Sources

Comment: One commenter supported incorporating a performance-based standard for major sources in the final rule. They believe a performance-based standard provides an incentive for sources to convert to safer alternatives for some or all of the articles handled by a source. Other commenters supported the alternative compliance option (facility-wide PCE usage or other metrics) for existing major sources to provide the maximum compliance flexibility possible.

Response: We appreciate the supportive comments regarding this concept, however a performance-based option has not been incorporated in the rule in part because we did not receive any indication from any of the major sources to which this option would have applied that they would have

found it useful. None of the major sources responded with comments supporting the need for a performance-based option, which suggests to us that their preferred compliance option would be to meet the required standards. Therefore, it is not necessary for us to further pursue a performance-based option for this specific industry.

E. Area Sources

Most comments received about the requirements for typical area sources supported EPA's proposed requirements of banning transfer machines, requiring existing facilities to implement an enhanced LDAR program, and requiring new sources to install a closed-loop dry-to-dry machine with refrigerated condenser and carbon adsorber. A few commenters opposed the ban on transfer machines based on the cost of the machine replacement. We received a few comments requesting more stringent requirements. These commenters asked EPA to require all typical area sources to upgrade their machines with a secondary carbon adsorber.

Based on our review of the advances in technology since the 1993 rule, we have determined that adopting the rule revisions for area sources as proposed satisfies the requirements of CAA section 112(d)(6). The preponderance of comments supported the proposed rule, and we received very few negative comments. Existing sources were estimated to incur a cost savings because both replacement of transfer machines and enhanced LDAR will reduce annual PCE consumption. The reduction in annual PCE consumption at the 200 businesses that would replace transfer machines is more than sufficient to offset the annualized cost of the new equipment. In particular, we believe most of the transfer machines are at the end of their useful life and it would be economically beneficial for the facilities to replace the transfer machines with dry-to-dry machines. Thus, we believe the economic impacts to the affected businesses and facilities are negligible. Finally, these costs and risk estimates do not consider the impacts of future trends of declining PCE usage. Therefore, consistent with our analysis at proposal, we are not requiring a secondary carbon adsorber on existing area sources because the emission and risk reduction would be relatively minor and the costs would impose unnecessary adverse economic impacts on a number of small businesses.

1. LDAR Program

Comment: One commenter believes the proposed LDAR requirements are not necessary, explaining that most States now require the PCE dry cleaners to inspect their equipment on a regular basis and State inspectors make periodic inspections.

Response: EPA disagrees. Most States do not have requirements beyond the 1993 NESHAP and do not inspect dry cleaners more than once every few years. Sensory methods are ineffective in identifying leaks early. Substantial PCE emissions occur between the point when failure begins and the leak can be detected by sensory methods. An instrument will enable earlier detection.

Comment: One commenter, a vendor of dry cleaning equipment, disagreed with the EPA's conclusion that leaks are the largest source of emissions. Leak inspections are a waste of time because serious leaks are repaired immediately without need for an inspection. More significant sources of emissions are:

1. Unloading incompletely-dried garments.
2. Routine maintenance.
3. Cleaning distillation units.
4. Receipt of new PCE.

Response: Our analysis has shown that the filling of PCE tanks is not a significant source of emissions. We agree that the first three sources named can be significant if dry cleaning systems are not operated properly. Under the General Provisions of 40 CFR 63, all regulated sources have a general duty to operate systems and control devices according to good air pollution control practices for minimizing emissions. This requirement includes following manufacturer's specifications for operation and maintenance of the system. We have concluded that it is not necessary at this time to specify in the rule additional operating and maintenance procedures. Leaks, however, are an important source of emissions, and controlling them is an integral part of an effective pollution prevention program. Leaks can be detected and controlled at a reasonable cost using an enhanced LDAR program. In a study by the South Coast Air Quality Management District, over half of the dry cleaning machines tested had leaky gaskets, which are replaceable parts that can cause significant PCE emissions. The enhanced LDAR program requirement is expected to result in earlier leak detection from these types of emission points, and is the best method to determine when gaskets need replacing and when they do not.

2. Banning PCE

Comment: Two commenters, a state agency and a manufacturer of PCE alternative solvent dry cleaning machines, stated that EPA failed to adequately assess the feasibility of alternative solvents because the negative impacts of alternative solvent technologies were not sufficiently considered. Any action that would result in the ban of PCE at some or all facilities requires the use of an alternative solvent.

Response: We concur with the commenter that each of the alternative solvents that are currently available have certain trade-offs or limitations relative to PCE. Depending on the system, these limitations may involve cost, cleaning ability, ease of use, applicability to certain fabrics, safety, or others. No single alternative offers all of the business advantages of PCE. Given these factors and the current degree of use of alternative solvents in the industry, we did not consider it appropriate to mandate the use of alternative solvents as part of the CAA section 112(d)(6) review, except in the context of co-residential area source settings as discussed below. For area sources, the 1993 NESHAP was based on the use of GACT. In our review of this standard under CAA section 112(d)(6), we considered PCE emission controls that are in widespread use by the industry. We concluded that, based on the current information before the agency, we are not prepared to require a ban of PCE at typical area sources (*i.e.*, area sources other than co-residential) under CAA section 112(d)(6). However, we interpret CAA section 112(d)(6) as allowing us to consider a broad range of factors in determining what changes to standards are ''necessary,'' after taking into account developments in practices, processes, and control technologies. This interpretation is consistent with those regarding other provisions of the CAA that direct us to find the ''best balance'' of emissions control, costs of control, safety, and other factors. Such factors may include whether sources' emissions present different degrees of risk. Due to the potential for high risks posed by co-residential area source dry cleaners, and in light of the availability of non-PCE dry cleaning technologies in the market, we determined that it is necessary under CAA section 112(d)(6) to treat this component of the area source sector differently than we are treating other area sources dry cleaners, whose emissions present significantly smaller risks.

3. Transfer Machines and Vented Machines

Comment: One industry association opposed the ban on transfer machines because such a ban would result in a significant economic impact to these

economically marginal businesses. To require the replacement of transfer machines in 90 days would result in the closure of each of these small plants.

Response: The economic impact analysis shows that there is an economic impact on owners of transfer machines from a ban on their operation, but not a significant one. The results of the analysis show impacts of compliance costs of just under two percent of sales. Given that these transfer machines are all at least 13 years old due to the ban on new transfer machines applied under the dry cleaning NESHAP, these machines are very likely close to or beyond their expected equipment life of 15 years. Thus, owners of these machines are likely to consider replacing them in the near future in any event without any additional regulatory driver.

Comment: Two dry cleaners owning transfer machines stated that transfer machines should not be prohibited because such a requirement would force them to close because they cannot afford a new machine. One of these commenters stated he used the same amount of PCE as dry cleaners using third generation machines. The other commenter requested that EPA phase out transfer machines over 10 to 15 years and that EPA examine each dry cleaner operating a transfer machine individually.

Response: EPA's cost and economic impact analyses for this rule shows that firms owning transfer machines will have to pay $35,600 to purchase a new dry cleaning machine with secondary controls (refrigerated condenser and carbon adsorber). The annualized compliance costs are estimated at just over one percent of the sales for an average dry cleaning firm. We believe these impacts are not significant overall, but we recognize that individual firms, especially small firms, may experience greater impacts than the average. To provide an adequate opportunity to raise capital and in response to comments, we are promulgating a compliance period of two years, rather than the 90 days that would have been allowed under the proposal.

Comment: Two State representatives, a vendor of dry cleaning equipment, and an environmental group recommended that EPA prohibit the use of vented machines because their emissions are considerably greater than closed-loop machines. One commenter added that, if a carbon adsorber for a vented machine does not get frequent maintenance, its emissions increase considerably. The two State representatives said that their states have already banned vented machines without encountering appreciable resistance from the dry cleaning industry. One commenter noted that according to EPA's cost estimates, dry cleaners replacing a vented machine with a fourth generation machine would reduce their net cost because of reduced usage of PCE. This commenter added that vented machines are at the end of their useful life.

Response: The final rule will not prohibit the use of vented machines. We have reviewed developments in processes and control technology and determined that an LDAR program will be required on a monthly basis with a leak detection instrument. These requirements satisfy the requirements of CAA section 112(d)(6). We did not find any control technologies that could be retrofitted at a reasonable cost on these machines. We concluded that forced replacement of these machines at typical area sources is not warranted given the costs and the relatively low levels of emission and risk reduction that would be achieved.

4. Co-Commercial Sources

Comment: One commenter, a State representative, strongly disagreed with the statement in the proposed rule indicating that the existing NESHAP level of control would result in an acceptable level of risk for area sources for co-commercial sources. The commenter presented a summary of results from complaint-based sampling of facilities in strip malls that demonstrate where PCE concentrations ranged from 8 to 50,400 micrograms per cubic meter (ug/m^3), including a day care facility with a mean concentration of 2,100 ug/m^3. Also, PCE concentrations during the first hour of operation are roughly four times the average because vapor accumulates in the drum of the machine overnight.

Response: While these measured concentration results are high (relative to what we would expect from the type of dry cleaning equipment likely to be in use at co-commercial sources), the fact that they were measured as the result of complaints may indicate that the reason behind the elevated levels may be lack of compliance with the 1993 NESHAP. This being the case, we cannot confidently conclude that these data as represent exposure levels that reflect compliance with the NESHAP. Therefore, we are choosing to not use them to evaluate the success or failure of the NESHAP level of control. In the future, studies of PCE exposures should be conducted to include a representative sampling of facilities and indicate the actual level of control being utilized and achieved by each facility in question.

Comment: Several commenters recommended additional controls should be required at co-commercial sources. A State representative recommended the following requirements for co-commercial sources:

1. Secondary carbon,
2. Vapor barriers,
3. Weekly leak inspections,
4. Annual third party inspections, and
5. Operator certification by an approved training program.

Without these measures, the revised NESHAP cannot achieve reductions in PCE levels comparable to those achieved by NYCRR Part 232.

Response: Additional information is needed to accurately estimate exposures and risks to individuals located next to co-commercial sources (including, for example, sources co-located with schools and day care centers). Without valid information that co-commercial sources pose greater risks than typical area sources, we are not prepared to determine that the cost of additional controls for co-commercial sources is justified under CAA section 112(d)(6).

In their remarks, some commenters quoted relatively high exposure concentrations that are attributed to co-commercial sources. However, only one study was referenced with the comments. This study has not been peer reviewed and has not had the opportunity for public comment. The study was completed on one co-commercial facility and without documentation of the study, we cannot analyze the methods of data collection, the type of facilities sampled, the dry cleaning systems used, or the conditions under which the data were collected. Accordingly, we do not know if these reported measurements are valid or, if so, whether these exposures are representative of all co-commercial facilities or only particular configurations. In absence of these data, we have no technical basis for requiring additional control on these facilities. Until more research is available on PCE exposures at co-commercial sources, we have determined to subject co-commercial sources to the same control requirements as typical area sources that are not collocated in the same buildings with residences.

5. Economic Impacts

Comment: Two trade associations stated that EPA has significantly underestimated median revenue of dry cleaners. According to the 2002 Economic Census, 87 percent of all dry cleaning establishments had less revenue than the median revenue used by EPA. Further, one third of all dry cleaners are so small that they have no

payment to report and are not reflected in census data.

Response: EPA's economic analysis of the impacts to affected dry cleaners is based on comparing the estimated annualized compliance costs to the estimated revenues for the parent firm. This estimate is contingent on the accuracy of the compliance costs and the revenue estimate for the firm. The Agency chose to use the industry revenue average for 1997 instead of the data from the 2002 Census because it was readily available to the model EPA chose to employ for generating the economic impact results at the time of the analysis. The value used by EPA from the Census reflects the average revenue per firm and applying this value is consistent with revenue estimates used in economic impact analyses that accompanied recent agency rulemakings. This approach is consistent with how EPA has estimated economic impacts in a variety of recent rulemakings for residual risk and other standards. A review of average revenue for firms in the dry cleaning industry from the 2002 Economic Census showed that this average revenue was 10 percent higher than the value from the 1997 Economic Census. Hence, our economic impact estimates will be lower using average revenues per firm from the 2002 Census as compared to the revenues used in the current economic impact analysis.

The commenter's point about the lack of revenue data from many dry cleaners that do not report payroll is a useful point. Having such a lack of data means some caution in applying Census revenue data for these firms is appropriate. However, collecting revenue data from these firms or estimating their revenues by some other means is highly problematic and impossible to incorporate in the current economic impact analysis. The commenter's assertions of the ''over saturation of the industry with too many plants'' and that many ''plants'' are having difficulty paying bills are ones for which no data is provided. The Agency's current estimate of the number of dry cleaning facilities is about 34,000. This estimate is extremely close to the estimate of 33,863 provided by the Agency in its ''Dry Cleaning Sector Notebook Project'' report published in September 1995, which was before full implementation of the dry cleaning NESHAP took place. In addition, low profit margins are typical for dry cleaning operations; the ''Dry Cleaning Sector Notebooks Project'' published by the Agency over 10 years ago mentions that ''Commercial dry cleaning is not a high profit business, and many dry cleaners are barely able to stay in business.'' The fact that the number of facilities in this industry are about the same over a ten year periods leads to skepticism as to whether the industry was oversaturated at the current time and whether firms in the industry are having more difficulty staying in business now than in the past.

F. Co-Residential Sources

Comment: We received several hundred comments on the two proposed options for co-residential sources. Comments from the industry and one mass-mailing campaign supported the technology-based option for co-residential sources similar to the technology requirements of New York's Part 232 regulations. Comments from States, environmental groups, and another mass-mailing campaign supported the ban of PCE at co-residential facilities with either an immediate ban or a phase-out over time. These commenters wanted dry cleaners to switch to alternative dry cleaning solvents. Some commenters supported the eventual phase-out of PCE and the interim imposition of technology requirements like New York's Part 232 regulations for all existing co-residential machines.

Response: Current technology controls to reduce PCE emissions from co-residential dry cleaning units—such as those embodied in the NY Part 232 requirements—have been generally effective in reducing exposures. Nevertheless, empirical evidence indicates that in certain cases PCE exposures may remain relatively high. We believe that further reductions are warranted to reduce potential exposure levels, but at the same time we believe that more stringent requirements should in part be based on considerations of cost, technical feasibility, and the availability of alternative technologies. Therefore, we are requiring existing sources to discontinue the use of PCE machines no later than December 21, 2020. In addition, our consideration of the relevant factors leads us to prohibit additional PCE-using machines from being installed.

We recognize that the industry has made great strides in technology that reduces PCE emissions since the 1993 NESHAP was established. If the development of future technologies produces one that is demonstrated to adequately reduce PCE emissions and related exposures to residents of apartments co-located in buildings with dry cleaners, we would consider revisiting the necessity of the ban and phase-out of PCE in co-residential settings. Such a review could, for example, occur in the next round of our review of the developments in control technologies, processes and practices under section 112(d)(6) for this NESHAP.

Some commenters suggest an immediate elimination of PCE in co-residential settings and others suggested phasing out PCE use over the natural life of the equipment. An immediate ban would impose significant adverse impacts on owners and operators of existing sources, as would a ban falling within the three-year compliance window we have traditionally allowed for existing sources. For these small businesses, which have substantial investments in their current equipment, we have concluded that it is appropriate to allow them sufficient time to recover the investment over the useful life of the equipment and raise the needed capital to fund alternative solvent systems.

The economic life of a PCE dry cleaning system is typically 15 years. One State commenter suggested that to set a phase-out of existing sources based on the purchase date of each machine would be impracticable and a burden for States to implement. This commenter suggested picking a single date by which all current systems would need to be converted. Considering these factors, the final rule establishes a date 15 years from the date of the proposed rule, after which time all existing PCE systems at co-residential sources are prohibited. We selected this date since it corresponds to the date when we first publicly proposed the potential requirements for PCE dry cleaners in co-residential settings. This amount of time is necessary in order to phase out PCE use in co-residential settings without causing unacceptable adverse economic impacts, which would be the result if we imposed a 3-year compliance deadline.

In addition, although it is unlikely that any additional co-residential PCE-using sources came on-line between the date of publication of the proposed rule and the date the Administrator signed the final rule (July 13, 2006), in this rulemaking we are treating such sources that commenced construction between December 21, 2005, and July 13, 2006 (if any exist), slightly differently than the way we are treating either existing sources discussed above or other new sources (which are required to comply with the PCE ban immediately upon startup or the effective date of the final rule, whichever is later). This is because the requirements we have adopted in the final rule for new co-residential sources are more stringent than one of the two options we proposed. Under CAA section 112(i)(2)(A)–(B), these

uniquely situated new sources will also be required to eliminate PCE use, but not until three years after the effective date of the final rule. In the interim, they are required to comply with the second option we proposed for new co-residential sources and use refrigerated condensers and secondary carbon adsorbers, with equipment housed inside a vapor barrier with general ventilation to the outside air, as required by NYSDEC title 6 NYCRR Part 232 rules. These facilities will also have to conduct weekly leak inspections using a leak detection device such as a halogenated hydrocarbon detector. To require these sources, which may have installed equipment compliant with New York controls in reliance on our co-proposal of that option, to dismantle their PCE equipment immediately could impose severe economic hardship for these sources, contrary to the efforts we have taken in the rest of the rulemaking to avoid causing significant adverse impacts on small businesses.

We anticipate that most existing systems will be relocated to nonresidential buildings or converted to alternative solvents prior to this date, given the range of ages of current co-residential sources. In the meantime, existing co-residential sources must also meet the additional control requirements in the final rule revisions for other area sources (i.e., eliminate transfer machines and use enhanced LDAR). We have decided not to impose additional control requirements on existing co-residential sources pending the phase-out of PCE use, such as the NYCRR Part 232 controls contained in our second proposed option addressing co-residential sources. While the NYCRR Part 232 controls are currently the most stringent technological controls required in the U.S., there is uncertainty about the precise effect of the NYCRR Part 232 controls on risk. Industry commenters claim that the high risks are not representative, and that dry cleaning systems using this technology do not pose high risks. Others point out that high risks measured in New York buildings have been assessed as being caused by poor control equipment design, malfunctions of control equipment, poor ventilation designs, operator error, and other unregulated activities. We do not consider it necessary or appropriate to impose the costs of the NYCRR Part 232 controls in the interim before PCE use at co-residential sources is eliminated entirely. Moreover, our economic analysis indicates that imposing the New York requirements on existing sources elsewhere in the country, pending the PCE phase out, would cause a significant adverse economic impact on small businesses.

The health risks from co-residential sources that we are concerned about are from chronic exposures, not acute. Thus, while short-term exposures from some sources will not be immediately reduced, this is not expected to result in adverse health effects. Further, although the full benefit of the ban (complete removal of sources and their associated risks from residential buildings) would not be realized until year 15, we expect that most sources would not wait until the 15th year to retire their equipment since many of these sources are nearing the end of their useful lives. Thus, over the next 15 years, the final rule will systematically reduce exposures and risks from current levels as old equipment is retired and existing co-residential shops are either relocated or converted to alternative solvents, ultimately resulting in the elimination of these chronic health risks.

About 80 percent of the co-residential sources already have installed controls similar to NYCRR Part 232 controls. Imposing additional capital costs on the approximately 250 remaining co-residential sources is not reasonable given the significant costs of the controls and the fact that even they would be prohibited upon machine replacement or the arrival of the sunset date. For many of these shops, the remaining useful life of the machine would not allow full amortization of the capital investment before the system would have to be replaced. In addition, it is not clear how much additional risk protection would be achieved by the controls and what would be the significance of the emissions reduction, which would be realized only over the remaining useful life of each machine. For shops with PCE equipment that would be replaced within a few years, the health benefits would be limited and the capital costs would not be well spent. Therefore, temporarily imposing this control technology is not necessary under section 112(d)(6).

1. Risk Assessment Data

Comment: Industry commenters claimed that the New York City data that EPA used to assess co-residential exposures were biased and these measured exposures are not representative of typical exposure. The sources of bias noted by the commenter were that: Residences sampled were selected based on complaints; sampled facilities may not have been in full compliance with NYCRR Part 232 rules; some samples taken soon after compliance with Part 232 and PCE would not have had time to dissipate to routine levels characteristic of the controls installed.

Response: The NYC study, as described in McDermott (2005), states that ''indoor air perc levels in most apartments in dry cleaner buildings sampled were below, or only slightly above, the NYSDOH residential air guideline of 100 μg/m^3. Higher levels were found in dry cleaner buildings located in low-income, minority neighborhoods and in buildings elsewhere that had been the subject of a residential complaint. Since successful completion of the NYC Perc Project required that as many apartments as possible with elevated PCE levels be identified, the strategy for identifying buildings for inclusion was modified so that buildings located in minority or low-income ZIP code areas and those that had been the subject of complaint were prioritized.'' The article goes on to state on that the sample ''obtained is not truly a random sample of all dry cleaners in the study area. However, socioeconomic characteristics of the census block groups where sampled buildings are located reflect socioeconomic characteristics of their larger ZIP Code area, are equivalent to census block groups where buildings that were not sampled are located, and are correlated with sampled household self-reported socioeconomic characteristics. Thus, conclusions drawn with respect to sampled building neighborhood characteristics and indoor air PCE level are likely to be applicable to other residential buildings matching NYC Perc Project building inclusion criteria (*e.g.*, dry cleaner using PCE on-site; not other sources of VOC).''

While the study authors believe that their results are likely generalizable to co-residential dry cleaners that meet similar criteria with respect to complaints and socioeconomic characteristics, the results cannot be generalized to all co-residential dry cleaners in NYC or across the country. We are not currently able to estimate the extent to which this study provides estimates that are biased. Nevertheless, these empirical results provide a representation of exposure levels that exist in New York City (where the vast majority of co-residential dry cleaners are located) and adequately serve as one basis for this rulemaking.

Our risk assessment has focused on the exposures associated with dry cleaning facilities that are in compliance with the New York Part 232 requirements. We examined the McDermott data, NYSDOH data, and public comments. To identify the compliant facilities, EPA ensured that

the date by which the sample was taken was after the date in which the facility began operating a fourth generation dry cleaning machine and had installed a vapor barrier. While the sampling dates are well documented, the compliance records for certain dry cleaning facilities are somewhat ambiguous; this is due to some limitations in the compliance records provided by NYSDOH. These records are comprised of initial notification letters that facilities have submitted to the NYSDEC as well as third-party inspection reports. EPA used a combination of these data to assess whether a particular facility was in or out of compliance with NYCRR Part 232. The result of this evaluation was a finding that 25 of the 65 sampled apartments were in the 9 buildings with potentially noncompliant dry cleaning systems, while 40 of the apartments were in the 14 buildings with compliant dry cleaning systems, and these were the values used to assess the risks associated with well-controlled dry cleaners. Nevertheless, we were unable to definitively determine the compliance status of one dry cleaner that was associated with high exposure level, as noted in the risk characterization memorandum in the docket. We believe that despite the uncertainty about this particular dry cleaner, our decision for the requirements for co-residential dry cleaners is warranted because it does not hinge on the compliance status of this particular facility.

2. Part 232 Technology Requirements

Comment: Some commenters opposed the use of Title 6 NYCRR Part 232 Technology Requirements for the final rule requirements, because these controls have not been effective in reducing exposure in residences. In addition this option would do nothing to reduce current risks in New York, where the majority of co-residential facilities are located. These commenters supported a ban of PCE because this is the only way to protect the public with an ample margin of safety. These commenters suggested that a phase-out of PCE should be accompanied by a sunset provision for existing machines or else co-residential dry cleaners would have the incentive not to replace their existing equipment. Rather, dry cleaners would continue to use their old, high-emitting equipment well beyond the normal economic life, resulting in continued high exposures to residences.

Response: We have concluded that, based on available data, the NYCRR Part 232 controls have not been demonstrated to be effective in preventing significant exposures to PCE in certain cases.

After reviewing technical developments in the industry, available public health risk information, and the comments received, we have concluded that the option that best satisfies the requirements of CAA section 112(d)(6) for existing co-residential area sources is to phase out the use of PCE. In addition to the potential for co-residential dry cleaners to cause high individual cancer risks (as fully discussed in the proposed rule), we believe that the cancer incidence estimates for these sources also justifies the decision. Estimates of cancer incidence are helpful in characterizing cancer risks, because such estimates account for the full range of exposures that have been captured by the monitoring and provide a metric of the aggregate health impact taking into account the number of people exposed to varying levels of risk. Our estimate of annual cancer incidence for the approximately 1300 co-residential sources currently in operation is in the range of 0.2 to 2 cases per year, which is on par with the estimated annual incidence of 0.4 to 4 cases per year for the approximately 27,000 other area source cleaners. The near-parity of these two estimates, notwithstanding the much smaller number of co-residential vis-à-vis other sources, suggests that co-residential sources pose a disproportionate cancer incidence to their residents. Further, this estimate of total cancer incidence for the co-residential sources is at the high-end of cancer incidence estimates that we have generated for other source categories reviewed by the residual risk program to date.

As we have previously noted, these cancer incidence estimates carry significant uncertainties since they are sensitive to assumptions regarding the number of individuals exposed and the level of exposure borne by residents of un-monitored apartments. However, when viewed in the context of the other risk information and the availability of alternative dry cleaning processes, we believe that the incidence estimates provide additional support for a requirement for new installations at co-residential facilities to adopt a non-PCE solvent.

We have determined that a phase out that takes place too quickly would impose significant adverse impacts on dry cleaners. For these small businesses, which have substantial investments in their current equipment, it is appropriate to allow them sufficient time to recover the investment over the useful life of the equipment and raise the needed capital to fund alternative solvent systems. The final rule establishes a date 15 years from the date of the proposed rule, after which time all PCE systems at co-residential sources are prohibited. We anticipate that most systems will be relocated to nonresidential buildings or converted to alternative solvents prior to this date.

3. Economic Impact of PCE Phase-Out

Comment: Industry commenters opposed the phase-out of new PCE installations because it would cause a significant effect on a substantial number of small businesses. The commenters said that the EPA underestimated the costs of this option because the EPA analysis overestimated dry cleaner revenues, underestimated the cost of hydrocarbon equipment, underestimated the cost of meeting fire codes, and used a 7 percent interest rate, which is unrealistically low. In addition, the commenters maintained that any type of ban on PCE would send a misleading signal that PCE is unsafe and would cause landlords to not renew leases of dry cleaners. This severe economic impact was not accounted for in EPA's economic analysis.

Response: The estimates of impacts provided in the Agency's economic analysis for the rule are in terms of annualized compliance cost per revenues for parent firms. It is not in terms of compliance cost per profits as asserted by the commenter. The commenter states that the impact will be a ''substantial'' increase in costs and a decrease in profit margin far in excess of the five percent impact on year-to-year profits accepted as a benchmark. The benchmark of at least five percent impact on year-to-year profits as a benchmark for significant impacts is, however, not a benchmark that the Agency has recognized as such in the recent past. The cost-to-sales calculation provided in the economic impact analysis has been an accepted approach for indicating the potential economic impacts to small and other businesses as part of the process to determine the degree of small business impacts associated with a proposed rule.

We chose to use the industry revenue average for 1997 instead of the data from Census for 2002 because it was readily available to the model we chose to employ for generating the economic impact results at the time of the analysis. The value we used from the Census does reflect the average revenue per firm and applying this value is consistent with revenue estimates used in economic impact analyses that accompanied recent Agency rulemakings. A review of average revenue for firms in the dry cleaning

industry from the 2002 Economic Census showed that this average revenue was 10 percent higher than the value from the 1997 Economic Census. Hence, our economic impact estimates will be lower using average revenues per firm from the 2002 Census as compared to the values used in the current economic impact analysis.

It should be noted that use of the average revenue-per-firm estimate suggested by the commenter of $204,000 in the Agency's analysis would lead to higher estimated impacts to small businesses than calculated by EPA but would not lead to any impacts above three percent of sales, a benchmark among others often considered as significant in characterizing small business impacts.

The incremental cost between a PCE and a hydrocarbon machine is a reasonable estimate of the cost of eliminating PCE at a facility because, on balance, the rule revisions will not affect the economic life of a machine. We assume that at the end of the machine's 15-year economic life, the machine has no salvage value. Instead of purchasing a PCE machine, the owner incurs the incremental cost of purchasing a hydrocarbon machine. Some sources may be required by their landlord to retire their PCE machine before the end of its useful life; EPA acknowledges that such premature retirements may create a separate additional burden on owners. Other sources may choose to maintain their machine beyond its normal economic life. Because predicting these effects would be very difficult, we assume that these effects do not change our assumption of a 15 year economic life for these machines. A number of commenters agreed with our estimate of 15 years for the economic life of these machines.

Our cost estimate is a reasonable appraisal of costs. Our estimate that 50 percent of facilities outside New York that install hydrocarbon machines would need a sprinkler system is similar to the commenter's estimate of 66 percent. The chart of fire code geographic applicability provided by the commenter is not a sure indicator of whether a facility would need a sprinkler system because machine vendors are often able to obtain a case-by-case variance if they can demonstrate fire protection features integral to the machine. Regarding the cost per facility outside of New York City, the cost in the docket item cited by the commenter was from a machine vendor. We used a lower estimate provided by a sprinkler contractor. Sprinkler system costs for plants in New York City are particularly difficult to estimate because of the fact that actual costs are unavailable because few if any systems have been built because of their high cost. In addition, by the time PCE machines in co-residential facilities need to be replaced, between now and the sunset date in 2020, it is possible that a less combustible solvent will be available, and sprinkler systems not required for plants that can no longer use PCE.

The use of 7 percent in annualizing costs is consistent with the guidance of OMB Circular A–94. Besides the quote from Circular A–4 listed by the commenter in footnote 56 on page 30, the Circular also recommends that 7 percent be used for annualizing the costs of regulatory analyses. As mentioned in Circular A–4, ''As a default position, OMB Circular A–94 states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis. The 7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. OMB revised Circular A–94 in 1992 after extensive internal review and public comment. In a recent analysis, OMB found that the average rate of return to capital remains near the 7 percent rate estimated in 1992. Circular A–94 also recommends using other discount rates to show the sensitivity of the estimates to the discount rate assumption.'' In addition to a 7 percent discount rate, we have also analyzed costs using a 3 percent discount rate, consistent with the requirements of Circular A–4.

4. Alternative Solvents

Comment: Some commenters opposed the use of alternative solvents because of the potential negative impacts. These potential impacts include uncertainty about the toxicity of cyclic siloxanes; increased volatile organic compound (VOC) emissions from hydrocarbons; safety hazard of carbon dioxide (CO_2); large quantities of wastewater from wet cleaners; and the fire hazard of hydrocarbons and cyclic siloxanes (D5).

Response: We recognize that each of the alternative processes has potential drawbacks. However, with the variety of choices of alternative systems that are currently available, dry cleaners can find a system that can work for their individual circumstances. The potential concerns brought up by the commenters are addressed below.

A dry cleaner that switches solvents from PCE to a hydrocarbon solvent would increase emissions of VOC, because hydrocarbon solvents are classified as a VOC and PCE is not. Increased VOC emissions could result in an increase in atmospheric ozone at some locations, depending on the mix of ozone precursors in the ambient air locally. Any new hydrocarbon machines would be subject to the new source performance standard (NSPS) for petroleum dry cleaners (40 CFR 60, subpart JJJ). The NSPS limits VOC emissions by requiring application of the best demonstrated control technology. The VOC emissions of a hydrocarbon machine at an average-sized facility are approximately 0.2 tons per year, which is a relatively small quantity for non-HAP VOC. Given the high risks posed by PCE in co-residential settings, we have concluded that the public health benefit of using alternative solvents, even if some of the alternatives are ozone precursors, supports elimination of PCE use in co-residential area sources (considering developments in practices, processes, and control technologies). In cases where VOC emissions from hydrocarbon machines would contribute significantly to ozone formation, the responsible air quality planning agency can require additional emission controls for VOC, as appropriate. Regarding HAP emissions, although benzene was once a significant component of Stoddard solvent alternatives it is now present only in trace amounts. We are unaware that any of the other solvents currently used in dry cleaning contain any of the CAA listed HAP.

EPA is not currently in a position to characterize the potential risks to human health or the environment associated with the use of decamethylcyclopentasiloxane (D5), an odorless, colorless siloxane fluid, as a dry cleaning solvent. In 2003, EPA received from Dow Corning the preliminary results of a two-year chronic toxicity and carcinogenicity study on D5 using rats. Preliminary results suggest that female rats exposed to the highest concentration of D5 exhibited a statistically significant increase of uterine tumors. The final results of the two-year study confirmed the significant increase in uterine tumors following exposure at the highest concentration of D5, while no significant increase in tumors was observed at lower doses. EPA is in the process of evaluating studies received on the mode of action to help determine whether a potential carcinogenic hazard

is associated with D5. Subsequent action may include external peer review of data and a determination whether it is appropriate to conduct a risk assessment for D5. EPA has developed a fact sheet describing its current state of knowledge on D5 that is available on the Garment and Textile Web site and that can be used by industry to guide decisions regarding the use of D5 in dry cleaning.

Hydrocarbon solvents and cyclic siloxanes can present a fire hazard because of their combustibility. However, hydrocarbon solvent dry cleaning machines have a long history of safety, as do cyclic siloxanes. We know of no fires in this country from the use of cyclic siloxanes or the synthetic hydrocarbon solvents currently in use. Dry cleaning machines that use these solvents are designed with special safety features, such as fireproof electrical connections, nitrogen blanketing, temperature controls to prevent explosion, and others.

For CO_2 systems, the commenters were referring to possible hazards due to the high pressure at which these systems operate. However, we are unaware of any safety-related accidents regarding CO_2 systems. The systems currently in use are designed to withstand the high pressures required. The pressures at which these machines operate are not extreme compared to many other processes, and the engineering to operate safely at these pressures is well understood.

Wet cleaning systems are widely used in the industry either to reduce PCE consumption or as a replacement for PCE dry cleaning. While wet cleaning generates wastewater, we are not aware of any health hazards from this waste. We expect that waste generated by wet cleaning systems will be significantly less hazardous than waste from PCE systems they replace.

G. Technical Corrections to the 1993 Dry Cleaning NESHAP

Based on comments received, we have made some technical corrections to the NESHAP in addition to those proposed. Many of these changes are needed to update the rule to reflect advances in PCE dry cleaning technology. Other changes harmonize the revisions with the existing NESHAP. The most significant technical changes are listed below. None of these changes affect the stringency of the rule or increase regulatory burden.

1. Additional Information Requested in the Notice of Compliance Status Report

We have added a requirement to indicate in the notice of compliance report if the dry cleaning facility is a major source or is located in a building with a residence or a business. This one-time requirement will impose no additional cost to the industry since the notice of compliance report is already required to be submitted.

2. Alternative Monitoring Requirement

We revised the monitoring requirement for refrigerated condensers to specify that owners and operators must monitor the high and low pressure of the refrigeration system, rather than the exit temperature, in cases where the system is equipped with pressure gauges. The pressure readings of the refrigeration system are the preferred monitoring parameters since these parameters are the most reliable indicators that the condenser is functioning properly during the drying phase, which represents maximum load conditions.

Virtually all machines have instrumentation for measuring the high and low pressures of the refrigeration system and vendor specifications for the pressure ranges that indicate proper operation of the condenser. However, for refrigeration systems that are not equipped with pressure gauges, the rule requires owners and operators to monitor the temperature of the gas-vapor outlet stream.

V. Impacts

A. Major Sources

The national capital cost of the final rule for major sources is $30,000, with an annual cost savings of about $250,000. The capital costs for individual facilities would range from $0 to $3,300 with a median cost of $3,300. Annualized costs would range from a cost savings of $84,000,000 per year to a cost of $1,319 per year. Most facilities would recognize a cost savings primarily from implementing the enhanced LDAR program. Leak detection and repair is a pollution prevention approach where reduced emissions translate into less PCE consumption and reduced operating costs because facilities would need to purchase less PCE. The highest maximum individual cancer risk are estimated to be reduced from a range of 50-in-1 million (using OPPTS potency values) to 400-in-1 million (using CalEPA potency values) down to a range of 20-in-1 million (using OPPTS potency values) to 200-in-1 million (using CalEPA potency values).

B. Area Sources

The final rule will reduce PCE emissions by an estimated 5,700 tons per year and will result in a net cost savings.

The capital costs to implement these requirements are $12 million. The enhanced LDAR program would cost about $5 million for an estimated 20,000 facilities to purchase a halogenated hydrocarbon detector at a cost of $250 each. About 200 facilities would be required to replace their existing transfer machines with dry-to-dry machines at a cost of about $36,000 each for a total industry cost of $7.5 million.

Annually, we estimate a cost savings to the industry of about $2.7 million per year. This cost savings would be realized because both replacement of transfer machines and enhanced LDAR will reduce annual PCE consumption. The reduction in annual PCE consumption at the 200 businesses that would replace transfer machines is more than sufficient to offset the annualized cost of the new equipment. In particular, most of the transfer machines are beyond the end of their economic life and it would be economically beneficial for the facilities to replace the transfer machines with dry-to-dry machines. Thus, we conclude the economic impacts to the affected businesses and facilities are negligible.

C. Co-Residential Sources

By the fifteenth year, the final rule will reduce PCE emissions from co-residential sources by an additional 317 tons/year. Cancer risks from all co-residential sources will be eliminated by the fifteenth year.

The national capital costs for new co-residential sources are $63.4 million, and the annualized costs are about $7.0 million in the fifteenth year. These cost estimates reflect the incremental capital and operating cost for 1,300 co-residential facilities to replace their PCE machines with machines using hydrocarbon solvent. The incremental cost was estimated as the difference between the costs of a new PCE machine meeting the NESHAP and a new machine using hydrocarbon solvents. The operating cost includes the cost of installing fire protection sprinklers in jurisdictions that are estimated to require sprinklers for hydrocarbon machines. The cost will be lower at facilities that already have sprinkler systems in place, that choose a less costly alternative garment cleaning option utilizing non-combustible solvents, or that choose to convert their facility to a drop shop and conduct PCE dry cleaning operations offsite.

An alternative calculation of the costs to co-residential sources using a net present value methodology shows that these costs are $3.5 million per year at

a 7 percent interest rate and $3.9 million per year at a 3 percent interest rate. These cost estimates are derived from the summing of the present value of the costs from the co-residential phase-out during the period over which the phase-out occurs, amortized over 15 years. This estimate provides a measure of the costs of the co-residential phase-out over the time period in which the phase-out takes place rather than an estimate of the costs for the fifteenth year.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has determined that it considers this final rule a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1415.06 and OMB Control Number 2060–0234.

The 2005 revisions to the Dry Cleaning NESHAP contain recordkeeping and reporting requirements beyond the recordkeeping and reporting requirements that were promulgated on September 22, 1993. Owners or operators will continue to keep records and submit required reports to EPA or the delegated State regulatory authority. Notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to the 1993 Dry Cleaning NESHAP. Owners or operators subject to the 1993 Dry Cleaning NESHAP continue to maintain records and retain them for at least five years following the date of such measurements, reports, and records. Information collection requirements that were promulgated on September 22, 1993 in the Dry Cleaning NESHAP prior to the 2005 proposed amendments, as well the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to national emission standards, are documented in EPA ICR No. 1415.05.

The information collection requirements described here are only those notification, recordkeeping, and reporting requirements that are contained in the 2005 revisions to the Dry Cleaning NESHAP. To comply with the 2005 revisions to the 1993 Dry Cleaning NESHAP, owners or operators of dry cleaning facilities read instructions to determine how they are affected. All sources will begin an enhanced LDAR program that requires a handheld portable monitor. Major source facilities will purchase a PCE gas analyzer and area sources will purchase a halogenated hydrocarbon leak detector. Owners and operators will incur the capital/startup cost of purchasing the monitors, plus ongoing annual operation and maintenance costs. The total capital/startup cost for this ICR is $5,049,000. Annual operation and maintenance cost are $552,825.

Owners and operators of major and area sources conduct enhanced leak detection and repair and keep monthly records of enhanced leak detection and repair events.

Approximately 28,000 existing area sources and 12 existing major sources are subject to the rule and are subject to the 1993 Dry Cleaning NESHAP. We estimate that an average of 2,330 new area sources per year will become subject to the regulation in the next three years, but that the overall number of facilities will remain constant as the new owners will take over old existing facilities. No new major sources are expected. The estimated annual labor cost for major and area sources to comply with the 2005 rule is approximately $3.9 million.

The recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to us pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to our policies set forth in 40 CFR part 2, subpart B.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business based on the following Small Business Administration (SBA) size standards, which are based on annual sales receipts: NAICS 812310—Coin-Operated Laundries and Dry Cleaners—$6.0 million; NAICS 812320—Dry Cleaning and Laundry Services (Except Coin-Operated)—$4.0 million; NAICS 812332—Industrial Launderers—$12.0 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Under these definitions, over 99 percent of commercial dry cleaning firms are small. For more information, refer to *http://www.sba.gov/size/sizetable2002.html.* The economic impacts of the regulatory alternatives were analyzed based on consumption of PCE, but are described in terms of comparing the compliance costs to dry cleaning revenues at affected firms. In addition, we used average revenues for firms in the dry cleaning industry instead of median revenues. This was because the Census data source that we utilized did not report medium revenues for firms by industry. For more detail, see the current Economic Impact Analysis in the public docket.

After considering the economic impacts of this final rule on small entities, I certify that the final rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the economic impact of the final rule to affected small entities in the entire PCE dry cleaning source category and considers the economic impact associated with the options for co-residential facilities. Over 98 percent of the approximately 20,000 small entities directly regulated by the final rule, including both major and area sources, are expected to have costs of less than one percent of sales. The cost impacts for all regulated small entities range from cost savings to less than 1.9 percent of sales. The small entities directly regulated by the final rule are dry cleaning businesses within the NAICS codes 812310, 812320, and 812332. We have determined that all of the major sources affected by the final rule are owned by businesses within NAICS 812332. The final rule is expected to affect 11 ultimate parent businesses that will be regulated as major sources. Six of the parent businesses are small according to the SBA small business size standard. None of the six firms has an annualized cost of more than one percent of sales associated with meeting the requirements for major sources.

We have determined that virtually all of the affected small businesses that own area source dry cleaners are in NAICS 812320. Small businesses complying with the final area source requirements are expected to have the following impacts. Ninety-four percent of the approximately 20,000 small entities owning area sources directly regulated by the final rule, are expected to have costs of less than 0.9 percent of sales. The one-time cost of $250 for purchasing a halogenated hydrocarbon detector is less than 0.10 percent of the average annual revenues for dry cleaning businesses in NAICS 812320, and there are minimal annualized costs associated with a detector's use. Of the nearly 200 small businesses that have to replace their transfer machines (or one percent of the total number of affected small entities), most of these businesses are expected to experience an annual cost savings and the others are expected to have compliance costs of less than 1.2 percent of sales. Of the remaining 1,000 affected small businesses (or 3.5 percent of the total number of affected small entities), all of which are owners of co-residential facilities, the compliance costs based on the first option for co-residential area sources range from 0.9 to 1.9 percent of sales.

Cost impacts associated with the final decision for major sources are presented in section V.A of this preamble. These impacts are also presented for area sources in section V.B, and for co-residential sources in section V.C. These impacts are detailed in the BID in the public docket as memoranda five through seven. For more information on the small entity economic impacts associated with the final decisions for dry cleaners affected by the final rule, please refer to the Economic Impact Analysis in the public docket.

Although the final rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the rule on small entities. When developing the final standards, we took special steps to ensure that the burdens imposed on small entities were minimal. We conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. In response to comments, we revised the compliance period for major and area sources from 90 days to two years. Additionally, we added a provision to the rule that allows containers for separator water to be uncovered while the containers are in use.

Following publication of the final rule, copies of the **Federal Register** notice and, in some cases, background documents, will be publicly available to all industries, organizations, and trade associations that have had input during the regulation development, as well as State and local agencies.

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.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to 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.''

The 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. None of the affected dry cleaning facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the proposed rule.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own dry cleaning facilities subject to the final standards for dry cleaning facilities. Thus, Executive Order 13175 does not apply to the final rule.

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

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

While these final rule amendments are not subject to the Executive Order because they are not economically significant as defined in Executive Order 12866, the Agency believes this action represents reasonable further efforts to mitigate risks to the general public, including effects on children. This conclusion is based on our assessment of the imposed technological controls that would reduce the PCE impacts on human health associated with exposures to dry cleaning operations.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The final rule will have a negligible impact on energy consumption because less than one percent of the industry will have to install additional emission control equipment to comply. The cost of energy distribution should not be affected by the final rule at all since the standards do not affect energy distribution facilities. We also expect that there would be no impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. Further, we have concluded that the final rule is not likely to have any significant adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d)of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final revisions to the 1993 NESHAP for PCE dry cleaners do not include requirements for technical standards beyond what the NESHAP requires. Therefore, the requirements of the NTTAA do not apply to this action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendment 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 final rule amendment in the **Federal Register**. The final rule amendment is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule is effective on July 27, 2006.

List of Subjects in 40 CFR Part 63

Environmental Protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 13, 2006.

Stephen L. Johnson,

Administrator.

■ For reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart M—[Amended]

■ 2. Section 63.320 is amended as follows:
■ a. By revising paragraph (b).
■ b. By revising paragraph (c).
■ c. By revising paragraph (d).
■ d. By revising paragraph (e).

§ 63.320 Applicability.

* * * * *

(b) The compliance date for a new dry cleaning system depends on the date that construction or reconstruction commences.

(1) Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991 and before December 21, 2005, shall be in compliance with the provisions of this subpart except § 63.322(o) beginning on September 22,

1993 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act; and shall be in compliance with the provisions of § 63.322(o) beginning on July 28, 2008, except as provided by § 63.6(b)(4), as applicable.

(2)(i) Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005 shall be in compliance with the provisions of this subpart, except § 63.322(o), immediately upon startup; and shall be in compliance with the provisions of § 63.322(o) beginning on July 27, 2006 or immediately upon startup, whichever is later.

(ii) Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005, but before July 13, 2006, and is located in a building with a residence, shall be in compliance with the provisions of this subpart, except § 63.322(o), immediately upon startup; shall be in compliance with the provisions of § 63.322(o)(5)(ii) beginning on July 27, 2006; and shall be in compliance with the provisions of § 63.322(o)(5)(i) beginning on July 27, 2009.

(3) Each dry cleaning system that commences construction or reconstruction on or after July 27, 2006, shall be in compliance with the provisions of this subpart, including § 63.322(o), immediately upon startup.

(c) Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall comply with §§ 63.322(c), (d), (i), (j), (k), (l), and (m); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993, and shall comply with other provisions of this subpart except § 63.322(o) by September 23, 1996; and shall comply with § 63.322(o) by July 28, 2008.

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), and (o)(4); 63.323(d); and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total PCE consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s), is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), (m), (o)(1), and (o)(4), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the PCE consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

* * * * *

■ 3. Section 63.321 is amended by revising the definition of Filter, and adding in alphabetical order definitions for Halogenated hydrocarbon detector, PCE gas analyzer, Residence, Vapor barrier enclosure, and Vapor leak to read as follows:

§ 63.321 Definitions.

* * * * *

Filter means a porous device through which PCE is passed to remove contaminants in suspension. Examples include, but are not limited to, lint filter, button trap, cartridge filter, tubular filter, regenerative filter, prefilter, polishing filter, and spin disc filter.

Halogenated hydrocarbon detector means a portable device capable of detecting vapor concentrations of PCE of 25 parts per million by volume and indicating a concentration of 25 parts per million by volume or greater by emitting an audible or visual signal that varies as the concentration changes.

* * * * *

PCE gas analyzer means a flame ionization detector, photoionization detector, or infrared analyzer capable of detecting vapor concentrations of PCE of 25 parts per million by volume.

* * * * *

Residence means any dwelling or housing in which people reside excluding short-term housing that is occupied by the same person for a period of less than 180 days (such as a hotel room).

* * * * *

Vapor barrier enclosure means a room that encloses a dry cleaning system and is constructed of vapor barrier material that is impermeable to perchloroethylene. The enclosure shall be equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system shall be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes. The vapor barrier enclosure shall be constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor. The enclosure shall be constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

Vapor leak means a PCE vapor concentration exceeding 25 parts per million by volume (50 parts per million by volume as methane) as indicated by a halogenated hydrocarbon detector or PCE gas analyzer.

* * * * *

■ 4. Section 63.322 is amended as follows:

■ a. By revising paragraph (e)(3).
■ b. By revising paragraph (j).
■ c. By revising paragraph (k) introductory text.
■ d. By revising paragraph (k)(11).
■ e. By revising paragraph (m).
■ f. By adding paragraph (o).

§ 63.322 Standards.

* * * * *

(e) * * *

(3) Shall prevent air drawn into the dry cleaning machine when the door of the machine is open from passing through the refrigerated condenser.

* * * * *

(j) The owner or operator of an affected facility shall store all PCE and wastes that contain PCE in solvent tanks or solvent containers with no perceptible leaks. The exception to this requirement is that containers for separator water may be uncovered, as necessary, for proper operation of the machine and still.

(k) The owner or operator of a dry cleaning system shall inspect the system weekly for perceptible leaks while the dry cleaning system is operating. Inspection with a halogenated hydrocarbon detector or PCE gas analyzer also fulfills the requirement for inspection for perceptible leaks. The following components shall be inspected:

* * * * *

(11) All Filter housings.

* * * * *

(m) The owner or operator of a dry cleaning system shall repair all leaks detected under paragraph (k) or (o)(1) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt.

* * * * *

(o) Additional requirements:

(1) The owner or operator of a dry cleaning system shall inspect the components listed in paragraph (k) of this section for vapor leaks monthly while the component is in operation.

(i) Area sources shall conduct the inspections using a halogenated hydrocarbon detector or PCE gas analyzer that is operated according to the manufacturer's instructions. The operator shall place the probe inlet at the surface of each component interface where leakage could occur and move it slowly along the interface periphery.

(ii) Major sources shall conduct the inspections using a PCE gas analyzer operated according to EPA Method 21.

(iii) Any inspection conducted according to this paragraph shall satisfy the requirements to conduct an inspection for perceptible leaks under § 63.322(k) or (l) of this subpart.

(2) The owner or operator of each dry cleaning system installed after December 21, 2005, at an area source shall route the air-PCE gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-PCE gas-vapor stream from inside the dry cleaning machine drum through a non-vented carbon adsorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

(3) The owner or operator of any dry cleaning system shall eliminate any emission of PCE during the transfer of articles between the washer and the dryer(s) or reclaimer(s).

(4) The owner or operator shall eliminate any emission of PCE from any dry cleaning system that is installed (including relocation of a used machine) after December 21, 2005, and that is located in a building with a residence.

(5)(i) After December 21, 2020, the owner or operator shall eliminate any emission of PCE from any dry cleaning system that is located in a building with a residence.

(ii) Sources demonstrating compliance under Section 63.320(b)(2)(ii) shall comply with paragraph (o)(5)(ii)(A) through (C), in addition to the other applicable requirements of this section:

(A) Operate the dry cleaning system inside a vapor barrier enclosure. The exhaust system for the enclosure shall be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(B) Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning drum through a carbon adsorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

(C) Inspect the machine components listed in paragraph (k) of this section for vapor leaks weekly while the component is in operation. These inspections shall be conducted using a halogenated hydrocarbon detector or PCE gas analyzer that is operated according to the manufacturer's instructions. The operator shall place the probe inlet at the surface of each component interface where leakage could occur and move it slowly along the interface periphery.

■ 5. Section 63.323 is amended as follows:

■ a. By revising paragraph (a)(1).

■ b. By revising paragraphs (b) introductory text, (b)(1), and (b)(2).

■ c. By revising paragraph (c).

§ 63.323 Test methods and monitoring.

(a) * * *

(1) The owner or operator shall monitor the following parameters, as applicable, on a weekly basis:

(i) The refrigeration system high pressure and low pressure during the drying phase to determine if they are in the range specified in the manufacturer's operating instructions.

(ii) If the machine is not equipped with refrigeration system pressure gauges, the temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer with a temperature sensor to determine if it is equal to or less than 7.2 °C (45 °F) before the end of the cool-down or drying cycle while the gas-vapor stream is flowing through the condenser. The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2 °C (45 °F) to an accuracy of ±1.1 °C (±2 °F).

* * * * *

(b) When a carbon adsorber is used to comply with § 63.322(a)(2) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with § 63.322(b)(3) or § 63.322(o)(2), the owner or operator shall measure the concentration of PCE in the exhaust of the carbon adsorber weekly with a colorimetric detector tube or PCE gas analyzer. The measurement shall be taken while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber or removal of the activated carbon to determine that the PCE concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube or PCE gas analyzer designed to measure a concentration of 100 parts per million by volume of PCE in air to an accuracy of 25 parts per million by volume; and

(2) Use the colorimetric detector tube or PCE gas analyzer according to the manufacturer's instructions; and

* * * * *

(c) If the air-PCE gas vapor stream is passed through a carbon adsorber prior to machine door opening to comply with § 63.322(b)(3) or § 63.322(o)(2), the owner or operator of an affected facility shall measure the concentration of PCE in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube or PCE gas analyzer to determine that the PCE concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube or PCE gas analyzer designed to measure a concentration of 300 parts per million by volume of PCE in air to an accuracy of ±75 parts per million by volume; and

(2) Use the colorimetric detector tube or PCE gas analyzer according to the manufacturer's instructions; and

(3) Conduct the weekly monitoring by inserting the colorimetric detector or PCE gas analyzer tube into the open space above the articles at the rear of the dry cleaning machine drum immediately upon opening the dry cleaning machine door.

* * * * *

■ 6. Section 63.324 is amended as follows:

■ a. By revising paragraphs (d)(3), (d)(5), and (d)(6).

■ b. By adding paragraph (f).

§ 63.324 Reporting and recordkeeping requirements.

* * * * *

(d) * * *

(3) The dates when the dry cleaning system components are inspected for leaks, as specified in § 63.322(k), (l), or (o)(1), and the name or location of dry cleaning system components where leaks are detected;

* * * * *

(5) The date and temperature sensor monitoring results, as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a), (b), or (o); and

(6) The date and monitoring results, as specified in § 63.323, if a carbon adsorber is used to comply with § 63.322(a)(2), (b)(3), or (o)(2).

* * * * *

(f) Each owner or operator of a dry cleaning facility shall submit to the Administrator or delegated State authority by registered mail on or before July 28, 2008 a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:

(1) The name and address of the owner or operator;

(2) The address (that is, physical location) of the dry cleaning facility;

(3) If they are located in a building with a residence(s), even if the residence is vacant at the time of this notification;

(4) If they are located in a building with no other tenants, leased space, or owner occupants;

(5) Whether they are a major or area source;

(6) The yearly PCE solvent consumption based upon the yearly solvent consumption calculated according to § 63.323(d);

(7) Whether or not they are in compliance with each applicable requirement of § 63.322; and

(8) All information contained in the statement is accurate and true.

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Federal Register

Vol. 71, No. 144

Thursday, July 27, 2006

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The United States Government Manual	**741–6000**
Other Services	
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Privacy Act Compilation	**741–6064**
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FEDERAL REGISTER PAGES AND DATE, JULY

37807–38052 3
38053–38258 5
38259–38510 6
38511–38752 7
38753–38978 10
38979–39202 11
39203–39510 12
39511–40002 13
40003–40382 14
40383–40636 17
40637–40874 18
40875–41090 19
41091–41344 20
41345–41722 21
41723–42016 24
42017–42240 25
42241–42566 26
42567–42746 27

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7758 (See 8033) 38255
8033 38255
8034 38509
8035 40383
8036 41091

Executive Orders:
13348 (See Notice of July 18, 2006) 41093
13381 (Amended by 13408) 37807
13408 37807
13409 38511

Administrative Orders:
Presidential Determinations:
No. 2006-17 of June 30, 2006 39511
Notices:
Notice of July 18, 2006 41093

5 CFR

213 42241
315 42241
534 38753
724 41095

Proposed Rules:
553 41376
1630 40034
1651 40034
1653 40034
1690 40034

6 CFR

5 42603

7 CFR

56 42006
70 42006
210 39513
215 39513
220 39513
225 39513
226 39513
235 39513
301 ..... 40875, 40879, 42176, 42246
319 ..... 40875, 42176
625 38053
916 41345
917 41345
922 40637
923 41723
948 40639
1250 41725
1402 40641
1423 42017
1491 42567
1900 38979
2902 42572

Proposed Rules:
52 39017
205 ..... 37854, 40624
305 42319
319 ..... 38302, 42319
457 40194
762 42605
915 41740
916 38115
917 38115
925 39019
944 39019
1220 41741
1421 37857

8 CFR

Proposed Rules:
215 42605
235 42605

9 CFR

55 41682
81 41682
94 38259

10 CFR

72 39520
110 40003
727 40880

Proposed Rules:
20 37862
32 37862
430 ..... 41320, 42178
431 ..... 38799, 42178

11 CFR

104 38513

12 CFR

8 42017
201 39520
701 42249
915 40643

Proposed Rules:
41 40786
222 40786
308 40938
327 ..... 41910, 41973
328 40440
334 40786
364 40786
563 37862
563b 41179
571 40786
575 41179
615 39235
703 42326
717 40786
1750 39399

14 CFR

23 ..... 39203, 41099, 41101, 41104, 42251

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 27, 2006

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:

Farm and Ranch Lands Protection Program; published 7-27-06

AGRICULTURE DEPARTMENT

Energy Policy and New Uses Office, Agriculture Department

Biobased products; designation guidance for Federal procurement; published 7-27-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific halibut and tagged sablefish; published 6-27-06

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):

Natural gas storage facilities; rate regulation; published 6-27-06

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Dry cleaning facilities; perchloroethylene emission standards; published 7-27-06

Air quality implementation plans; approval and promulgation; various States:

Missouri; published 6-27-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 6-22-06

Boeing; published 6-22-06

McDonnell Douglas; published 6-22-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

National Organic Program:

Allowed and prohibited substances; national list; comments due by 8-2-06; published 7-3-06 [FR E6-10393]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

National Veterinary Accreditation Program; comments due by 7-31-06; published 6-1-06 [FR E6-08493]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Marketing assistance loans; grain security storage requirements; comments due by 8-2-06; published 7-3-06 [FR E6-10368]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:

Guaranteed farm loans; fees

Correction; comments due by 8-4-06; published 7-27-06 [FR E6-11979]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia

Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 8-2-06; published 7-3-06 [FR 06-05957]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):

Energy Policy Act of 2005; implementation—

Natural gas project applications; coordination of Federal authorization processing and complete consolidated records maintenance; comments due by 7-31-06; published 5-30-06 [FR E6-08205]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Portland cement manufacturing industry; comments due by 8-1-06; published 7-18-06 [FR E6-11334]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Ascorbic acid, etc.; comments due by 7-31-06; published 5-31-06 [FR E6-08249]

Inorganic bromide; comments due by 7-31-06; published 5-31-06 [FR E6-08398]

Sulfuryl fluoride; comments due by 8-4-06; published 7-5-06 [FR E6-10454]

Terbacil; comments due by 7-31-06; published 5-31-06 [FR E6-08275]

Zoxamide; comments due by 7-31-06; published 6-1-06 [FR E6-08395]

Toxic substances:

Polymer premanufacture notification exemption rule—

Perfluorinated polymers; exclusion; comments due by 7-31-06; published 5-30-06 [FR E6-08245]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Missouri; comments due by 7-31-06; published 6-28-06 [FR E6-10007]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Head Start Program:

Transportation requirements; waivers; comments due by 7-31-06; published 5-30-06 [FR E6-08222]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY; comments due by 7-31-06; published 6-1-06 [FR 06-05032]

Regattas and marine parades:

Ocean City Maryland Offshore Challenge; comments due by 7-31-06; published 6-29-06 [FR E6-10251]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Accelerated claim and asset disposition program; comments due by 8-4-06; published 6-5-06 [FR E6-08637]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Safety and soundness:

Record retention requirements; comments due by 7-31-06; published 6-1-06 [FR E6-08491]

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:

Allocation of assets—

Benefits payable in terminated plans and interest assumptions for valuing and paying benefits; comments due by 8-1-06; published 7-14-06 [FR E6-11101]

PERSONNEL MANAGEMENT OFFICE

Classification under General Schedule and prevailing rates systems; classification and job grading appeals; obsolete references removed; comments due by 7-31-06; published 6-30-06 [FR 06-05891]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 7-31-06; published 6-30-06 [FR 06-05872]

BAE Systems (Operations) Ltd.; comments due by 8-2-06; published 7-3-06 [FR E6-10352]

Boeing; comments due by 7-31-06; published 7-6-06 [FR E6-10536]

Empresa Brasileira de Aeronautica S.A.

(EMBRAER); comments due by 7-31-06; published 5-30-06 [FR 06-04909]

Fokker; comments due by 7-31-06; published 6-30-06 [FR 06-05873]

International Aero Engines; comments due by 8-1-06; published 6-2-06 [FR E6-08562]

Sikorsky; comments due by 7-31-06; published 5-31-06 [FR 06-04911]

Class E airspace; comments due by 7-31-06; published 6-14-06 [FR 06-05366]

VOR Federal airways; comments due by 7-31-06; published 6-16-06 [FR E6-09371]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Proposed highway projects; licenses, permits and approvals:

Ohio; comments due by 7-31-06; published 2-1-06 [FR E6-01312]

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Transit operations; prohibited drug use and alcohol misuse prevention:

Safety-sensitive employees; controlled substances and alcohol misuse testing; duplicative requirements elimination; comments due by 8-4-06; published 6-5-06 [FR 06-05073]

VETERANS AFFAIRS DEPARTMENT

Compensation, pension, burial and related benefits:

Benefits; bars, forfeiture, and renouncement; comments due by 7-31-06; published 5-31-06 [FR 06-04940]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 655/P.L. 109–245

To amend the Public Health Service Act with respect to the National Foundation for the Centers for Disease Control and Prevention. (July 26, 2006; 120 Stat. 575)

Last List July 26, 2006

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