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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. 145

Friday, July 28, 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.

Federal Register
Vol. 71, No. 145
Friday, July 28, 2006

Presidential Documents

Title 3—

The President

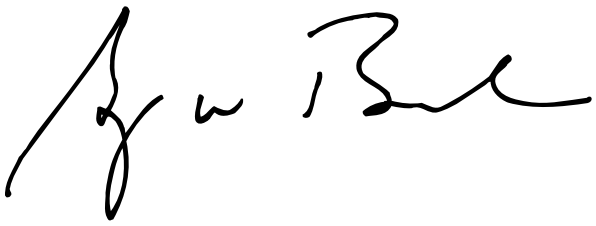
Memorandum of July 18, 2006

Assignment of Reporting Functions Related to Russian Debt Reduction for Nonproliferation

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, and section 1321 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (the ''Act''), I hereby assign to you the functions of the President under section 1321 of the Act.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 18, 2006.

[FR Doc. 06–6580
Filed 7–27–06; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 71, No. 145
Friday, July 28, 2006

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1425

RIN 0560–AH42

Cooperative Marketing Associations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the Commodity Credit Corporation (CCC) governing Cooperative Marketing Associations (CMA's). This rule provides that a CMA is no longer required to distribute Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) proceeds directly to members of the CMA within 15 days of receipt of such proceeds from CCC, and makes additional policy clarifications on CMA distributions to members. The intent of this rule is to remove regulatory requirements that are outdated and unnecessary.

DATES: This rule is effective July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, phone: (202) 720–7935; e-mail: *chris.kyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

CCC has made commodity loans available to producers through agricultural marketing cooperatives for over 70 years, beginning in 1934 with loans to cotton cooperatives. Today, there are a total of 30 cooperatives approved for CMA status by CCC to receive MAL's and LDP's on behalf of their producer members. These CMA's receive MAL's and LDP's on grains, oilseeds, rice, and cotton, and disburse marketing loan gains and LDP's to their members who have delivered commodities to the CMA for marketing on a pool basis, in addition to disbursing marketing proceeds. Members enter into marketing agreements with CMA's, which give the CMA authority to request a CCC loan or LDP on the commodity and to perform marketing functions on behalf of the members. This arrangement gives professional marketing decision making authority to the Cooperative member and optimizes marketing returns. Additionally, according to the terms of the typical CMA marketing agreement, producers receive an advance payment from the CMA soon after delivery of the commodity, at a rate usually equivalent to CCC loan rate. After the CMA has taken title to the commodity, the CMA obtains loans or LDP's from CCC and, if applicable, repays loans at opportune times at rates less than the loan rate, thus potentially maximizing marketing loan gains. Then, periodic subsequent payments may be made during the crop year to members, with final settlement occurring at the end of the crop year at a rate dependent upon the total marketing proceeds, total loan gains, and total LDP's earned by the marketing pool after taking into account advance payments and expenses.

Currently, most CMA marketing agreements permit members to receive deferred payments, such that producers can defer payments from the CMA into a subsequent tax year. This practice conflicts with the regulation at 7 CFR 1425.18 which, in part, states that related CCC loan or LDP proceeds shall be distributed to members participating in the loan pool within 15 work days from the date the CMA receives loan or LDP proceeds from CCC, except when loans are redeemed within 15 work days of the date of the loan.

Reviews of CMA's conducted by CCC staff during 2004 and 2005, revealed that this provision, also known as the ''15-day rule,'' is being interpreted and administered differently from CMA to CMA. For example, one CMA believed that the 15-day rule allowed them to obtain loan gains and hold those gains under a deferred payment contract with the producer because this qualified as constructive receipt of the funds by the member. This CMA stated that use of a deferred payment contract by Cooperatives meets the definition of constructive receipt of income used by the United States Internal Revenue Service (IRS) because, under IRS tax deferral rules, constructive income is received when proceeds are made available in the producer's CMA account, but the producer may choose when to accept actual payment.

Furthermore, an unanticipated consequence of the 15-day rule is that, if the producer requested a delayed payment from the CMS pursuant to a deferred payment agreement, some cotton CMA's have delayed submitting bales of cotton for loan until after the beginning of the next year, or until the last 15 days of the calendar year. As a result, this places a large amount of cotton under loan at the same time, sometimes as many as 800,000 bales in one evening, significantly stressing the CMA as well as the CCC loan making systems.

To resolve problems and avoid any unnecessary involvement with payments schedules between CMA's and their members, 7 CFR 1425.18 is amended by this rule to specifically permit delayed payment under a deferred payment agreement between the CMA and its members. CCC is not a party to the agreement between the CMA and the member producer, which is governed by a contract between those parties. Therefore, CCC has no privity of contract with the CMA members. As such, failure of a CMA to distribute proceeds to its members in a timely manner is a dispute only between its members and the CMA. Nonetheless, CCC has found that most CMA's distribute loan and LDP proceeds to pool accounts or directly to members well within the 15 work day policy. Furthermore, IRS regulations govern cooperative member accounting and disbursement functions and contain guidance on deferred payments. Any CCC regulation requiring cooperatives to treat payments differently could be contradictory. Therefore, 7 CFR 1425.18(a)(1) will be amended in the manner indicated.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) requires the Secretary to promulgate the regulations necessary to implement Title I of the 2002 Act, including those which provide for the programs addressed by this rule, without regard to the notice and comment provisions of 5 U.S.C. 553 or

the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final. In addition, section 1601(c)(3) of the 2002 Act provides that the Secretary, in carrying out the rulemaking exception, shall utilize the authority in section 808 of title 5 of the U.S. Code. Accordingly, under 5 U.S.C. 808, it is further found that it would be contrary to the public interest to delay implementation of this rule for the special Congressional review provisions provided for in 5 U.S.C. 802 *et seq.*, to the extent, if any, that they would otherwise apply.

Executive Order 12866

This rule has been determined to be ''Not Significant'' under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act

Under 7 U.S.C. 7991(c)(2)(A) these regulations may be promulgated and the program administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Most forms used by CMA's may be submitted to CCC by electronic submission.

List of Subjects in 7 CFR Part 1425

Agricultural commodities, Cooperatives, Cotton, Feed grains, Oilseeds, Price support programs.

■ For the reasons set out in the preamble, 7 CFR part 1425 is amended as set forth below.

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

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

Authority: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

■ 2. Amend § 1425.18 by revising paragraph (a)(1) to read as follows:

§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes loans or LDP's for any quantity in a loan pool, the related proceeds shall be distributed or otherwise made available to the members account:

(i) Based on the quantity and quality of the commodity delivered by each member;

(ii) Less any authorized charges for services performed or paid by the CMA necessary to condition or otherwise make the commodity eligible for loans or LDP's, according to the marketing agreement provided for in § 1425.13;

(iii) Within 15 work days from the date the CMA receives loan or LDP proceeds from CCC, or held according to the terms of a deferred payment agreement if requested by the member.

* * * * *

Signed in Washington, DC, on July 17, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–12068 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 366

[Docket No. RM05–32–002, Order No. 667–B]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DoE.

ACTION: Final Order; Order on Rehearing.

SUMMARY: By this order, the Federal Energy Regulatory Commission (Commission) grants clarification and rehearing in part of Order No. 667–A. Order No. 667–A granted rehearing in part and denied rehearing in part of Order No. 667, which amended the Commission's regulations to implement repeal of the Public Utility Holding Company Act of 1935 and enactment of the Public Utility Holding Company Act of 2005.

DATES: *Effective Date:* This order is effective on August 28, 2006.

FOR FURTHER INFORMATION CONTACT:

Lawrence Greenfield (Legal Information), Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6415.
Andrew Lyon (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6614.
Laura Wilson (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6128.
James Guest (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6614.

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

Order on Rehearing

1. Subtitle F of Title XII of the Energy Policy Act of 2005 (EPAct 2005) repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935) and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005).[1] In Order No. 667, the Federal Energy Regulatory Commission (Commission) amended Subchapter U of its regulations to implement Subtitle F.[2] In Order No. 667–A, the Commission denied rehearing in part and granted rehearing in part of Order No. 667.[3] In the present order, we grant clarification and rehearing in part of Order No. 667–A and amend our regulations accordingly.

Introduction

2. On rehearing of Order No. 667–A, commenters[4] raise five issues. First, National Grid, EEI, Duke, and Consumers seek clarification and/or rehearing of changes in the regulatory text that could be construed to place conditions on the effectiveness of status as an exempt wholesale generator (EWG) or foreign utility company (FUCO). Under the Commission's PUHCA 2005 regulations, a person that is a holding company solely with respect to an EWG or FUCO is eligible for exemption from books-and-records, accounting, record retention and reporting requirements.[5] In Order No. 667–A, the Commission modified the regulatory text governing procedures for obtaining EWG status to state that self-certification (or a Commission determination) would not become effective until the relevant state commissions had made certain determinations under section 32(c) of PUHCA 1935 in those cases where such determinations were necessary under section 32(c) of PUHCA 1935. Similar language was included with respect to FUCO self-certifications (and Commission determinations); *i.e.*, that such status would not become effective until the relevant state commissions had provided certain certifications under section 33(a)(2) of PUHCA 1935. National Grid, EEI, Duke, and Consumers suggest that the Commission cannot and should not require those determinations and certifications, and they seek clarification or rehearing. As discussed below, we reaffirm that EWGs are subject to section 32(c) of PUHCA 1935.[6] However, we clarify that we did not intend that an entity that meets the definition of a FUCO would not have FUCO status until a state commission certification is also provided. Accordingly, we revise the regulatory text that created this confusion.

3. Second, EEI, Sempra, Edison, PPL, and AES ask for clarification or rehearing of the Commission's definition of ''single-state holding company system.'' Under the Commission's PUHCA 2005 regulations, a single-state holding company system is eligible for waiver of accounting, record retention and reporting requirements.[7] In Order No. 667–A, for purposes of such waiver, the Commission defined ''single-state holding company system'' as a system that derives no more than thirteen percent of its ''public-utility company'' revenues from outside of a state. The Commission also defined ''public-utility company'' and ''electric utility company'' to include EWGs, FUCOs, and qualifying facilities (QFs).[8] As a result, interests in out-of-state EWGs, FUCOs or QFs might make a system ineligible for waiver. EEI, Sempra, Edison, PPL, and AES suggest that this result is unnecessary and would discourage investment. We grant clarification as discussed below, and modify the regulatory text to reflect this clarification.

4. Third, ALCOA expresses concern as to the requirement in Order No. 667–A that, when a subsidiary owns jurisdictional transmission facilities, the parent company must apply for exemption from the Commission's PUHCA 2005 regulations rather than being eligible for exemption upon the provision of notice. ALCOA suggests that, if the subsidiary is not primarily engaged in the provision of transmission service, the parent company should be eligible for exemption upon provision of notice. We deny rehearing as discussed below.

5. Fourth, INGAA requests clarification of the Commission's definition of ''gas utility company.'' Under Order No. 667–A, a natural gas pipeline company that makes only incidental retail sales is a ''gas utility company.'' An upstream owner of the pipeline company is therefore subject to regulation under the Commission's PUHCA 2005 regulations. It asserts that this result imposes unnecessary burdens and should be avoided through adoption of a *de minimis* standard for retail sales. We grant clarification and revise the relevant regulatory text to add an additional exemption to address this circumstance as discussed below.

6. Finally, we clarify (1) in response to a concern raised by EEI and Duke, a subsidiary holding company may be eligible for an exemption or waiver even if an upstream holding company is not; and (2) in response to a concern raised by Invenergy, service companies within an exempt holding company system are themselves exempt from the requirements of sections 366.2, 366.22, and 366.23.

Discussion

1. EWG and FUCO Status

Background

7. PUHCA 2005 requires the Commission to exempt from its books-and-records requirements companies that are holding companies solely with respect to an ''exempt wholesale generator'' or ''foreign utility

[1] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[2] *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).

[3] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006).

[4] Commenters in this second rehearing phase include: AES Corporation (AES); ALCOA Inc. (ALCOA); Consumers Energy Company and CMS Energy Corporation (Consumers); Duke Energy Corporation (Duke); Edison Electric Institute (EEI); Edison International (Edison); Interstate Natural Gas Association of America (INGAA); Invenergy Investment Company LLC and Mayflower Management Services LLC (Invenergy); National Grid USA (National Grid); PPL Corporation (PPL); and Sempra Energy (Sempra).

[5] 18 CFR 366.7(a).

[6] We note that, in practice, section 32(c) of PUHCA only applies to EWGs whose generation facilities' costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992). Where it does not apply and therefore where State commission determinations are not necessary, an EWG need merely inform us of that fact.

[7] 18 CFR 366.3(c)(1).

[8] *See* 18 CFR 366.1.

company.'' [9] PUHCA 2005 gives the term ''exempt wholesale generator'' the same meaning as in section 32 of PUHCA 1935 and gives the term ''foreign utility company'' the same meaning as in section 33 of PUHCA 1935.[10]

8. In the regulations implementing PUHCA 2005, the Commission restated the definition of EWG in section 32(a)(1) of PUHCA 1935. Under that definition, an EWG is a person that owns or operates an ''eligible facility,'' which is a facility that, with minor exception, is dedicated to wholesale sales.[11]

9. The Commission also incorporated into the definition of EWG the requirement for state commission determinations in section 32(c) of PUHCA 1935.[12] Section 32(c) applies to generation facilities whose costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992).[13] Under section 32(c), for such a facility to be considered an ''eligible facility,'' the relevant state commission must determine that dedication of the facility to wholesale sales will benefit consumers, will be in the public interest and will not violate state law.[14] Because, by definition, an EWG can only own or operate eligible facilities, a person seeking EWG status whose generation facilities' costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992) would not qualify as an EWG until the relevant state commission issues the specified determinations.[15]

10. In implementing PUHCA 2005, the Commission adopted the definition of ''foreign utility company'' in section 33(a)(3) of PUHCA 1935.[16] Under this definition, a FUCO is a company that owns or operates electricity or natural or manufactured gas facilities that are not located in the United States, that does not derive income from the generation, transmission or distribution of electricity or the distribution at retail of natural or manufactured gas in the United States, and that is not and has no subsidiary that is a public-utility company operating in the United States.

11. In modifications to the regulatory text adopted on rehearing, the Commission included in the definition of ''foreign utility company'' a provision that exempts FUCOs from all sections but section 366.7 of the Commission's PUHCA 2005 regulations; [17] section 366.7 provides that FUCO status does not become effective until the FUCO has obtained state commission certification consistent with section 33(a)(2) of PUHCA 1935.[18] Section 33(a)(2) of PUHCA 1935, in turn, required state certification as a condition on exemption of a FUCO's parent company from public utility holding company regulation under PUHCA 1935. For the exemption to be effective, each state commission with jurisdiction over associated retail electricity and natural gas suppliers needed to certify that the state commission could adequately protect retail ratepayers.[19]

Comments

12. National Grid, EEI, Duke, and Consumers seek clarification and/or rehearing of the requirements for state commission determinations and certifications. They assert that the requirements violate PUHCA 2005 by incorporating operative provisions of PUHCA 1935. They add that state involvement is unnecessary because the Commission may prevent cross-subsidization between EWGs and FUCOs and retail suppliers. Finally, they assert that, if the Commission conditions FUCO status on state commission certification, it will prevent companies from representing that they have FUCO status until state commission certification has been obtained, and also will be inconsistent with such companies' ability to rely on FUCO status under PUHCA 1935. According to these commenters, the associated uncertainty and delay will put companies with United States affiliates at a disadvantage in bidding for foreign utility companies.

Decision

13. We will deny rehearing with respect to EWGs, but grant relief with respect to FUCOs.

14. For some entities, EWG status does not take effect until state commission determinations have been obtained consistent with section 32(c) of PUHCA 1935.[20] PUHCA 2005 gives the term ''exempt wholesale generator'' the same meaning as in section 32 of PUHCA 1935.[21] Section 32(a)(1) of PUHCA 1935 defines ''exempt wholesale generator'' as a person that owns or operates an ''eligible facility.'' Section 32(c) of PUHCA 1935 states that certain facilities, *i.e.*, those whose costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992), are not eligible facilities until specified state commission determinations are obtained.[22] Thus, because, by definition, an EWG can only own or operate eligible facilities, and certain facilities can only be eligible facilities with state commission determinations, a person cannot be an EWG if it owns or operates such facilities (*i.e.*, if it owns or operates generation facilities whose costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992)) without having obtained the necessary State commission determinations.

15. With respect to FUCOs, we clarify that the Commission did not intend to establish a requirement that an entity cannot meet the definition of a FUCO without first obtaining state commission certification. In contrast to the statutory definition of EWG in section 32 of PUHCA 1935, the statutory definition of FUCO in section 33 of PUHCA 1935 is not tied to state commission certification, and PUHCA 2005 gives the term ''foreign utility company'' the same meaning as in section 33 of PUHCA 1935. Under section 33 of PUHCA 1935, state commission certification affected only the availability of an exemption from public utility holding company regulation under PUHCA 1935, but was not part of the definition of ''foreign utility company.'' [23] As a result, state commission certification is not required by PUHCA 2005 as a condition of FUCO status, and we will eliminate the reference to such state commission certification in the regulatory text.

16. Consistent with the foregoing, we also will move paragraph (2) of the definitions of EWG and FUCO to a new section 366.7(e).

[9] EPAct 2005 1266. *See also* EPAct 2005 1264.

[10] EPAct 2005 1262(6).

[11] 18 CFR 366.1; 15 U.S.C. 79z–5(a)(1) and (2).

[12] 18 CFR 366.1, definition of ''exempt wholesale generator'' (1). *See also* 18 CFR 366.1, definition of ''exempt wholesale generator'' (2); 18 CFR 366.7 (conditioning EWG status on State determinations under section 32(c) of PUHCA 1935).

[13] Pub. L. 102–486, 106 Stat. 2776 (1992). To the extent that the facilities that are at issue are not encompassed within section 32(c) of PUHCA 1935, *e.g.*, the facilities are new facilities, then section 32(c) would not apply and the state commission determinations provided for in section 32(c) would not be necessary. The regulations state that, in such circumstances, the EWG need simply inform the Commission of that fact.

[14] 15 U.S.C. 79z–5a(a)(2) and (c).

[15] As noted supra note 13, to the extent that section 32(c) of PUHCA 1935 does not apply in a particular instance, the person seeking EWG status need simply inform the Commission of that fact.

[16] 18 CFR 366.1, definition of ''foreign utility company.'' *See also* 15 U.S.C. 79z–5b(a)(3)(B).

[17] *Id.*

[18] 18 CFR 366.7.

[19] *See* 15 U.S.C. 79z–5b(a)(1) and (2).

[20] As noted *supra* note 13, to the extent that section 32(c) of PUHCA 1935 does not apply in a particular instance, the person seeking EWG status need simply inform the Commission of that fact.

[21] EPAct 2005 1262.

[22] *See* 15 U.S.C. 79z–5a(a)(1) and (c).

[23] *See* 15 U.S.C. 79z–5b(a).

2. Single-State Holding Companies

Background

17. In implementing PUHCA 2005, the Commission provided for waiver of accounting, recordkeeping and reporting requirements for single state holding company systems.[24] The waiver reflects the principle that, when a system operates substantially within a single state, ratepayers are adequately protected by state oversight as well as by federal oversight under the Federal Power Act, 16 U.S.C. 824 *et seq.*

18. In Order No. 667–A, the Commission defined ''single-state holding company system'' with reference to revenues from in-state versus out-of-state activities. For purposes of waiver from the Commission's accounting, record-keeping and reporting requirements, the Commission defined a single-state holding company system as a system that derives no more than thirteen percent of its ''public-utility company revenues'' from outside of a single state.[25] The Commission also defined ''public-utility company'' and ''electric utility company'' to include EWGs, FUCOs and QFs.[26] As a result, a system whose traditional utility operations are largely confined to a single state might be subject to federal accounting, record-keeping and reporting requirements as a result of owning out-of-state EWGs, FUCOs or QFs.

Comments

19. EEI, Sempra, Edison, PPL, and AES suggest that ownership of out-of-state EWGs, FUCOs or QFs should not affect a system's eligibility for waiver of federal accounting, recordkeeping and reporting requirements. They state that ownership of out-of-state EWGs, FUCOs and QFs did not affect a system's eligibility for the single-state exemption from public utility holding company regulation under PUHCA 1935. They suggest that considering ownership of out-of-state EWGs, FUCOs and QFs now would subject holding company systems to new obligations and would therefore contradict Congress's goal in PUHCA 2005 of removing regulatory obstacles to investment.

Decision

20. The Commission's intent in adopting the 13 percent of revenues standard to identify who is a single state holding company system entitled to a waiver was to use the same 13 percent standard applied by the SEC under PUHCA 1935. Although we have defined ''public-utility company'' and ''electric utility company'' to include EWGs, FUCOs, and QFs, we clarify that we did not intend to include such entities' revenues for purposes of applying the 13 percent of revenues standard to identify who is a single state holding company system entitled to waiver. We will revise the relevant regulatory text in 18 CFR 366.3(c)(1) accordingly.

21. This approach is similar to the section 3(a) exemption under PUHCA 1935, which exempted single-state holding company systems from plenary federal oversight of the system's corporate and financial structure.[27] The section 3(a) exemption of PUHCA 1935 reflected Congress's assessment that the states and the federal government, through corporate and rate regulation, could otherwise effectively oversee a single-state system without the necessity of public utility holding company regulation. Existing state and federal regulation should continue to be sufficient to protect against any abuses associated with ownership of out-of-state EWGs, FUCOs and QFs.

22. Accordingly, we will amend our regulations to provide that, for purposes of waiver under section 366.3(c)(1), revenues derived from EWGs, FUCOs and QFs will not be considered to be ''public-utility company'' revenues and therefore will not affect the availability of waiver of federal accounting and related requirements.[28]

3. Companies That Are Not Primarily Engaged in Transmission

Background

23. In Order No. 667–A, the Commission exempted from its PUHCA 2005 regulations persons that are holding companies with respect to Commission-jurisdictional utilities when (1) neither the utility nor an affiliate has captive customers and (2) neither the utility nor an affiliate owns Commission-jurisdictional transmission facilities or provides Commission-jurisdictional transmission services.[29]

Comments

24. ALCOA suggests that the Commission should exempt, under 18 CFR 366.3(b)(2) and 366.4(b)(1), *i.e.*, by way of FERC–65A, companies whose subsidiaries have no captive customers and are not primarily engaged in transmission in interstate commerce, regardless of whether a subsidiary owns transmission facilities. According to ALCOA, the Commission's regulations as they stand require companies such as ALCOA to instead apply for exemption, under 18 CFR 366.3(d) and 366.4(b)(3), when a subsidiary owns discrete transmission facilities and acquired those facilities by what it characterizes as historical coincidence. ALCOA suggests that there is no regulatory interest in oversight of the parent company in those circumstances and that, therefore, the parent company should not be required to apply for exemption.

25. ALCOA also suggests that the Commission must make the exemption process provided in 18 CFR 366.3(b)(2) and 366.4(b)(1), *i.e.*, by way of FERC–65A, available to companies such as ALCOA because (1) those companies were exempted from public utility holding company regulation under PUHCA 1935, (2) the Commission's notice of proposed rulemaking in this proceeding suggested that the Commission did not intend to impose burdens beyond those in PUHCA 1935, and (3) the Commission did not make the parent company of a transmission owner ineligible for the notification process until rehearing of the Commission's initial order in this proceeding. According to ALCOA, to now require ALCOA to apply for exemption would violate notice requirements of the Administrative Procedure Act, 5 U.S.C. 551–59, and ALCOA's constitutional right to the equal protection of the laws.

Decision

26. At issue is not whether ALCOA and similar companies are eligible for exemption from the Commission's PUHCA 2005 regulations but whether those companies must individually and formally apply for exemption under 18 CFR 366.3(d) and 366.4(b)(3), rather than submitting an exemption notification, *i.e.*, a FERC–65A, under 18 CFR 366.4(b)(1). Contrary to ALCOA's suggestion, at this early stage in our implementation of PUHCA 2005, there is a strong regulatory interest in

[24] 18 CFR 366.3(c).

[25] 18 CFR 366.3(c)(1).

[26] 18 CFR 366.1.

[27] 15 U.S.C. 79c(a).

[28] In the separate context of the statutory exemption of PUHCA 2005 section 1275(d), as reflected in 18 CFR 366.5, involving cost allocation for non-power goods and services in the case of a holding company system whose public utility operations are confined substantially to a single state, EEI asks that the Commission not require that a holding company file a petition for declaratory order in order to obtain a Commission determination that the holding company's public utility operations are confined substantially to a single state. EEI Rehearing Request at 4, 12–13. As a Commission determination that a holding company's public utility operations are confined substantially to a single state would be a declaratory order, the appropriate vehicle to seek such a determination would be a petition for a declaratory order.

[29] *See* 18 CFR 366.3(b)(2)(ii).

requiring holding companies that do not qualify for the exemptions or waivers identified in 18 CFR 366.3(b)(2) and 366.3(c) to apply formally for exemption. As relevant here, that would include, where no other exemption or waiver applies, where the company or a subsidiary owns jurisdictional transmission facilities or provides jurisdictional transmission service. We do not mean to suggest that on the facts and circumstances of a particular case an exemption or waiver might not be appropriate. Rather, at this point in time, the formal application process gives the Commission the opportunity to make such determinations on the facts and circumstances of each case. For example, the process gives the Commission the opportunity to determine whether there might be significant potential for transmission service customers to subsidize wholesale sales and, if so, whether the cross-subsidies could be adequately addressed through rate regulation. Based on that analysis, the Commission would or would not, as the facts and circumstances dictate, permit exemption from oversight under the Commission's PUHCA 2005 regulations.[30]

27. Moreover, the requirement does not impose undue regulatory burdens. In its request for rehearing, ALCOA cites cases in which the SEC determined that ALCOA was exempt from holding company regulation under PUHCA 1935. In light of the SEC's past, active involvement in determining eligibility for exemption under PUHCA 1935, our requirement that companies formally apply to us for exemption under the Commission's PUHCA 2005 regulations (rather than obtaining exemption by filing a FERC–65A) is unexceptional. It is true that companies like ALCOA must apply anew for exemption rather than relying on prior SEC determinations. That obligation flows directly from Congress's decision to change the governing law and is not an unreasonable cost of doing business.

28. Finally, the Administrative Procedure Act does not require us to issue a new notice of proposed rulemaking every time that we make a change to a proposed rule. The express purpose of the comment, decision, and rehearing process is to allow the Commission to make changes to a proposed rule. As evidenced by ALCOA's request for rehearing, moreover, ALCOA had actual and timely notice and opportunity to address provisions and changes that affected ALCOA.

4. Pipeline Companies That Make Incidental Retail Gas Sales

Background

29. Pursuant to PUHCA 1935, and specifically section 2(a)(4) of PUHCA 1935, a natural gas pipeline that was not ''primarily engaged'' in the sale of natural gas at retail was not considered to be a ''gas utility company.'' [31] As a result, under PUHCA 1935, a holding company with interests in that pipeline would not, by virtue of those interests, be subject to public utility holding company regulation.[32]

30. PUHCA 2005 defines ''gas utility company'' without regard to whether a company is primarily engaged in the retail sale of natural gas.[33] In implementing PUHCA 2005, the Commission adopted the statutory definition of ''gas utility company,'' with the added clarification that an entity that is engaged only in the marketing of natural gas is not a ''gas utility company'':

> The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. For the purposes of this subchapter, ''gas utility company'' shall not include entities that engage only in marketing of natural and manufactured gas.[34]

Under that definition, a pipeline that makes incidental retail sales of natural gas could be interpreted to be a ''gas utility company,'' such that a parent of the pipeline would be subject to the Commission's PUHCA 2005 regulations.[35]

Comments

31. INGAA seeks clarification of the Commission's interpretation of ''gas utility company'' and asks us to find that a company that ''owns an interstate natural gas pipeline company, which pipeline makes deliveries to industrial customers and power plants and/or *de minimis* deliveries to farmers and/or ranchers located adjacent to the pipeline's rights-of-way is not, due to such ownership, a 'holding company' under the Commission's PUHCA [2005] regulations.'' INGAA relies primarily on section 2(a)(4) of PUHCA 1935, which allowed the SEC to except from the definition of ''gas utility company'' companies that were not ''primarily engaged in'' retail sales of natural gas. According to INGAA, section 2(a)(4) of PUHCA 1935 demonstrated Congressional intent not to impose holding company regulation in the context of pipeline companies that make incidental retail sales. INGAA suggests there is no need to change that longstanding practice under PUHCA 1935 and, in particular, to impose regulatory obligations under PUHCA 2005 where none existed under PUHCA 1935. It also points out that under PUHCA 1935 the SEC promulgated a regulation exempting entities from the definition of ''gas utility company'' if their revenues from retail distribution of natural gas were *de minimis* and that the most recent monetary limit was an average annual amount of $5 million over the preceding three calendar years.

Decision

32. A holding company is defined in PUHCA 2005 and in the Commission's PUHCA 2005 regulations based on its ownership of a public-utility company. A public-utility company, in turn, includes a gas utility company, but does not include a natural gas company. So, for a public-utility company that is a gas utility company, its parent may fall within the definition of a holding company. In contrast, for a public-utility company that is a natural gas company and not a gas utility company, its parent would not fall within the definition of a holding company. INGAA's concern is that some pipelines may make incidental sales of natural gas at retail. That fact would result in their also being considered gas utility companies rather than solely natural gas companies—thus resulting in regulation of their parent companies as holding companies.

33. The relevant language in PUHCA 2005 at issue here defining ''gas utility company'' and when exemptions would be warranted under PUHCA 2005 is not identical to the corresponding language in PUHCA 1935 highlighted by INGAA above defining ''gas utility company'' and when exemptions were warranted under PUHCA 1935. That fact notwithstanding, we agree with INGAA and believe that the fact that a pipeline makes sales of natural gas to end-use customers located adjacent to the pipeline's right of way should not, on that basis alone, lead to the pipeline's parent being considered a holding

[30] In fact, ALCOA has made a formal filing, in Docket No. EL06–75–000, seeking an exemption. That filing is presently pending.

[31] 15 U.S.C. 79b(a)(4).

[32] 15 U.S.C. 79b(a)(7); *see also* 17 CFR 250.7(a) (a pipeline company was not ''primarily engaged'' in the sale of natural gas at retail if gross revenues from retail sales were less than an average, annual amount of $5,000,000 over the preceding three calendar years).

[33] EPAct 2005 1262(7).

[34] 18 CFR 366.1.

[35] EPAct 2005 1262(8) and (13); 18 CFR 366.1.

company under PUHCA 2005.[36] We will revise the regulatory text accordingly to add an additional exemption to address such circumstances.

5. Additional Clarifications

34. We hereby grant two clarifications to Order No. 667–A. The first clarification relates to the following statement in the narrative preamble of Order No. 667–A:

> Where the parent holding company qualifies for an exemption or waiver, the subsidiary holding company would necessarily equally qualify; phrased differently, if the subsidiary did not qualify for a particular exemption or waiver, then the parent would not qualify for that same exemption or waiver either.[37]

EEI and Duke urge us to delete the latter portion of the quoted sentence that begins with ''phrased differently'' on the grounds that it creates unnecessary confusion. Upon further review, the first portion of the above-quoted sentence is sufficiently clear on its own. We therefore void the latter, ''phrased differently'' portion of the sentence.

The second clarification relates to section 366.3(a) of our regulations, which states that holding companies that meet the requirements of that section are exempt from specified provisions of the Commission's PUHCA 2005 regulations:

> Any person that is a holding company solely with respect to one or more of the following will be exempt from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23 * * *.[38]

35. The specified provisions include two provisions—sections 366.22 and 366.23—that apply to service companies. Invenergy requests clarification that, if a holding company is exempt as provided in section 366.3(a), service companies within the holding company system are exempt from sections 366.22 and 366.23. We agree with the requested clarification and will change section 366.3(a) accordingly.

Information Collection Statement

36. The regulations of the Office of Management and Budget (OMB) [39] require that OMB approve information-collection burdens that are imposed by an agency. OMB has approved the information-collection burdens that were imposed in Order Nos. 667 and 667–A.[40] The present order clarifies those orders. Accordingly, OMB approval for this order is not necessary. The Commission will send a copy of this order to OMB for informational purposes.

37. Interested persons may obtain information on the information requirements by contacting the following: 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*.

The Commission Orders

Rehearing and clarification is hereby granted in part and denied in part as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

List of Subjects in 18 CFR Part 366

Electric power, Natural gas, Public utility holding companies and service companies, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, under the authority of PUHCA 2005, the Commission is amending Part 366 in Chapter I of Title 18 of the *Code of Federal Regulations*, as set forth below:

Subchapter U—Regulations Under the Public Utility Holding Company Act of 2005

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

Subpart A—PUHCA 2005 Definitions and Provisions

■ 1. The authority citation for part 366 continues to read as follows:

Authority: Pub. L. 109–58, 1261 *et seq.*, 119 Stat. 594, 972 *et seq.*

■ 2. Section 366.1 is amended by revising the definitions of ''exempt wholesale generator'' and ''foreign utility company'' to read as follows:

Subpart A—PUHCA 2005 Definitions and Provisions

§ 366.1 Definitions.

For purposes of this part:

* * * * *

Exempt wholesale generator. The term ''exempt wholesale generator'' means any person engaged directly, or indirectly through one or more affiliates as defined in this subchapter, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. For purposes of establishing or determining whether an entity qualifies for exempt wholesale generator status, sections 32(a)(2) through (4), and sections 32(b) through (d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(a)(2)–(4), 79z–5a(b)–(d)) shall apply.

Foreign utility company. The term ''foreign utility company'' means any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company:

(1) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and

(2) Neither the company nor any of its subsidiary companies is a public-utility company operating in the United States.

* * * * *

■ 3. Section 366.3 is amended by revising paragraphs (a) introductory text, (b)(2) introductory text, (c) introductory text, and (c)(1), and by adding paragraph (b)(2)(vii) to read as follows:

§ 366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.

(a) *Exempt classes of entities.* Any person that is a holding company solely with respect to one or more of the following will be exempt from the requirements of §§ 366.2 and 366.21 and any associated service company will be exempt from the requirements of §§ 366.2, 366.22, and 366.23; such person need not make the filings provided in § 366.4(a) or (b):

* * * * *

(b) * * *

(2) *Commission exemption of additional persons and classes of transactions.*

The Commission has determined that the following persons and classes of transactions satisfy the requirements of paragraph (b)(1) of this section, and any person that is a holding company solely with respect to one or more of the following may file to obtain an exemption for that person or class of transactions, as appropriate, from the

[36] As we previously noted in both Order No. 667 and Order No. 667–A, we again note that we have independent authority under the Natural Gas Act to obtain the books and records of regulated companies and any person that controls such companies if relevant to jurisdictional activities. 15 U.S.C. 717g.

[37] Order No. 667–A at P 20, n.41.

[38] 18 CFR 366.3(a).

[39] 5 CFR 1320.12.

[40] *See* OMB Control Nos. 1902–0166, 1902–0216.

requirements of §§ 366.2 and 366.21 (applicable to holding companies) and §§ 366.2, 366.22, and 366.23 (applicable to the holding companies' associated service companies), pursuant to the notification procedure contained in § 366.4(b):

* * * * *

(vii) Natural gas companies that distribute natural or manufactured gas at retail to industrial or electric generation customers and/or distribute *de minimis* amounts of natural or manufactured gas at retail to farmer or rancher customers located adjacent to the natural gas company's rights-of-way.

(c) *Waivers.* Any person that is a holding company solely with respect to one or more of the following may file to obtain a waiver of the accounting, record-retention, and reporting requirements of § 366.21 (applicable to holding companies) and §§ 366.22 and 366.23 (applicable to the holding companies' associated service companies), pursuant to the notification procedures contained in § 366.4(c):

(1) Single-state holding company systems; for purposes of § 366.3(c)(1), a holding company system will be deemed to be a single-state holding company system if the holding company system derives no more than 13 percent of its public-utility company revenues from outside a single state (for purposes of this waiver, revenues derived from exempt wholesale generators, foreign utility companies and qualifying facilities will not be considered public-utility company revenues);

* * * * *

■ 4. In § 366.7, paragraphs (a) and (b) are revised to read as follows, and paragraph (e) is added to read as follows:

§ 366.7 Procedures for obtaining exempt wholesale generator and foreign utility company status.

(a) *Self-certification notice procedure.* An exempt wholesale generator or a foreign utility company, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company (including stating the location of its generation); such notices of self-certification must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located, and that person must also represent to this Commission in its submittal with this Commission that it has filed a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. Notice of the filing of a notice of self-certification will be published in the **Federal Register**. Persons that file a notice of self-certification must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. A person filing a notice of self-certification in good faith will be deemed to have temporary exempt wholesale generator or foreign utility company status. If the Commission takes no action within 60 days from the date of filing of the notice of self-certification, the self-certification shall be deemed to have been granted; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a (c)) any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations are not necessary, the notice of self-certification should state so). The Commission may toll the 60-day period to request additional information, or for further consideration of the request; in such cases, the person's exempt wholesale generator or foreign utility company status will remain temporary until such time as the Commission has determined whether to grant or deny exempt wholesale generator or foreign utility company status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a (c)), any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations are not necessary, the notice of self-certification should state so). Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel's designee.

(b) *Optional procedure for Commission determination of exempt wholesale generator status or foreign utility company status.* A person may file for a Commission determination of exempt wholesale generator status or foreign utility company status under § 366.1 by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter, justifying the request for such status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a (c)), a Commission determination of exempt wholesale generator status may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary. (If such determinations are not necessary, the petition for declaratory order should state so.) Persons that file petitions must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter.

* * * * *

(e) An exempt wholesale generator shall not be subject to any requirements of this part other than § 366.7, *i.e.*, procedures for obtaining exempt wholesale generator status. A foreign utility company shall not be subject to any requirements of this part other than § 366.7, *i.e.*, procedures for obtaining foreign utility company status.

[FR Doc. E6–12048 Filed 7–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0077; 0790–AG31]

32 CFR Part 202

Department of Defense Restoration Advisory Boards

AGENCY: Department of Defense.

ACTION: Final rule; correction.

SUMMARY: The Department of Defense (DoD) published a final rule document on May 12, 2006 promulgating the Restoration Advisory Board (RAB) rule regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. That rule implemented the requirement established in 10 U.S.C. 2705(d)(2)(A), which requires the Secretary of Defense to prescribe regulations regarding RABs. That rule was based on DoD's current policies for establishing and operating RABs, as well as the Department's experience over the past ten years. This document makes administrative corrections to the preamble of that document.

DATES: This rule is effective July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ferrebee, Office of the Deputy

Under Secretary of Defense (Installations & Environment), 703–571–9060.

SUPPLEMENTARY INFORMATION: On Friday, May 12, 2006 (71 FR 27610), the Department of Defense published a final rule, ''Department of Defense Restoration Advisory Boards''. On page 27612, Section B. 202.2, ''Criteria for Establishment'', in the fourth paragraph, in the first sentence, the term ''bi-annually'' is corrected to read ''biennially'' and on page 27613, Section F., ''Developing Operating Procedures'', in the sixth paragraph, in the second sentence, ''§ 202.9(a)(3)'' is corrected to read ''§ 202.9(a)(4)''.

Dated: July 24, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6531 Filed 7–27–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–05–162]

RIN 1625–AA09

Drawbridge Operation Regulation; N.E. 14th Street Bridge, Atlantic Intracoastal Waterway, Mile 1055.0, Pompano, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the N.E. 14th Street Bridge, Atlantic Intracoastal Waterway mile 1055.0, Pompano, Florida. This temporary rule provides for solely single-leaf bridge operations twice an hour between July 5, 2006 and September 30, 2006. During this period, the bridge will operate on a single-leaf schedule unless a four hour notice is provided for double-leaf openings.

DATES: This temporary rule is effective from July 5, 2006 until September 30, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–05–162] and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 23, 2006, we published a notice of proposed rulemaking (NRPM) entitled Drawbridge Operation Regulations; N.E. 14th Street, Atlantic Intracoastal Waterway, Mile 1055.0, at Pompano Beach, FL, in the **Federal Register** (71 FR 9300). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. These repairs are necessary to protect the safety of the public, and delaying them would be contrary to the public interest. In addition, we received no objections to this rule during the NPRM comment period and this rule provides for scheduled single-leaf bridge openings, as well as double-leaf openings after four hours notice, for vessels to transit past the bridge.

Background and Purpose

PCL Civil Constructors, Inc. on behalf of the Florida Department of Transportation has requested the Coast Guard temporarily change the existing regulations governing the operation of the N.E. 14th Street Bridge across the Atlantic Intracoastal Waterway by allowing single-leaf operation during bridge rehabilitation. The N.E. 14th Street Bridge is located on the Atlantic Intracoastal Waterway, mile 1055.0, Pompano, Florida. The current regulation governing the operation of the N.E. 14th Street Bridge is published in 33 CFR 117.261(cc) and requires the bridge to open on signal except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

The Coast Guard is temporarily changing the operating regulations of the N.E. 14th Street Bridge from July 5, 2006 to September 30, 2006 so that the bridge will operate a single-leaf twice an hour unless a four hour notice is given for double-leaf openings.

Discussion of Rule

We received no comments on the NPRM. This temporary change will allow the owner to make necessary repairs to the bridge.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule will allow for bridge openings during the repairs to this bridge.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because the regulations provide for bridge openings, short closure periods and will provide for the reasonable needs of navigation.

Assistance for Small Entities

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

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

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Public Law 102–587, 106 Stat. 5039.

■ 2. From July 5, 2006, through October 1, 2006, § 117.261(cc) is suspended and paragraph (uu) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(uu) N.E. 14th Street Bridge, mile 1055.0, at Pompano.

From 7 a.m. on July 5, 2006 through 6 p.m. on September 30, 2006 the draw shall open double-leaf upon four hours advance notification to the bridge tender on VHF channel 9 or the bridge rehabilitation contractor at (772) 201–3745. Otherwise, the draw shall open a single-leaf on the quarter-hour and three-quarter-hour.

* * * * *

Dated: July 5, 2006.

D.W. Kunkel,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E6–11877 Filed 7–27–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK21

Definition of Psychosis for Certain VA Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to define the term ''psychosis.'' The term is used but not defined in certain statutes that provide presumptive service connection for compensation. The intended effect of this amendment is consistent application of these statutory provisions.

DATES: *Effective Date:* This amendment is effective August 28, 2006.

Applicability Date: The provisions of this regulation shall apply to all applications for benefits received by VA on or after August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: On October 11, 2002, VA published in the **Federal Register** (67 FR 63352) a proposal to amend VA regulations to define the term ''psychosis'' as used in statutory and regulatory provisions concerning presumptive service connection for compensation or health care purposes. Interested persons were invited to submit written comments on or before December 10, 2002. We received three comments: one from the American Psychiatric Association, one from the American Association for Geriatric Psychiatry, and one from a member of the general public.

In response to the proposed rule, which referenced Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM–IV) in the preamble, one commenter observed that the DSM–IV is essentially out-of-print, having been replaced by Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM–IV–TR).

As a preliminary matter, we note that DSM–IV does not differ materially from DSM–IV–TR as to which disorders are classified as psychoses. (Compare page 19 of DSM–IV with pages 19–20 in DSM–IV–TR; pages 273–274 in DSM–IV with pages 297–298 in DSM–IV–TR; and pages 694–695 of DSM–IV with pages 750–751 in DSM–IV–TR). Although our proposed rule relied on the DSM–IV to define ''psychosis,'' we will address the comments to the proposed rule based on DSM–IV–TR and refer to DSM–IV–TR in the final rule because it is the most updated and accessible version of the manual. Furthermore, VA will update the regulation being added by this rulemaking, 38 CFR 3.384, when a new edition of Diagnostic and Statistical Manual of Mental Disorders is published in the future.

One commenter urged VA to replace the term ''Mood Disorder with Psychotic Features'' with ''Bipolar Disorder (types I and II) With Psychotic Features'' and ''Major Depressive Disorder With Psychotic Features'' because ''Mood Disorder with Psychotic Features'' does not appear as a listed disorder in DSM–IV, published by the American Psychiatric Association in 1994. The commenter noted that the definition of ''psychosis'' was much broader in the first edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM–I), published by the American Psychiatric Association in 1952, compared to its current usage. The commenter further noted that what we now refer to as Bipolar Disorder (types I and II) and Major Depressive Disorder were considered psychotic disorders when psychosis was designated as a presumptive condition in 1958 by Public Law 85–857, 72 Stat. 1118.

We have reconsidered whether Mood Disorder with Psychotic Features should be included in our definition of ''psychosis'' at all. We included it in our proposed definition because that disorder appeared in the decision tree for Differential Diagnosis of Psychotic Disorders in the DSM–IV. In the preamble to the proposed rule, at 67 FR 63352, we stated:

> According to DSM–IV, pages 19 and 694–695, the following mental disorders contain at least one of the above-mentioned DSM–IV, Appendix A, psychotic symptoms: psychotic disorder due to a general medical condition; substance-induced psychotic disorder; schizophrenia; schizophreniform disorder; schizoaffective disorder; mood disorder with psychotic features; delusional disorder; psychotic disorder not otherwise specified; brief psychotic disorder; and shared psychotic disorder.

The proposed rule itself listed these ten disorders as psychoses. Neither the DSM–IV nor the DSM–IV–TR, however, lists Mood Disorder with Psychotic Features as a psychotic disorder. We consider the actual listing of psychotic disorders more significant than the appearance of a disorder in the decision tree. The actual listing of psychotic disorders in the DSM–IV–TR includes only disorders ''that include psychotic symptoms as a prominent aspect of their presentation,'' whereas disorders such as Mood Disorder with Psychotic Features ''may present with psychotic symptoms as associated features.'' DSM–IV–TR at 297.

Upon review of DSM–IV–TR and further consideration, we do not believe that Mood Disorder with Psychotic Features, or other disorders which may have psychotic features but are not listed in DSM–IV–TR as psychoses, should be considered psychoses for purposes of this regulation. Psychotic features may be temporary and not recur, but the disorders listed as psychoses by the DSM–IV–TR include psychotic symptoms as a prominent aspect of their presentation. Psychotic features do not necessarily show that the veteran has an actual psychosis. By analogy, it would be erroneous to consider a disease that has symptoms also found in a cancer, but which is not actually a type of cancer, to constitute a cancer for presumptive purposes.

We recognize that the disorders now referred to as Bipolar Disorder (types I and II) and Major Depressive Disorder were once considered psychotic disorders. However, we note that DSM–IV–TR states that the definition of the term ''psychotic'' has evolved over time, and that at least one prior definition (contained in DSM–II, which we note was published in 1968) ''was probably far too inclusive.'' (DSM–IV–TR, Appendix C, at page 827). We believe that it is appropriate for VA to use current scientific knowledge in defining the term psychosis.

For the reasons stated above, we have not included Mood Disorder with Psychotic Features, Bipolar Disorder (types I and II) With Psychotic Features, or Major Depressive Disorder With Psychotic Features in the definition of psychosis in the final rule.

Citing page 297 of the DSM–IV–TR, published by the American Psychiatric Association in 2000, one commenter noted that catatonic behavior is also a psychotic symptom. This commenter suggested that we include the following disorders within the definition of psychosis: ''Catatonic Disorder Due to a General Medical Condition,'' ''Major Depressive Disorder [W]ith Catatonic Features,'' ''Bipolar I Disorder [W]ith Catatonic Features'' and ''Bipolar II Disorder [W]ith Catatonic Features.''

Our review of DSM–IV–TR confirms the commenter's assertion that catatonic behavior is also a psychotic symptom. However, as stated above, we do not believe that all disorders presenting with psychotic features should be considered psychoses. Only disorders listed by the DSM–IV–TR as psychotic disorders should be considered psychoses. We therefore decline to accept this suggestion.

One commenter suggested we add ''dementia with delusions'' to the definition of psychosis because dementia is often accompanied by psychotic symptoms. That commenter stated that other government or private entities could adopt such a definition and use it in other contexts. Another commenter suggested we add ''Vascular Dementia with Delusions'' to the definition of psychosis because delusions are considered a psychotic symptom.

We decline to adopt the first suggestion because ''dementia with delusions'' is not a specific DSM–IV–TR diagnosis. However, Vascular Dementia

With Delusions is a specific DSM–IV–TR diagnosis and its symptoms may be psychotic. However, as stated above, we do not believe that all disorders presenting with psychotic features should be considered psychoses. Only disorders listed by the DSM–IV–TR as psychotic disorders should be considered psychoses. We therefore decline to accept this suggestion.

One commenter urged VA to adopt a policy of accepting a treating physician's diagnosis as absolute. This suggestion is outside the scope of this rulemaking, and we have made no change based on it.

This commenter also stated that VA should eliminate its proposed definition of psychosis and accept evidence of any disorder listed in DSM–IV as sufficient for adjudication purposes. DSM–IV lists numerous mental disorders that are not classified as psychoses (e.g. anxiety disorders). Furthermore, certain presumptions of service connection apply to psychoses but not other mental disorders. We therefore make no change based on this comment.

This commenter also stated that VA should not create any definition of psychosis because it would create more red tape and place an additional burden on veterans. For the reasons stated above and in the supplementary information for the proposed rule, we believe that adopting a clear definition of psychosis will actually make the claims process simpler for veterans seeking service connection for a psychosis. We therefore decline to make any change based on this comment.

We have made one non-substantive formatting change to proposed 38 CFR 3.384 by listing the different psychoses in alphabetical order. We believe this change will make it easier for the reader to quickly locate a particular psychotic disorder.

In the preamble to the proposed rule, we noted that a statute authorizing health care, specifically 38 U.S.C. 1702, uses the term ''psychosis'' and that new § 3.384 was intended to affect the application of that statute. The references to health care, and to section 1702 in particular, were erroneously included in the preamble, and we wish to clarify that, as stated in the proposed regulation text, new § 3.384 only concerns presumptions of service connection under 38 CFR part 3, which governs adjudication with respect to compensation, pension, dependency and indemnity compensation, and burial benefits, but not health care.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

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 Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action because it may raise novel legal and policy issues under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.101, Burial Expenses Allowance for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: April 18, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.384 is added under the undesignated center heading

''Rating Considerations Relative to Specific Diseases'' to read as follows:

§ 3.384 Psychosis.

For purposes of this part, the term ''psychosis'' means any of the following disorders listed in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, of the American Psychiatric Association (DSM–IV–TR):

(a) Brief Psychotic Disorder;

(b) Delusional Disorder;

(c) Psychotic Disorder Due to General Medical Condition;

(d) Psychotic Disorder Not Otherwise Specified;

(e) Schizoaffective Disorder;

(f) Schizophrenia;

(g) Schizophreniform Disorder;

(h) Shared Psychotic Disorder; and

(i) Substance-Induced Psychotic Disorder.

(Authority: 38 U.S.C. 501(a), 1101, 1112(a) and (b))

[FR Doc. E6–12079 Filed 7–27–06; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 71, No. 145
Friday, July 28, 2006

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC05

Common Crop Insurance Regulations; Potato Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations; Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, Northern Potato Crop Insurance Storage Coverage Endorsement, and the Central and Southern Potato Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of the insureds, and to reduce vulnerability to fraud, waste and abuse. The changes are intended to apply for the 2008 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 26, 2006 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled ''Potato Crop Insurance Provisions'', by any of the following methods:

- By Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- E-mail: *DirectorPDD@rma.usda.gov.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection from 7 a.m. to 4:30 p.m., c.s.t. Monday through Friday except holidays at the above address.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lopez, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above; telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this

rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations; Northern Potato Crop Insurance Provisions, Northern Potato Crop Insurance Quality Endorsement, Northern Potato Crop Insurance Processing Quality Endorsement, Potato Crop Insurance Certified Seed Endorsement, Northern Potato Crop Insurance Storage Coverage Endorsement, and Central and Southern Potato Crop Insurance Provisions.

The documents listed above were last updated effective for the 1998 crop year in states where insurance is offered under the Northern Potato Crop Provisions and for the 1999 crop year in states where insurance is offered under the Central and Southern Potato Crop Provisions. Since that time, several requests have been made for changes to improve the coverage offered, address program integrity issues, simplify program administration and improve clarity of the policy provisions. The various requests and the actions, if any, taken in response to the request are included below.

The proposed changes are as follows:

1. FCIC proposes to amend § 457.142, Northern Potato Crop Insurance Provisions as follows:

a. FCIC is proposing to amend the introductory text to include Kansas and San Juan County, New Mexico, because growing and post harvest handling of production is similar to other areas currently covered by the Northern Potato Crop Provisions. FCIC is also proposing to allow the Special Provisions to include additional states or counties in which insurance can be provided under the Northern Potato Crop Provisions. This will allow FCIC to better meet the needs of producers by more quickly making insurance available in other areas;

b. FCIC is proposing to remove provisions regarding document priority because these provisions are now contained in the Basic Provisions;

c. Section 1—FCIC is proposing to revise the definition of ''Certified seed'' to clarify that certified seed includes both seed used to produce a seed crop for the next crop year or a potato crop for harvest for commercial sale in the next crop year. This will clarify that certified seed must be used to produce the crop for both purposes and clarify the amount of production to count under the Potato Crop Insurance Certified Seed Endorsement. A definition of ''Potato certified seed program'' is being proposed because it is used in the definition of ''Certified seed''. FCIC is also proposing to revise the definition of ''Grade inspection'' to specify the standards that will be used to grade the potatoes. Since there are several grading standards that differ based on the intended use of the potato (i.e., chipping, processing, etc.), the policy needs to specify how these different standards will be applied for grading the potatoes. FCIC is also proposing to remove the definition of ''reduction percentage'' because the revised quality adjustment provisions no longer use the term. FCIC is also proposing to move the definition of ''processor contract'' from the Northern Potato Crop Provisions to the Northern Potato Crop Insurance Processing Quality Endorsement because the term is used only in that endorsement;

d. Section 2(b)—FCIC is proposing to revise the amount of percentage of the price election used to calculate an indemnity when the crop is not harvested. Producer groups requested FCIC review harvesting costs to determine if the current adjustment to the price election for unharvested acreage is accurate. The Federal Crop Insurance Act authorizes a reduction in the indemnity paid that is proportional to the out-of-pocket expenses that are not incurred as a result of not harvesting the crop. To effectuate this reduction in indemnity, FCIC reduces the price election used to compute the indemnity for unharvested acreage.

Under the current policy, 80 percent of the price election is used when calculating the indemnity for unharvested acreage. Using cost of production budgets prepared by the Cooperative State Research Education and Extension Service (CSREES), FCIC determined an average harvest cost (inputs associated with vine kill through hauling) of approximately 10 percent of the cost of production. Therefore, FCIC is proposing the price election used to determine an indemnity for unharvested production be set at 90 percent of the price election. Sections 2(b) and 11(b) of the Northern Potato Crop Provisions and sections 3(b) and 12(b) of the Southern Potato Crop Provisions have also been revised to reflect this change;

e. Section 8(c)—FCIC is proposing to revise the provisions to include the state of Kansas with other states having October 15 as the end of insurance period because this is the date by which harvest is usually completed in this state;

f. Section 8(e)—FCIC is proposing to revise the provisions to include San Juan County, New Mexico with other states having October 31 as the end of insurance because this is the date by which harvest is usually completed in this county;

g. Section 11(b)(7)—FCIC is proposing to revise the indemnity calculation example to incorporate the new percentage used to reduce the price election for unharvested acreage;

h. Section 11(d)(1)(iv)—FCIC is proposing to revise the provisions to clarify that all unharvested production is subject to the price reduction used to determine the indemnity for unharvested acreage and qualifies for a quality adjustment. As currently drafted, it may not be clear that all unharvested production is subject to these provisions. Further, since unharvested production is eligible for the quality adjustments, potential production in acreage put to another use or abandoned should also be eligible for quality adjustment. FCIC also proposes to revise the cross references to the quality adjustment provisions;

i. Section 11(e)(2)—FCIC is proposing to clarify that a grade inspection must be completed no later than 21 days after end of the insurance period. If the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable, samples must be obtained within 60 days from the end of the insurance period and a quality (grade) determination must occur within 21 days of sampling. To allow grade inspections to occur at later dates will lead to the potential to have quality adjustments based on other than insurable causes of loss that occur within the insurance period;

j. FCIC also proposes to add section 11(e)(3) to the quality adjustment provisions to clarify that the producer must report the intended use of the potatoes so that the appropriate United States Standards can be applied. This will allow for a more accurate quality adjustment based on the disposition of the potatoes;

k. Section 11(g)—FCIC is proposing to revise section 11(g) because the Office of Inspector General (OIG) and an RMA Compliance office recommended changes to the quality adjustment provisions. Section 11(g) provides the quality adjustment standards based on a certain number of days within which the potatoes are discarded, delivered, or there is an agreement on the price of potatoes (within 21 days of the end of the insurance period or 60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable). Based on these standards, the amount of production counted as production to count is reduced. The production to count is used to determine whether an indemnity is due. Reports prepared by OIG and RMA Compliance indicated there were some cases in which producers retained production beyond the time period specified and then were able to sell more production than the amount of production used to determine the production to count. Therefore, FCIC is proposing changes to the quality adjustment procedures for situations in which damaged production is not sold within the applicable time period. In these cases, the amount of production to count will be the greater of the amount determined by dividing the sale price per cwt. of the production eligible for a quality adjustment by the price election and multiplying the result by the number of cwt. of production eligible for a quality adjustment, or the amount determined by reducing the production by a specified percentage factor based on the percent damage. By using the greater of these two amounts, the production will no longer be able to qualify for an adjustment based on the percentage factors contained in the policy and then later sold in a greater amount. The amount of production used to calculate the claim will be the amount actually sold.

In addition, FCIC proposes to revise the percentages used for this purpose and the same factors will be used for damage resulting from tuber rot and for freeze. The current policy uses different factors for tuber rot and freeze and is complex to administer when there is a combination of such damage. Instead, FCIC has carefully considered the factors and is proposing new factors it believes are a balance between the two sets of current factors and should adequately reflect the value lost due to tuber rot and freeze; and

l. FCIC proposes to add provisions to section 11(g) to clarify how discarded production will be adjusted. Currently, the provisions state that if production with freeze damage in excess of 17.9 percent is not discarded within 21 days of the end of the insurance period, 15 percent of such production will be included as production to count. Now production that has more than 5.1 percent freeze damage and could not have been sold will receive a zero as production to count. However, such production must be destroyed before a claim can be settled. If the production could have been sold or was discarded more than 21 days after the end of the insurance period, the production will be adjusted under section 11(g)(2)(iii). This change treats freeze damage consistent with the manner in which tuber rot is currently adjusted and eliminates the additional complexity required by many different percentage standards. Any additional losses this change will cause will be included in the premium rating.

2. FCIC proposes to amend § 457.143, Northern Potato Crop Insurance Quality Endorsement as follows:

a. FCIC is proposing to add a new section 1, and move the definition of ''Percentage factor'' currently in section 10 to section 1. This new format will conform to all other crop provisions that have the definitions first, which will make it easier to read;

b. Section 4—FCIC is proposing to revise provisions to reflect the format and changes for the quality adjustment provisions in section 11(g) of the Northern Potato Crop Provisions; and

c. Section 5—For the reasons stated above, FCIC is proposing to add provisions to clarify how discarded production will be adjusted.

3. FCIC proposes to revise § 457.144, Northern Potato Crop Insurance Processing Quality Endorsement as follows:

a. Section 1—FCIC is proposing to add a new section 1, move the definition of ''Percentage factor'' currently in section 10 to section 1 and add definitions for ''Broker,'' ''Processor,'' and ''Processor contract''. This new format will conform to all the other crop provisions that have the definitions first, which will make it easier to read. Previously, the terms ''Processor'' and ''Processor contract'' were included in the endorsement but were not defined. Definitions are necessary to ensure a uniform meaning is provided for these terms, which are consistent with the definitions of such terms in other crop policies involving processing crops. The definition of ''Broker'' is added because FCIC recognizes that not all potatoes are sold directly to processors and instead the potatoes are sold through brokers. Subsequent sections will be redesignated as necessary;

b. Section 2—FCIC is proposing to add a new section 2 that consolidates the provisions regarding eligibility from current sections 2, 3, 4 and 5, into one section to eliminate ambiguity. The new section 2 now contains the requirement that the producer must have a Northern Potato Crop Insurance Quality Endorsement in effect and the Northern Potato Crop Insurance Processing Quality Endorsement must be elected on or before the sales closing date. Further, FCIC is proposing to add a provision that specifies that if the producer cancels the Northern Potato Crop Insurance Quality Endorsement, the Northern Potato Crop Insurance Processing Quality Endorsement is automatically cancelled. The provision regarding the ability to cancel the Northern Potato Crop Insurance Processing Quality Endorsement for subsequent years has been added to this section because the other cancellation provisions are here and it is best to keep such provisions together. FCIC also proposes to add a requirement that the producer have a processor contract executed with a processor or broker as a condition of eligibility. This is implied in other sections but now it is clear that such a contract is a condition of eligibility for coverage;

c. Redesignated section 5—FCIC is proposing to include processor contracts executed with brokers because this has become an increasingly common mechanism for producers to sell their potato production and without inclusion of these contracts, such producers would be without coverage. FCIC also proposes to add those provisions currently in section 6 because they also relate to the insurable acreage. Inclusion of all related provisions should improve the readability of the policy and remove ambiguities;

d. Redsignated section 6—FCIC is proposing to revise the quality adjustment provisions for potatoes to include a standard for chipping potatoes. A producer group recommended including a quality standard specific to chipping potatoes in the Northern Potato Crop Insurance Processing Quality Endorsement. FCIC agrees such standard should be added. FCIC is proposing to use a standard based on an Agtron rating because this rating is commonly recognized by the potato industry as well as being referenced in the U.S. Standards for Grades of Potatoes for Processing or Chipping. FCIC is proposing to use an Agtron rating value of 58 because this appears to be an average threshold of what processors will accept. For the reasons stated above, FCIC is also proposing to revise the provisions to reflect the changes in the new quality

adjustment provisions in the Northern Potato Crop Provisions. FCIC is also proposing to simplify the provisions and make other grammatical changes for readability;

e. FCIC is proposing to add a new section 7 to clarify how discarded production will be adjusted for the same reasons stated above; and

f. FCIC is proposing to combine the provisions in current sections 7 and 8 to specify that all quality determinations must be based on a grade inspection using the United States Standards for Grades of Potatoes for Processing and Chipping.

4. FCIC proposes to amend § 457.145, Potato Crop Insurance Certified Seed Endorsement as follows:

a. Section 1—FCIC is proposing to revise the provisions to clarify that the Certified Seed Endorsement only extends the time period to discover damage beyond harvest that resulted from a cause of loss that occurred during the insurance period, it does not extend the insurance period and any new causes of loss that occur after harvest are not covered. Therefore, the additional premium paid for coverage under the Storage Coverage Endorsement will not apply;

b. Section 2—FCIC is proposing to move the definition ''potato certified seed program'' to Northern Potato Crop Provisions because the term is used in the definition of certified seed;

c. Section 6—FCIC also proposes to move the provisions currently in section 11 to section 6 and add new provisions to clarify that failure to meet any requirements under the potato seed certification program will be considered loss due to uninsured causes, which under section 8(d) means that such production is counted as production to count. This will ensure that coverage is only provided for potatoes that could have met the standards for certification if not for an insurable cause of loss; and

d. Section 10—FCIC also proposes to clarify that coverage is not provided for failure to meet quality requirements for seed used to produce a subsequent seed crop. Certified seed can be used to produce a subsequent commercial crop or a subsequent seed crop. This endorsement only covers quality losses due to insurable causes of certified seed used to produce a subsequent commercial crop, not the subsequent seed crop. This is because certified seed that does not meet the quality standards for a subsequent seed crop generally still meets the requirements to be used for a commercial crop.

5. FCIC proposes to amend § 457.146, Northern Potato Crop Insurance Storage Coverage Endorsement as follows:

a. Section 5(a)(3)—FCIC is proposing to revise the provisions to include the Agtron standard for chipping potatoes for the reasons stated above;

b. Section 5(c)—FCIC is proposing to revise the provisions to include provisions currently contained in section 5(d) because the provisions all relate to sampling and now provide the time frame such sampling must occur for all situations and who may conduct the sampling; and

c. Producer groups recommended increasing the length of time coverage is provided under the Northern Potato Crop Insurance Storage Coverage Endorsement period. The current endorsement provides 60 days after the end of the insurance period to discover damage that occurred during the insurance period but does not become evident until a later time. To determine the feasibility of extending the storage period, the historic experience for policies with the Storage Coverage Endorsement was analyzed. A review of crop years from 1998 through 2003 indicated that for five of the six years, losses exceeded premiums collected under the Storage Coverage Endorsement. In addition, several potato industry experts state that virtually all damage that occurs within the covered insurance period (coverage ends upon harvest) will become apparent within 45 days after production is harvested. Therefore, based on loss experience to date and adequacy of the current coverage period, no time extension is proposed.

6. FCIC proposes to amend § 457.147, Central and Southern Potato Crop Insurance Provisions as follows:

a. Introductory text—FCIC is proposing to revise to exclude San Juan County, New Mexico, and to allow for the Special Provisions to include states or counties in which insurance can be provided under the Central and Southern Potato Crop Insurance Provisions;

b. FCIC is proposing to remove provisions regarding document priority because these are now contained in the Basic Provisions;

c. Section 1—FCIC is proposing to revise the definition of ''Certified seed'' to clarify that certified seed includes both seed used to produce a seed crop for the next crop year or a potato crop for harvest for commercial sale in the next crop year. This will clarify that certified seed must be used to produce the crop for both purposes. The definition of ''Potato certified seed program'' is included because it is used in the definition of certified seed. FCIC is also proposing to revise the definition of ''grade inspection'' to specify the standards that will be used to grade the potatoes. Since there are several grading standards that differ based on the intended use of the potato (i.e., chipping, processing, etc.), the policy needs to specify how these different standards will be applied for grading the potatoes;

d. Section 3(b)—FCIC is proposing to revise the percent of the price election used to determine the indemnity for unharvested acreage from 80 to 90 percent;

e. Section 4—FCIC is proposing to add an additional contract change date of October 31 for counties with a new January 31 cancellation date as specified below. This will allow sufficient time for affected producers to make informed decisions by the cancellation date;

f. Section 5—FCIC is proposing to add an additional cancellation and termination date of January 31 for Delaware, Maryland, New Jersey, North Carolina, and Virginia. This change is being made to accurately reflect the growing cycle in these states;

g. Section 12(b)—FCIC is proposing to revise the indemnity calculation example to incorporate the new percentage used to reduce the price election for unharvested acreage; and

h. Section12(e)—FCIC is proposing to add the requirement that the producer provide notice of the intended use of the potato so the appropriate grading standard can be applied. Further, FCIC is proposing to revise the provisions to clarify that the same quality determinations apply for both harvested and unharvested production.

List of Subjects in 7 CFR Part 547

Crop insurance, Potatoes, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2008 and succeeding crop years to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.142 Northern potato crop insurance provisions as follows:

a. Revise the introductory text;

b. Remove the paragraph regarding document priority immediately preceding section 1 and revise the remaining paragraph below the heading ''Northern Potato Crop Provisions'' and before section 1;

c. Amend section 1 by revising the definition of ''Certified seed'' and ''Grade inspection''. Add definition of ''Potato certified seed program'', and remove the definitions of ''Processor contract'' and ''Reduction percentage'';

d. Amend section 2 by revising paragraph (b);

e. Amend section 8 by revising paragraphs (c) and (e); and

f. Amend section 11 as follows:

(1) Revise paragraph (b)(7);

(2) Remove paragraph (d)(1)(iv), redesignate paragraph (d)(1)(v) as (d)(1)(iv) and revise it;

(3) Revise paragraph (e)(2);

(4) Add new paragraph (e)(3);

(5) Revise section 11(g); and

(6) Remove paragraph (h).

The added and revised text reads as follows:

§ 457.142 Northern potato crop insurance provisions

The Northern Potato Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

These provisions will be applicable in: Alaska; Humboldt, Modoc, and Siskiyou Counties, California; Colorado; Connecticut; Idaho; Indiana; Iowa; Kansas; Maine; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; San Juan County, New Mexico; New York; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Utah; Washington; Wisconsin; and Wyoming; and any other states or counties if allowed by the Special Provisions.

* * * * *

1. Definitions

* * * * *

Certified seed. Potatoes that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next crop year or a potato crop for harvest for commercial uses in the next crop year.

* * * * *

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot of and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. The United States standards used to determine the quality (grade) deficiencies will be: (1) For potatoes produced or sold for chipping, the United States Standards for Grades of Potatoes for Chipping; (2) for potatoes produced or sold for processing, the United States Standards for Grades of Potatoes for Processing; and (3) for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

* * * * *

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

* * * * *

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 90 percent of your price election. This requirement is not applicable to the certified seed endorsement price election.

* * * * *

8. Insurance Period

* * * * *

(c) October 15 in Colorado; Indiana; Iowa; Kansas; Michigan; Minnesota; Montana; Nevada; North Dakota; South Dakota; Utah; and Wisconsin.

* * * * *

(e) October 31 in Humboldt, Modoc, and Siskiyou Counties, California; Connecticut; Idaho; Massachusetts; San Juan County, New Mexico; New York; Ohio; Oregon; Pennsylvania; Rhode Island; and Washington.

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 × 0.90 = $3.60.)) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and 15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 indemnity payment.

* * * * *

(d) * * *

(1) * * *

(iv) Unharvested production, including unharvested production on insured acreage that you intend to put to another use or acreage damaged by insurable causes and for which you cease to provide further care or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or cease providing care for the crop. This unharvested production may be adjusted in accordance with sections 11(e), (f), and (g); and the value of all unharvested production will be calculated using the reduced price election determined in section 2(b). If agreement on the appraised amount of production is not reached:

* * * * *

(e) * * *

(2) A grade inspection is completed no later than 21 days after the end of insurance period (if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable, samples must be obtained within 60 days of the end of insurance period and quality (grade) determinations must be completed with 21 days of sampling); and

(3) Prior to any quality adjustment, you notify us of the intended use of the potatoes so the applicable United States Standards will be applied.

* * * * *

(g) Potato production to count that is eligible for quality adjustment, as specified in section 11(e), with 5.1 percent damage or more (by weight) will be determined as follows:

(1) For potatoes for which a price is agreed upon between you and a buyer within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage endorsement is applicable), or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production will be determined by:

(i) Dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result (not to exceed 1.0) by the number of harvested hundredweight; or

(2) For potatoes for which a price is not agreed upon between you and a buyer or are not delivered and no price is agreed upon within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) and that remain in storage 22 or more days after the end of insurance period (61 or more days after the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production will be the greater of:

(i) The amount determined by:

(A) Dividing the price that is received, or will be received after the end of the applicable insurance period, per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based in the price you could have received in the local market); and

(B) Multiplying the result of section 11(g)(2)(i)(A) (not to exceed 1.0) by the number of harvested hundredweight; or

(ii) The amount of production determined by:

(A) Reducing any harvested or appraised production:

(*1*) By 0.1 percent for 0.1 percent damage through 5.0 percent;

(*2*) By 0.5 percent for each 0.1 percent of damage from 5.1 percent through 6.0 percent;

(*3*) By 1.0 percent for each 0.1 percent of damage from 6.1 through 13.5 percent; or

(B) Including 15 percent of the production when damage is in excess of 13.5 percent.

(iii) For any production discarded:

(A) Within 21 days after the end of insurance period (60 days after the end of the insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production to count will be:

(*1*) Zero if we determine the production could not have been sold; or

(*2*) Determined in accordance with section 11(g)(2)(ii) if we determine the production could have been sold; or

(B) Later 21 days after the end of insurance period (60 days after the end of the insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production to count will be adjusted in accordance with section 11(g)(2)(ii).

* * * * *

3. Amend § 457.143, Northern potato crop insurance quality endorsement, as follows:

a. Revise the introductory text;

b. Redesignate sections 5 through 8 as 7 through 10;

c. Redesiginate sections 1 through 4, as sections 2 through 5, and add new section 1;

d. Revise redesignated section 5; and

e. Add a new section 6.

The revised and added text reads as follows:

§ 457.143 Northern potato crop insurance quality endorsement.

The Northern Potato Crop Insurance Quality Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. Definitions

Percentage factor. The historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than 4 years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions so that such a combination would be the functional equivalent of 4 years of records.

* * * * *

5. We will adjust the production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions for potatoes that do not meet U.S. No. 2 grade requirements from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection due to:

(a) Internal defects as long as the number of potatoes with such defects are in excess of the tolerances allowed for the U.S. No. 2 grade potatoes on a lot basis and are not separable from undamaged production using methods used by the packers or processors to whom you normally deliver your potato production as follows:

(1) For potatoes for which a price is agreed upon between you and a buyer within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), or that are delivered to a buyer within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage endorsement is applicable), the amount of production will be determined by:

(i) Dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result (not to exceed 1.0) by the number of harvested hundredweight; or

(2) For potatoes for which a price is not agreed upon between you and a buyer or are not delivered and no price is agreed upon within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) and that

remain in storage 22 or more days of the end of insurance period (61 or more days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production will be the greater of:

(i) The amount of production determined by:

(A) Dividing the price that is received, or will be received after the end of the applicable insurance period, per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(B) Multiplying the result of section 5(a)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold production (Adjustment under section 5(a)(2)(i)(A) will not be performed if it already has been performed under the terms of section 11(g)(2) of the Northern Potato Crop Provisions); or

(ii) The amount of production determined as follows:

(A) The combined weight of sampled potatoes that grade U.S. No. 2 or better (the amount of potatoes grading U.S. No. 2 will be based on a grade inspection completed no later than 21 days after the end of insurance period (if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable, samples must be obtained within 60 days of the end of insurance period and a grade inspection completed within 21 days of sampling) and are damaged by freeze or tuber rot will be divided by the total sample weight;

(B) The percentage determined in section 5(a)(2)(ii)(A) will be divided by the applicable percentage factor determined in accordance with section 1; and

(C) The result of section 5(a)(2)(ii)(B) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(b) Factors other than those specified in section 5(a), in accordance with section 5(a)(2)(ii).

6. For any production discarded that qualifies for adjustment in accordance with section 6(a):

(a) Within 21 days after the end of insurance period (60 days after the end of the insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 5(a)(2)(ii) if we determine the production could have been sold; or

(b) Later than 21 days after the end of insurance period (60 days after the end of the insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production to count will be adjusted in accordance with section 5(a)(2)(ii).

* * * * *

4. Revise § 457.144, Northern potato crop insurance processing quality endorsement provisions in its entirety to read as follows:

§ 457.144 Northern potato crop insurance processing quality endorsement.

The Northern Potato Crop Insurance Processing Quality Endorsement Provision for the 2008 and succeeding crop years are as follows:

1. Definitions.

Broker. Any business enterprise regularly engaged in the buying and selling of processing potatoes, that possesses all licenses and permits as required by the state in which it operates, and when required, has the necessary facilities or the contractual access to such facilities, with enough equipment to accept and transfer processing potatoes to the broker within a reasonable amount of time after harvest or the typical storage period.

Percentage factor. The historical average percent of potatoes grading U.S. No. 2 or better, by type, determined from your records. If a least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than 4 years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions so that such combination would be the functional equivalent of 4 years of records.

Processor. Any business enterprise regularly engaged in processing potatoes for human consumption, that possesses all licenses and permits for processing potatoes required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process processing potatoes grown under a processing contract within a reasonable amount of time after harvest or the typical storage period.

Processor contract. A written agreement between the producer and processor, or between a producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing potatoes, and to deliver the potato production to the processor or broker;

(b) The processor's or broker's commitment to purchase all the production stated in the processing contract; and

(c) A price or pricing mechanism to determine the value of delivered production.

2. To be eligible for coverage under this endorsement, you must have a:

(a) Northern Potato Crop Insurance Quality Endorsement in place and elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement;

(1) Cancellation of your Northern Potato Crop Insurance Quality Endorsement will automatically result in cancellation of this endorsement;

(2) This endorsement may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date; and

(b) Processor contract executed with a processor or broker for the potato types insured under this endorsement that is applicable for the crop year;

(1) A copy of the processor contract must be submitted to us on or before the acreage reporting date for potatoes:

(2) Failure to timely provide the processor contract will result in no coverage under this endorsement and coverage will be provided only under the terms of the Northern Potato Crop Insurance and Northern Potato Crop Insurance Quality Endorsement.

3. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions and Northern Potato Crop Insurance Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions or Northern Potato Crop Insurance Quality Endorsement and this endorsement, this endorsement will control.

4. All terms of the Northern Potato Crop Insurance Quality Endorsement not modified by this endorsement will be applicable to acreage covered under this endorsement.

5. If you elect this endorsement, all insurable acreage of production under contract with the processor or broker must be insured under this endorsement:

(a) When the processor contract requires the processor or broker to purchase a stated amount of production, rather than all of the production from a

stated number of acres, the insurable acreage will be determined by dividing the stated amount of production by the approved yield for the acreage; and

(b) The number of acres insured under this endorsement will not exceed the actual number of acres planted to the potato types needed to fulfill the contract.

6. In lieu of the provisions contained in section 5 of the Northern Potato Crop Insurance Quality Endorsement, production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions will be adjusted in accordance with sections 6(a) or 6(b), whichever is applicable, from unharvested acreage or harvested acreage that is stored or is marketed after a grade inspection conducted in accordance with section 8 as follows:

(a) The production to count for potatoes rejected by a processor or broker because they do not meet U.S. No. 2 grade requirements due to internal defects as long as the number of potatoes with such defects are in excess of the tolerance allowed for U.S. No. 2 grade potatoes on a lot basis and are not separable from undamaged production using methods used by the potato packers to whom you normally deliver your potato production; a specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract; a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent; or an Agtron rating lower than the lesser of 58 or the minimum acceptable amount specified in the processor contact will be determined as follows:

(1) For potatoes for which a price is agreed upon between you and a buyer within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), or that are delivered to a buyer within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production will be determined by:

(i) Dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (If the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(ii) Multiplying the result of section 6(a)(1)(i) (not to exceed 1.0) by the number of hundredweight; or

(2) For potatoes for which a price is not agreed upon between you and a buyer *or are not delivered and no price is agreed upon* within 21 days of the end of insurance period (60 days of the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) and that remain in storage 22 or more days after the end of insurance period (61 or more days after the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production will be the greater of:

(i) The amount of production determined by:

(A) Dividing the price that is received, or will be received after the end of the applicable insurance period, per hundredweight by the highest price election designated in the Special Provisions or addendum thereto for the insured potato type (if the production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market); and

(B) Multiplying the result of section 6(a)(2)(i)(A) (not to exceed 1.0) by the number of hundredweight of sold production (Adjustment under section 6(a)(2)(i) will not be performed if it already has been performed under the terms of section 11(g)(2) of the Northern Potato Crop Provisions): or

(ii) The amount of production determined as follows:

(A) The combined weight of sampled potatoes that grade U.S. No. 2 or better, and that are damaged by freeze or tuber rot will be based on a grade inspection:

(*1*) The amount of potatoes grading U.S. No. 2 or better will be based on a grade inspection from samples taken no later than 21 days after the end of insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is not applicable;

(*2*) If the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable, samples must be obtained within 60 days of the end of insurance period and quality (grade) determination completed within 21 days of sampling.

(B) The percentage determined in section 6(a)(2)(ii)(A) will be divided by the applicable percentage factor; and

(C) The result of section 6(a)(2)(ii)(B) will be multiplied by the amount of production to count determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions.

(b) The production to count for potatoes rejected by the processor or broker due to factors other than those specified in section 6(a) will be adjusted in accordance with section 6(a)(2)(ii).

7. For any production that qualifies for adjustment in accordance with section 6(a) and that is discarded:

(a) Within 21 days after the end of insurance period (60 days after the end of the insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of production to count will be:

(1) Zero if we determine the production could not have been sold; or

(2) Determined in accordance with section 6(a)(2)(ii) if we determine the production could have been sold; or

(b) Later than 21 days after the end of insurance period (60 days after the end of the insurance period if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable), the amount of will production to count will be adjusted in accordance with section 6(a)(2)(ii).

8. All quality determinations must be based upon a grade inspection using the United States Standards for Grades of Potatoes for Processing or Chipping.

9. The actuarial documents may provide ''U.S. No. 1 grade'' in place of ''U.S. No. 2 grade'' as used in this endorsement. If both U.S. No. 1 and 2 grades are available in the actuarial documents, you may elect U.S. No. 1 or 2 grade by potato type or group, if separate types or groups are specified in the Special Provisions.

5. Amend § 457.145, Potato crop insurance certified seed endorsement, as follows:

a. Revise the introductory text;

b. Revise section 1;

c. Remove section 2, and redesignate sections 3 through 11 as 2 through 10;

d. Revise redesignated section 6; and

e. Revise redesignated section 10.

The added and revised text reads as follows:

§ 457.145 Potato crop insurance certified seed endorsement.

The Potato Crop Insurance Certified Seed Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. Any additional premium paid for coverage under the Northern Potato

Crop Insurance Storage Coverage Endorsement will not apply to the additional coverage provided under the terms of this endorsement. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

* * * * *

6. All potatoes insured for certified seed production must be produced and managed in accordance with the regulations, standards, practices, and procedures required for certification under the potato certified seed program. Any production that does not qualify as certified seed because of varietal mixing or your failure to meet any requirements under the potato certified seed program will be considered as lost due to uninsured causes.

* * * * *

10. Failure to meet any requirements for seed to be used to produce a subsequent seed crop will not be covered. All the production that meets requirements for certified seed used to produce a commercial crop will be included in production to count.

6. Amend § 457.146 Northern potato crop insurance storage coverage endorsement as follows:

a. Revise the introductory text; and

b. Amend section 5 by revising the first sentence, removing paragraph (d) and revising paragraphs (a)(3) and (c).

The revised text reads as follows:

§ 457.146 Northern potato crop insurance storage coverage endorsement.

The Northern Potato Crop Insurance Storage Coverage Endorsement Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

5. In lieu of section 9(b)(1) of the Northern Potato Crop Provisions, the extended coverage provided by this endorsement will be applicable but only if:

(a) * * *

(3) A specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent, or an Agtron rating lower than the lesser of 58 or the minimum acceptable amount specified in the processor contract. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Processing Quality Endorsement.

* * * * *

(c) The percentage of production that has any of the quality deficiencies specified in section 5(a) is determined based on samples obtained no later than 60 days after the end of the insurance period and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, or us, in accordance with the United States Standards for Grades of Potatoes;

(1) Samples of damaged production must be obtained by us or a party approved by us prior to the sale or disposal of any lot of potatoes; and

(2) If production is not sold or disposed of within 60 days of the end of insurance period, samples must be obtained within 60 days of the end of insurance period and a quality (grade) determination must be completed within 21 days of sampling.

7. Amend § 457.147, Central and southern potato crop insurance provisions as follows:

a. Revise the introductory text;

b. Remove the paragraph regarding document priority immediately preceding section 1 and revise the remaining paragraph below the heading ''Central and Southern Potato Crop Provisions'' and before section 1;

c. Amend section 1 by revising the definition of ''Certified seed'' and ''Grade inspection'', and adding a new definition for ''Potato certified seed program'';

d. Amend section 3 by revising paragraph (b);

e. Amend section 4 by redesignating the current paragraph (c) as paragraph (d) and adding a new paragraph (c);

f. Revise section 5; and

g. Amend section 12 as follows:

(1) Revise paragraph (b)(7); and

(2) Revise paragraph (e) in its entirety.

The added and revised text reads as follows:

§ 457.147 Central and southern potato crop insurance provisions.

The Central and Southern Potato Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

These provisions will be applicable in Alabama; Arizona; all California counties except Humboldt, Modoc, and Siskiyou; Delaware; Florida; Georgia; Maryland; Missouri; New Jersey; all New Mexico counties except San Juan; North Carolina; Oklahoma; Texas and Virginia; and other states or counties if allowed by the Special Provisions.

* * * * *

1. Definitions

* * * * *

Certified seed. Potatoes that were entered into the potato certified seed program and that meet all requirements for production to be used to produce a seed crop for the next year or a potato crop for harvest for commercial uses in the next crop year.

* * * * *

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. The United States standards used to determine the quality (grade) deficiencies will be: (1) For potatoes produced or sold for chipping, the United States Standards for Grades of Potatoes for Chipping; (2) for potatoes produced or sold for processing, the United States Standards for Grades of Potatoes for Processing; and (3) for all other potatoes, the United States Standards for Grades of Potatoes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC.

* * * * *

Potato certified seed program. The state program administered by a public agency responsible for the seed certification process within the state in which the seed is produced.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 90 percent of your price election.

* * * * *

4. Contract Changes

* * * * *

(c) October 31 preceding the cancellation date for counties with a January 31 cancellation date; and

* * * * *

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Dates
Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties lying south thereof	September 30.
Arizona; all California counties; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Haskell, Knox, Lamb, Parmer, Swisher, and Yoakum.	November 30.
Alabama; Georgia; Missouri; and All Florida Counties except Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties to the south thereof.	December 31.
Delaware; Maryland; New Jersey; North Carolina; and Virginia	January 31.
Oklahoma; and Haskell and Knox Counties, Texas	February 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum counties, Texas; and New Mexico.	March 15.

* * * * *

12. Settlement of Claim.

* * * * *

(b) * * *

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acreage acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.60 per hundredweight. (The price election for unharvested acreage is 90.0 percent of your elected price election ($4.00 x 0.90 = $3.60.)) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.60 price election = $54,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $54,000.00 = $114,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.60 = $12,600.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $12,600.00 = $52,600.00 total value of production to count;

(6) $114,000.00 − $52,600.00 = $61,400.00 loss; and

(7) $61,400.00 loss × 100 percent = $61,400.00 indemnity payment.

* * * * *

(e) With the exception of production with external defects, only marketable lots of mature potatoes will be production to count for loss adjustment purposes:

(1) Production not meeting the standards for grading U.S. No. 2 due to external defects will be determined on an individual basis for all harvested and unharvested potatoes if we determine it is or would be practical to separate the damaged production;

(2) All determinations must be based upon a grade inspection; and

(3) Prior to any grade inspection, you must notify us of the intended use of the potatoes so the applicable United States Standard will be applied.

(4) Marketable lots of potatoes will include any lot of potatoes that is:

(i) Stored;

(ii) Sold as seed;

(iii) Sold for human consumption; or

(iv) Harvested and not sold or that is appraised if such lots meet the standards for grading U.S. No. 2 or better on a sample basis.

(5) Marketable lots will also include any potatoes that we determine:

(i) Could have been sold for seed or human consumption in the general marketing area;

(ii) Were not sold as a result of uninsured causes including, but not limited to, failure to meet chipper or processor standards for fry color or specific gravity; or

(iii) Were disposed of without our prior written consent and such disposition prevented our determination of marketability.

(6) Unless included in section 12(e)(4) or (5), a potato lot will not be considered marketable if, due to insurable causes of damage, it:

(i) Is partially damaged, and is salvageable only for starch, alcohol, or livestock feed;

(ii) Does not meet the standards for grading U.S. No. 2 or better due to internal defects; or

(iii) Does not meet the standards for grading U.S. No. 2 or better due to external defects, and it is not practical to separate the damaged production.

* * * * *

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

James Callan,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 06–6527 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC02

Common Crop Insurance Regulations; Fresh Market Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend its Fresh Market Sweet Corn Crop Insurance Provisions. The intended effect of this action is to provide policy changes to allow for the expansion of fresh market sweet corn coverage into areas where the crop is produced and when provided in the actuarial documents, and allow coverage for fresh market sweet corn when it is marketed through direct marketing. This change will be applicable for the 2008 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 26, 2006 and will be considered when the

rule is to be made final. Comments on information collection under the Paperwork Reduction Act of 1995 must be received on or before September 26, 2006.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676. Comments titled ''Fresh Market Sweet Corn Crop Insurance Provisions'' may be sent by any of the following methods:

- By Mail to: Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- E-Mail: *DirectorPDD@rma.usda.gov.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this proposed rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels or government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule preempts State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environment Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 457.129 Fresh Market Sweet Corn Crop Insurance Provisions effective for the 2008 and succeeding crop years. The principal changes to the provisions for insuring fresh market sweet corn are:

1. FCIC is proposing to remove the provisions regarding document priority because these provisions are now contained in the Basic Provisions.

2. *Section 1*—FCIC proposes to remove definitions for the terms ''excess rain,'' ''excess wind,'' and ''freeze.'' These terms have been determined to be too limiting as causes of loss and have been replaced by the term ''adverse weather conditions'' in section 11. This will make this policy consistent with other similar policies and allow all types of adverse weather to be covered. FCIC also proposes to add a definition of ''amount of insurance (per acre)'' to specify the calculation utilized in computing the dollar amount of coverage. The term is used throughout the policy but was not previously defined. FCIC proposes to add definitions for ''allowable cost,''

''minimum value'' and ''net value per container'' to clarify how fresh market sweet corn will be valued for the purpose of computing production to count. Also FCIC proposes to revise the definition of ''container'' for clarity. FCIC also proposes to revise the definition of ''harvest'' to specify that it is removal of the ear from the plant and it can include either by hand or by machine. The previous definition just referred to picking of sweet corn and the new definition will clarify what is meant by picking. FCIC also proposes to revise the definition of ''marketable sweet corn'' to include the United States Standards for Grades of Sweet Corn. This will make sweet corn consistent with other crops for which the United States has standards and provide a clear objective standard upon which to determine whether the sweet corn is marketable.

3. *Section 2*—FCIC proposes to remove provisions which state optional units by irrigated and non-irrigated practices are not applicable. This change will allow optional units by irrigated and non-irrigated practices if the Special Provisions provide for a non-irrigated practice. This change is necessary so the fresh market sweet corn crop insurance program may be expanded into areas where the growing conditions and farming practices may not require an irrigated practice.

4. *Section 3(d)*—FCIC proposes to add a new section 3(d) to limit the amount of insurance per acre if a required minimum amount of production has not been produced in at least one of the three most recent crop years. This provision will provide a means to implement amount of insurance limits and prevent potential over-insurance in areas where sweet corn production may not be consistent with the reference maximum dollar amount contained in the actuarial documents.

5. *Section 3(f)*—FCIC proposes to add language to clarify that if sweet corn is damaged in the first stage of growth and other producers in the area would not normally care for the crop, the sweet corn will be deemed as destroyed even if the insured continues to care for the crop. There were questions regarding what occurred if the producer continued to care for the crop. This language clarifies that the crop will still be deemed destroyed, and the claim paid based on the stage the crop was in when the damaged occurred, even if the producer continues to care for the crop.

6. *Section 8(c)*—FCIC proposes to add an exception to the policy to allow coverage for fresh market sweet corn that is grown for direct marketing if such practice is allowed by the Special Provisions or by written agreement. In many areas of the mid-west and eastern states fresh market sweet is grown and marketed directly to the public by way of farmers markets and roadside stands. This change will allow coverage for, and make the policy consistent with many other crops that are marketed by direct marketing.

7. *Section 9(a)*—FCIC proposes to remove paragraph (a), which previously allowed coverage for sweet corn planted in newly cleared land or former pasture land. Coverage for such acreage is normally precluded but fresh market sweet corn provided an exception because of the locations in which it was normally grown. However, as the production of the crop and coverage expand into new areas, there is concern that allowing coverage on newly cleared acreage or former pasture land will create program vulnerabilities. Therefore, FCIC is proposing to eliminate coverage for such acreage, which is consistent with most other crop policies. The following paragraphs are redesignated and restructured for clarity.

8. *Section 9(b)*—FCIC proposes to revise the provisions previously contained in section 9(b)(2), now redesignated as section 9(b), to specify that in areas with fall or winter planting periods, not only must the final planting date have passed, it must be considered practical to replant. If both conditions are met, the producer will have the option to replant and receive the replant payment or not replant and accept an indemnity based on the stage of growth when the damage occurred. Previously the provision only referred to the final planting date having passed and did not specify that it still must be practical to replant. This change will eliminate any ambiguity in the provision.

9. *Section 10(f)*—FCIC proposes to revise the provision that states that the end of the insurance period is 100 days after the date of planting or replanting. Flexibility is needed because there may be new varieties or the program may be expanded into areas where the sweet corn may take shorter or longer to mature. This change will allow FCIC to set the appropriate end of the insurance period in the Special Provisions.

10. *Section 11(a)*—FCIC is proposing to add ''adverse weather conditions,'' ''wildlife,'' ''volcanic eruption,'' and ''earthquake'' as insured causes of loss. This change will provide consistency in the causes of loss found in other crop insurance policies. The previous list provided the predominate causes of loss that posed a risk to the production of sweet corn in the limited areas where insurance was available. However, if sweet corn gets expanded into other areas, these other causes of loss may become a risk to the crop and there is no reason that such causes should not also be covered. They pose no greater risk to sweet corn than they do to any other crop and the risks will be included in the premium rates. FCIC also proposes to remove the terms ''excess rain,'' ''excess wind,'' ''freeze,'' ''hail,'' and ''tornado.'' As stated above, the term ''adverse weather conditions'' includes the individually named causes of loss that are being removed.

11. *Section 11(b)(1)*—FCIC proposes to move the provisions that specify that any loss of production due to insects and disease will not be insured unless there is no effective control measures to section 11(a) and allow such causes to be covered unless damage occurs due to insufficient or improper application of pest or disease control measures. This change will standardize provisions among other crop insurance policies.

12. *Section 11(b)*—FCIC proposes to add a new section 11(b)(1) that would specify that failure to harvest in a timely manner is not an insured cause of loss unless harvest is prevented by one of the other insurable causes of loss. Since fresh market sweet corn is a perishable commodity, failure to timely harvest can cause damage even though no other cause of loss may have occurred. This change will ensure that only damage due to natural causes are covered. FCIC also proposes to revise section 11(b)(2) to add provisions that clarify that an indemnity will not be paid for a quarantine, boycott or refusal to accept production. This is consistent with language in other crop policies and ensures that coverage is only provided for natural causes.

13. *Section 13(b)*—FCIC proposes to restructure the current provisions into section 13(a) and add a new section 13(b) to require notice of loss be given at least 15 days before any production will be sold by direct marketing so an appraisal can be made. If damage occurs after this appraisal, an additional appraisal will be made. The appraisals and any acceptable production records will be used to determine production to count. Since insurance is now being provided for direct marketed crops, and there may not be any verifiable records associated with such sales, this change is necessary to more accurately determine the value of production to count.

14. *Section 13(c)*—FCIC proposes to add a new section 13(c) to specify that failure to give timely notice of loss when sweet corn will be sold by direct marketing will result in an amount of production to count that is not less than

the dollar amount of insurance per acre for the applicable stage if such failure results in the inability to properly determine the value of the production. Without the ability to appraise the crop before any is sold in direct marketing it will make it difficult to impossible to determine whether production was accurately reported because, unlike crops not sold through direct marketing, there are no independent sources to verify production.

15. *Section 14(b)(4)(ii)*—FCIC proposes to remove the provisions pertaining to the 1998 and 1999 crop years because they are obsolete and specifying the coverage level of fifty-five percent, which is the coverage level for catastrophic risk protection coverage.

16. *Section 14(b)(5)*—FCIC proposes to add an example of the claim for indemnity calculations at the end of paragraph (b)(5) for clarity.

17. *Section 14(c)(1)(v)*—FCIC is proposing to add a new section 14(c)(1)(v) that specifies that the value of production to count for direct marketed production will not be less than the dollar amount of insurance per acre for such production if the producers fails to provide timely notice that the production will be sold through direct marketing. Because of the inability to verify records of sales, approved insurance providers must have the opportunity to appraise the production before any of it is sold. This is consistent with other crops sold through direct marketing.

18. *Section 14(c)(2)*—FCIC is proposing to clarify that to be considered as production to count, the unharvested sweet corn must be marketable. If marketable, the value of appraised unharvested sweet corn production will not be less than the dollar amount obtained by multiplying the number of containers appraised by the minimum value per container shown in the actuarial. However, even if not marketable, the unharvested production will be considered as production to count if the production is later harvested and sold. This ensures that the producer is only indemnified for actual losses.

19. *Section 14(c)(3)*—FCIC is proposing to modify and clarify that the value of all harvested production that is marketable and sold (except production sold by direct marketing) and unsold. The value of sold production will be the greater of: (1) The dollar amount obtained by multiplying the total number of containers harvested by the minimum value; or (2) the dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of containers of sweet corn sold. The value of sweet corn that is unsold but is marketable will be the dollar amount obtained by multiplying the total number of containers harvested by the minimum value. Should the actual value for each container of sold production be used and the allowable costs then subtracted it would be time consuming and complex. FCIC is proposing to use the average net value, which will allow the approved insurance provider to average the prices received and use this single price to calculate the value of all sold production, except that sold through direct marketing. This will simplify the calculation and ensure that the producer receives the proper value for the production. The provision also is intended to clarify that if the production is sold, it will be considered as production to count, regardless of whether or not it is marketable. It is only if the production is damaged or defective due to an insurable cause, not marketable and not sold will it not be included as production to count.

20. *Section 14(c)(4)*—FCIC is proposing to add provisions specifying the value of production that is sold by direct marketing. If all conditions are met for insurability and timely notice is given, the value will be the greater of the actual value received by the insured, or the dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct market by the minimum value per container. Since it is impossible to obtain verifiable sales records, it would create a program vulnerability to allow the sales price for the direct marketed production to be used.

21. *Section 16(b)(1)*—FCIC is proposing to specify the value of harvested production insured under the Minimum Value Option will be the dollar amount obtained by multiplying the average net value per container from all sweet corn by the total number of containers of sweet corn sold. As stated above, should the actual value for each container of sold production be used and the allowable costs then subtracted would be time consuming and complex. FCIC is proposing to use the average net value, which will allow the approved insurance provider to average the prices received and use this single price to calculate the value of all sold production, except that sold through direct marketing. This will simplify the calculation and ensure that the producer receives the proper value for the production.

22. *Section 16(b)(2)*—FCIC is proposing to specify that the value of marketable production that is not sold will be the dollar amount obtained by the total number of containers of such sweet corn by the minimum value shown in the actuarial documents. This will ensure consistency with other policy provisions that require all sold production to be considered as production to count, regardless of whether such production is marketable. It is only if the production is damaged or defective due to an insurable cause, not marketable, and not sold will it not be included as production to count.

23. *Section 16(c)*—FCIC is proposing to add provisions to specify that if the Minimum Value Option is applicable, the total value of any production that is sold by direct marketing will be the greater of the actual value received by the insured or the dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct market by the minimum value per container shown in the actuarial documents. As stated above, since it is impossible to obtain verifiable sales records, it would create a program vulnerability to allow the sales price for the direct marketed production to be used.

List of Subjects in 7 CFR Part 457

Crop insurance, Fresh market sweet corn, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 for the 2008 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend 457.129 as follows:

A. Revise the introductory text.

B. Remove the paragraph regarding priority preceding section 1.

C. Remove the reference of ''457.8'' from the definitions of ''Crop year,'' and ''Practical to replant;'' and from sections 3(a), 3(c), 4, 5, 6, 7, 8, 9(a), 9(b), 10, 11(a), 11(b), 12(a), 12(c), and 13.

D. Add definitions in section 1 for ''Allowable cost,'' ''amount of insurance (per acre),'' ''minimum value;'' and ''net value per container;'' and remove the definitions of ''excess rain,'' ''excess wind,'' and ''freeze;'' revise the definitions of ''container,'' ''harvest,'' and ''marketable sweet corn,'' and amend the definition of ''crop year'' by removing the word ''(Definitions).''

E. Revise section 2.

F. Amend section 3(a) by removing the words ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)''.

G. Amend section 3(c) by removing the words ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)''.

H. Redesignate section 3 paragraphs (d) and (e) as paragraph (e) and (f), add a new paragraph (d), and revise newly redesignated paragraph (f).

I. Amend section 4 by removing the words ''(Contract Changes)''.

J. Amend section 5 by removing the words ''(Life of Policy, Cancellation, and Termination)''.

K. Amend section 6 by removing the words ''(Report of Acreage)''.

L. Amend section 7 by removing the words ''(Annual Premium)''.

M. Amend opening paragraph of section 8 by removing the words ''(Insured Crop)''.

N. Revise section 8(c)(3).

O. Revise section 9.

P. Amend opening paragraph in section 10 by removing the words ''(Insurance Period)''.

Q. Revise section 10(f).

R. Revise section 11.

S. Amend sections 12(a) and (c) by removing the words ''(Replanting Payment)''.

T. Revise section 13.

U. Amend section 14(b)(2) by removing the words (see section 3(d)), and adding in its place ''(see section 3(e)).

V. In section 14, revise paragraphs (b)(4)(ii), (b)(5), (c)(1)(iii), (c)(1)(iv), (c)(2) introductory text, (c)(2)(i), and (c)(3). Add new paragraphs (c)(1)(v), (c)(4), and add an example immediately following paragraph (b)(5).

W. In section 16, revise paragraph (b); redesignate current paragraph (c) as (d), and add a new paragraph (c).

The revisions and additions to § 457.129 to read as follows:

§ 457.129 Fresh market sweet corn crop insurance provisions.

The fresh market sweet corn crop insurance provisions for the 2008 and succeeding crop years are as follows:

* * * * *

1. Definitions.

Allowable cost. The dollar amount per container for harvesting, packing, and handling as shown in the Special Provisions.

Amount of insurance (per acre). The dollar amount of coverage per acre obtained by multiplying the reference maximum dollar amount shown on the actuarial documents by the coverage level percentage you elect.

Container. The unit of measurement for the insured crop as specified in the Special Provisions.

* * * * *

Harvest. Separation of ears of sweet corn from the plant by hand or machine.

Marketable sweet corn. Sweet corn that is sold or grades U.S. No. 1 or better in accordance with the requirements of the United States Standards for Grades of Sweet Corn.

Minimum Value. The dollar amount per container shown in the actuarial documents that we will use to value marketable production to count.

Net value per container. The dollar value of packed and sold fresh market sweet corn obtained by subtracting the allowable cost and any additional charges specified in the Special Provisions from the gross value per container of sweet corn sold (this result may not be less than zero).

* * * * *

2. Unit Division

A basic unit, as defined in section 1 of the Basic Provisions, will also be established for each planting period.

3. Amounts of Insurance and Production Stages

* * * * *

(d) If specified in the Special Provisions, we will limit your amount of insurance per acre if you have not produced the minimum amount of production of fresh market sweet corn contained in the Special Provisions in at least one of the most recent three crop years.

* * * * *

(f) Any acreage of sweet corn damaged in the first stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed even though you continue to care for it. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

* * * * *

8. Insured Crop

* * * * *

(c) * * *

(3) Grown for direct marketing, unless otherwise provided in the Special Provisions or by written agreement.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of sweet corn damaged during the planting period in which initial planting took place must be replanted if:

(1) Less than 75 percent of the plant stand remains;

(2) It is practical to replant; and

(3) If, at the time the crop was damaged, the final day of the planting period has not passed.

(b) Whenever sweet corn initially is planted during the fall or winter planting periods and the final planting date for the planting period has passed, but it is considered practical to replant, you may elect:

(1) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage; or

(2) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

10. Insurance Period

* * * * *

(f) 100 days after the date of planting or replanting, unless otherwise provided in the Special Provisions.

11. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Volcanic eruption;

(5) Earthquake;

(6) Insects, but not damage due to insufficient or improper application of pest control measures;

(7) Plant disease, but not damage due to insufficient or improper application of disease control measures; or

(8) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss due to:

(1) Failure to harvest in a timely manner unless harvest is prevented by one of the insurable causes of loss specified in section 11(a); or

(2) Failure to market the sweet corn unless such failure is due to actual physical damage caused by an insured cause of loss specified in section 11(a) that occurs during the insurance period. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

* * * * *

13. Duties In The Event of Damage or Loss

In addition to the requirements contained in section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(a) You also must give us notice not later than 72 hours after the earliest of:

(1) The time you discontinue harvest of any acreage on the unit;

(2) The date harvest normally would start if any acreage on the unit will not be harvested; or

(3) The calendar date for the end of the insurance period.

(b) If insurance is permitted by the Special Provisions or by written agreement on acreage with production that will be sold by direct marketing, you must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine the value of your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal if you notify us that additional damage has occurred. These appraisals, and any acceptable production records provided by you, will be used to determine the value of your production to count.

(c) Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the dollar amount of insurance (per acre) for the applicable stage if such failure results in our inability to accurately determine the value of production.

14. Settlement of Claim

* * * * *

(b) * * *

(4) * * *

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by fifty-five percent; and

(5) Multiplying the result of section 14(b)(4) by your share.

For example:

You have a 100 percent share in 65.3 acres of fresh market sweet corn in the unit (15.0 acres in stage 1 and 50.3 acres in the final stage), with a dollar amount of insurance of $600 per acre. You are only able to harvest 5,627 containers of sweet corn. The net value of all sweet corn production sold ($3.11 per container) is greater than the Minimum Value per container ($2.50). The 5,627 containers sold × $3.11 average net value per container = $17,500 value of your production to count. Your indemnity would be calculated as follows:

1 15.0 acres × $600 amount of insurance = $9,000 and 50.3 acres × $600 amount of insurance = $30,180;

2 $9,000 × .65 (percent for stage 1) = $5,850 and $30,180 × 1.00 (percent for final stage) = $30,180;

3 $5,850 + $30,180 = $36,030 amount of insurance for the unit;

4 $36,030 − $17,500 value of production to count = $18,530 loss;

5 $18,530 × 100 percent share = $18,530 indemnity payment.

(c) * * *

(1) * * *

(iii) That is damaged solely by uninsured causes;

(iv) For which you fail to provide acceptable production records; or

(v) From which insurable production is sold by direct marketing and you fail to meet the requirements contained in section 13(b) of these Crop Provisions;

(2) The value of appraised sweet corn production as follows, which will not be less than the dollar amount obtained by multiplying the number of containers of appraised sweet corn by the minimum value per container shown in the actuarial documents for the planting period:

(i) Unharvested marketable sweet corn production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is later harvested and sold);

* * * * *

(3) The value of all harvested production of sweet corn from the insurable acreage, except production that is sold by direct marketing as specified in section (c)(4) below:

(i) For sold production, will be the greater of:

(A) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by the minimum value contained in the actuarial documents; or

(B) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of containers of sweet corn sold.

(ii) For marketable sweet corn production that is not sold, will be the dollar amount obtained by multiplying the number of containers of such sweet corn by the minimum value shown in the actuarial documents for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is sold.

(4) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(i) The actual value received by you for direct marketed production; or

(ii) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct marketing by the minimum value per container shown in the actuarial documents.

* * * * *

16. Minimum Value Option

* * * * *

(b) In lieu of the provisions contained in section 14(c)(3) of these Crop Provisions, the total value of harvested production that is not sold by direct marketing will be determined as follows:

(1) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of containers of sweet corn sold (this result may not be less than the minimum value option amount shown in the actuarial documents);

(2) For marketable sweet corn production that is not sold, the value of such production will be the dollar amount obtained by multiplying the total number of containers of such sweet corn by the minimum value shown in the actuarial documents for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be included as production to count.

(c) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(1) The actual value received by you for direct marketed production; or

(2) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct marketing by the minimum value per container shown in the actuarial documents.

* * * * *

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

James Callan,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–12066 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25419; Directorate Identifier 2006–NM–055–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 airplanes. This proposed AD would require replacing the mini-latches on certain lavatory waste compartment doors with new, stronger latches, and other specified actions. This proposed AD results from reports of certain lavatory waste compartment doors opening during flight due to movement of the waste compartment during takeoff, because the mini-latches installed on the doors of those compartments lose their strength over time. We are proposing this AD to prevent the inability of the waste compartment doors to adequately contain a fire inside the lavatory waste compartment, and consequent uncontained fire and smoke within a lavatory during flight.

DATES: We must receive comments on this proposed AD by August 28, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25419; Directorate Identifier 2006–NM–055–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The Departamento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model ERJ 170 airplanes. The DAC advises that it has received reports of certain lavatory waste compartment doors opening during flight due to movement of the waste compartment during takeoff. An investigation conducted by the parts manufacturer, C&D Aerospace, revealed that the existing mini-latches installed on certain doors in the lavatory (*i.e.*, forward lavatory waste compartment, aft lavatory amenity door, aft lavatory storage door, and service doors) lose their strength over time. This can cause the doors to open easily with a single flap spring force or movement of the waste compartment during takeoff, or to be easily opened mistakenly by passengers by any kind of involuntary touch. This condition, if not corrected, could result in the inability of the waste compartment door to adequately contain a fire inside the lavatory waste compartment, and consequent uncontained fire and smoke within a lavatory during flight.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–25–0024, dated July 21, 2005. The service bulletin describes procedures for replacing the mini-latches on certain lavatory waste compartment doors with new, stronger latches. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–11–01, effective December 8, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

EMBRAER Service Bulletin 170–25–0024, dated July 21, 2005, refers to C&D Aerospace Service Bulletin 170–18616–25–023, dated June 23, 2005, as an additional source of service information for replacing the mini-latches on certain lavatory waste compartment doors. The C&D Aerospace service bulletin describes procedures for replacing the mini-latches on certain lavatory waste compartment doors with new, stronger latches, and other specified actions. The other specified actions include removing/installing inserts, applying bonding, and installing certain placards. This service bulletin also provides procedures for reworking certain lavatory mirrors. (The C&D Aerospace service bulletin is included in the EMBRAER service bulletin).

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between Proposed AD, Brazilian Airworthiness Directive, and Service Information.''

Differences Between Proposed AD, Brazilian Airworthiness Directive, and Service Information

Brazilian airworthiness directive 2005–11–01, effective December 8, 2005, is applicable to ''all EMBRAER ERJ 170( ) aircraft models in operation.'' However, this does not agree with EMBRAER Service Bulletin 170–25–0024, dated July 21, 2005, which states that only certain ERJ 170 airplanes are affected and identifies them by serial number. This proposed AD would be applicable only to the airplanes listed in the service bulletin. This difference has been coordinated with the DAC.

EMBRAER Service Bulletin 170–25–0024, dated July 21, 2005; and C & D Aerospace Service Bulletin 170–18616–25–023, dated June 23, 2005, describe procedures for replacing the forward and aft lavatory mirrors. These procedures were included in the service bulletins at the request of an operator. This proposed AD does not include a requirement for replacing these mirrors.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement of lavatory waste compartment door latches	4	$80	$0	$320	54	$17,280

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–25419; Directorate Identifier 2006–NM–055–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 28, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170 airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 170–25–0024, dated July 21, 2005.

Unsafe Condition

(d) This AD results from reports of certain lavatory waste compartment doors opening during flight due to movement of the waste compartment during takeoff, because the mini-latches installed on those doors lose their strength over time. We are issuing this AD to prevent the inability of the waste compartment doors to adequately contain a fire inside the lavatory waste compartment, and consequent uncontained fire and smoke within a lavatory during flight.

Compliance

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

Replacement of Mini-Latches on Certain Lavatory Waste Compartments Doors

(f) Within 700 flight hours after the effective date of this AD: Replace the mini-latches for the forward and aft lavatory waste compartment doors by accomplishing all the actions, except for the forward and aft lavatory mirror rework, specified in the Accomplishment Instructions of EMBRAER Service Bulletin 170–25–0024, dated July 21, 2005.

Note 1: EMBRAER Service Bulletin 170–25–0024, dated July 21, 2005, refers to C&D Aerospace Service Bulletin 170–18616–25–

023, dated June 23, 2005, as an additional source of service information for replacing the mini-latches on certain lavatory waste compartment doors required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2005–11–01, effective December 8, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–12106 Filed 7–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

[USCBP–2006–0015]

19 CFR Parts 24, 113, and 128

RIN 1505–AB39

Fees for Customs Processing at Express Consignment Carrier Facilities

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to title 19 of the Code of Federal Regulations (19 CFR) to reflect changes to the customs user fee statute made by section 337 of the Trade Act of 2002 and section 2004(f) of the Miscellaneous Trade and Technical Corrections Act of 2004. The statutory amendments made by section 337 concern the fees payable for customs services provided in connection with the informal entry or release of shipments at express consignment carrier facilities and centralized hub facilities, and primarily serve to replace the annual lump sum payment procedure with a quarterly payment procedure based on a specific fee for each individual air waybill or bill of lading. Section 2004(f) amended the user fee statute to authorize, for merchandise that is formally entered at these sites, the assessment of merchandise processing fees provided for in 19 U.S.C. 58c(a)(9), in addition to the fees that are currently assessed on individual air waybills or bills of lading. Lastly, pursuant to the authority established in 19 U.S.C. 58c(b)(9)(B)(i), this document proposes to raise the existing $0.66 fee assessed on individual air waybills or bills of lading to $1.00 to more equitably align it with the actual costs incurred by CBP in processing these items.

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

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2006–0015.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: 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. 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.

Docket: For access to the electronic docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Michael L. Jackson, Office of Field Operations, Trade Enforcement and Facilitation, Tel.: (202) 344–1196.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Bureau of Customs and Border Protection (CBP) also invites comments that relate to the economic effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

I. Statutory Changes Made by Section 337(a) of the Trade Act of 2002

On August 6, 2002, the President signed into law the Trade Act of 2002, Public Law 107–210, 116 Stat. 933. Section 337(a) of the Trade Act of 2002 amended section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) by adding new requirements for the payment of user fees for customs services provided by CBP to express consignment carrier facilities and centralized hub facilities in connection with imported letters, documents, shipments or other merchandise to which informal entry procedures apply. The principal changes involve the following:

1. In the introductory text of section 58c(b)(9)(A), which refers to reimbursements and payments required from a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the words ''the processing of merchandise that is informally entered or released'' were replaced by the words ''the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is less than $2,000 (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498 of the Tariff Act of 1930), except such items entered for transportation and exportation or immediate exportation.'' [It is noted that the statutory monetary amount was subsequently amended to ''$2,000 or less * * *'' as discussed later in this document.]

2. Section 58c(b)(9)(A)(ii) was replaced by new text identifying, in the case of an express consignment carrier facility or a centralized hub facility, a fee of $0.66 per individual air waybill or bill of lading. Prior to this amendment, clause (ii) required an express consignment carrier facility or a centralized hub facility to make the following reimbursements and payments:

(a) A reimbursement to Customs (hereinafter referred to as ''CBP'' to reflect the transfer of the U.S. Customs Service to the Department of Homeland Security and the agency's subsequent renaming as Bureau of Customs and Border Protection) of an amount equal to the cost of the services provided by CBP for the facility during the fiscal year; and

(b) An annual payment by the facility to the Secretary of the Treasury in an amount equal to the annual reimbursement made under 19 U.S.C. 58c(b)(9)(A)(ii)(I).

3. Subparagraph (B) was redesignated as subparagraph (C) and a new subparagraph (B) was added. New subparagraph (B) consists of clauses (i) through (iii) which provide as follows:

(a) Clause (i) authorizes the Secretary of the Treasury to adjust the $0.66 fee prescribed in subparagraph (A)(i) to an amount that is not less than $0.35 and not more than $1.00 per individual air waybill or bill of lading. Clause (i) further provides that the adjustment may not be made before fiscal year 2004 and not more than once per fiscal year and must involve publication of notice of the proposed adjustment in the **Federal Register** with opportunity for public comment;

(b) Clause (ii) provides that the payment required by subparagraph (A)(ii) is the only payment required for reimbursement of CBP in connection with the processing of an individual air waybill or bill of lading in accordance with that subparagraph and for providing services at express consignment carrier facilities or centralized hub facilities, except that CBP may require those facilities to cover CBP expenses for adequate office space, equipment, furnishings, supplies, and security.

(c) Clause (iii)(I) provides that the payment required under subparagraphs (A)(ii) and (B)(ii) is to be paid to CBP on a quarterly basis by the carrier using the facility in accordance with regulations prescribed by the Secretary of the Treasury. Clause (iii)(II) states that 50 percent of the amount of payments received under subparagraphs (A)(ii) and (B)(ii) will, in accordance with 19 U.S.C. 1524, be deposited in the Customs (CBP) User Fee Account and used to directly reimburse each appropriation for the amount paid out of that appropriation for costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Such amounts are to remain available until expended for the provision of customs services to these entities. Clause (iii)(III) directs the remaining 50 percent of the amount of payments received under subparagraphs (A)(ii) and (B)(ii) to be paid to the Secretary of the Treasury. *See* 19 U.S.C. 58c(b)(9)(B)(iii)(I)—(III).

Section 337(b) of the Trade Act of 2002 provides that the amendments made by section 337(a) take effect on October 1, 2002.

The following points are noted regarding the effect of the statutory changes made by section 337(a) of the Trade Act of 2002:

1. The overall effect of section 337(a) is to replace two equal annual lump sum payments (one representing a reimbursement of the cost of services provided and the other representing a payment in lieu of the payment of fees for the informal entry or release of merchandise) with a quarterly payment procedure based on a specific fee for each individual air waybill or bill of lading.

2. The $2,000 limit referred to in the amended statute reflects the amount that CBP, pursuant to section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498), has adopted in § 143.21 of title 19 of the Code of Federal Regulations (19 CFR 143.21) as the limit for shipments of merchandise that may be entered under informal entry.

3. The replacement of the word ''merchandise'' by a reference to ''letters, documents, records, shipments, merchandise, or any other item'' in the amended statute ensures that other imported articles or items that are eligible for informal entry under § 143.21 will be subject to the new fee. The one exception concerns those articles (for example, articles of plastics or rubber, textiles and textile articles, leather articles, and footwear) for which the informal entry limit is set at $250 in § 143.21; for those articles having a value greater than $250 but less than $2,000, the new fee standard will apply even though those articles are not subject to informal entry procedures under § 143.21.

4. Each shipment transported by affected carriers is issued an individual air waybill that is used, among other things, for tracking purposes. Because the law applies the fee to each individual air waybill, the use of master bills or other practices of consolidation or convenience by these entities, the billing system used by these entities for their customers, and the number of entries filed, are irrelevant to the application of the fee. In effect, the individual air waybill subject to the fee is the bill at the lowest level, *i.e.*, not a master bill. An example of an individual airway bill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where shipment is assigned to a single ultimate consignee, and no lower (more disaggregated) bill unit exists.

5. Under the amended statute, responsibility for payment rests with the carrier rather than with the facility. This does not represent a substantive change in the case of centralized hub facilities because the hub facility owner and the carrier using the facility are always the same. However, it does represent a shift in responsibility for payment, from the facility to the carrier, in the case of express consignment carrier facilities that are not owned and operated by the different carriers that use them.

6. The affected carriers became responsible for payment of the new fee for each individual covered transaction as of October 1, 2002, effective date of the amendments made by section 337(a) of the Trade Act of 2002. Therefore, even though the first payment to CBP under the new payment procedure would not have taken place until after the close of the last quarter of the year 2002, the statute obligated the affected carriers to maintain adequate records to determine the proper amount to be paid starting on the effective date of the statutory amendments.

II. Statutory Changes Made by Section 2004(f) of the Miscellaneous Trade and Technical Corrections Act of 2004

The Miscellaneous Trade and Technical Corrections Act of 2004 (''Trade Act of 2004'') was signed into law by the President on December 3, 2004 (Pub. L. 108–429, 18 Stat. 2593). Section 2004(f) of the Trade Act of 2004 made further amendments to section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)). The principal changes made by section 2004(f) are set forth below:

1. In the introductory text of section 58c(b)(9)(A), which refers to reimbursements and payments to CBP required from a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the words ''less than $2,000'' were replaced by the words ''$2,000 or less''.

2. Section 58c(b)(9)(A)(ii), which requires an express consignment carrier facility or a centralized hub facility to reimburse CBP in an amount of $0.66 per individual air waybill or bill of lading, was amended by: (a) Adding the language, ''[N]otwithstanding subsection (e)(6)'' at the beginning of the section; and (b) restructuring this provision by creating two new sub-clauses. The first new sub-clause, identified as (A)(ii)(I), sets forth the existing reimbursement fee of $0.66 per

individual air waybill or bill of lading. The second new sub-clause, identified as (A)(ii)(II), pertains to situations where merchandise is formally entered and mandates, in addition to the fee specified in sub-clause (A)(ii)(I), reimbursement to CBP of the fee provided for in subsection (a)(9) (the merchandise processing fee), if applicable. *See* 19 U.S.C. 58c(a)(9).

3. To accommodate the amendments to subparagraph (A)(ii), discussed above, conforming changes were made to section 58c(b)(9)(B)(ii) whereby the statutory reference to ''(A)(ii)'' was replaced with a reference to ''(A)(ii)(I) or (II)''.

III. Proposal To Increase Certain Reimbursement Fees Payable by Express Consignment Carrier Facilities and Centralized Hub Facilities

As noted above, 19 U.S.C. 58c(b)(9)(B)(i), as amended by section 337(a) of the Trade Act of 2002, authorizes the Secretary of the Treasury to adjust the $0.66 fee prescribed in 19 U.S.C. 58c(b)(9)(A)(ii) to an amount that is not less than $0.35 and not more than $1.00 per individual air waybill or bill of lading. This section further provides that notice of any proposed adjustment and the reasons therefore must be published in the **Federal Register** with opportunity for public comment.

Pursuant to this authority, this document proposes to increase the existing $0.66 reimbursement fee payable to CBP by express consignment carrier facilities and centralized carrier facilities to $1.00. The proposed fee increase is necessary to more adequately reimburse CBP for the actual costs incurred by the agency in processing individual air waybills and bills of lading at these sites. It is also noted that in addition to the regular costs associated with processing individual air waybills and bills of lading, CBP must also incur the expenses associated with relocating CBP personnel when a carrier opts to close a carrier-owned express consignment facility and open a new facility at a different location. The current fee schedule does not sufficiently cover CBP's regular expenses at these sites.

As discussed previously, the amendments to section 58c(b)(9)(B) made by section 337(a) of the Trade Act of 2002 direct that the money collected by CBP from this one payment be sent to two different accounts. Section 58c(b)(9)(B)(iii)(II) requires fifty percent of the payment to be deposited in the CBP User Fee Account and used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities and centralized hub facilities. Such amounts are available until expended for the provision of custom services for these facilities. Section 58c(b)(9)(B)(iii)(III) requires the remaining fifty percent to be paid to the Secretary of the Treasury in lieu of an informal entry Merchandise Processing Fee (MPF). Prior to the 2002 amendment, the law provided for two payments: One payment was made to CBP as the fee to cover agency expenses incurred by providing customs services relating to staffing for the onsite processing and release of cargo at express consignment carrier facilities, and the second payment was made to the Treasury in lieu of the informal entry Merchandise Processing Fee (MPF). Thus, the current payment structure provides for a single payment collected by CBP and deposited in two separate sub-accounts, whereas previously two separate fees were paid to CBP and Treasury. In neither case did fees exceed direct costs. In fact, collected fees were well below direct costs. Under this proposal, fees will approach costs up to the new statutory cap.

CBP has conducted a financial analysis of the costs incurred by CBP in providing services to express consignment facilities and centralized hub facilities in Fiscal Years (FY) 2004 and 2005. The collection/cost data reveals that at the close of FY 2004, the half of the 58c(b)(9)(A)(ii) payment intended to defray the cost of services to express consignment and centralized hub facilities left the agency with a deficit with the agency collecting only 78% of the monies expended to provide those services. In FY 2005, CBP collected only 70% of these costs. Projections for FY 2006 indicate that the deficit will increase again due to the fact that certain CBP expenses, such as reimbursable wages for CBP employees at these sites, will increase.

The following table sets forth the collection/cost data associated with CBP's processing of individual air waybills and bills of lading at express consignment facilities and centralized hub facilities for FY 2004 and 2005, as well as a projected financial analysis for FY 2006:

Fiscal year	Estimated package volume	Total collections (based on $.66 cents per bill)	CBP's retained portion of collected amount (based on $.33 cents per bill)	CBP costs	CBP cost per bill	CBP deficit
2004*	47,243,205	$31,180,516	$15,590,258	$19,945,704	0.42	($4,355,446).
2005*	45,364,139	29,940,332	$14,970,166	21,393,520	0.47	($6,423,354).
2006**	43,549,574	28,742,718	$14,371,359 ($21,774,787 based on $.50 cents collected per bill if the payment is raised to $1.00).	22,545,880	0.52	($8,174,521) (($771,093) based on $.50 cents collected per bill if the payment is raised to $1.00).

* FY 2004 and 2005 costs information from the CBP Cost Management Information System.

** FY 2006 costs equal FY 2005 costs plus 27 new CBP Officer positions Grade 11 Step 1 with a prorated onboard date of April 2006. New position cost information derived from the FY 2006 CBP position model and does not include any equipment, training, travel costs, etc.

The financial projections for FY 2006 indicate that CBP will incur a per bill cost of $0.52. If the payment is raised to $1.00, as proposed, CBP will collect $0.50 per bill (the other $0.50 to be deposited with the Secretary of the Treasury in lieu of the informal entry Merchandise Processing Fee).

Based on these figures, and subject to the monetary limits set by law, CBP proposes raising the $0.66 payment to $1.00 so that the half of the payment associated with providing services to express consignment and centralized hub facilities is aligned with the actual costs incurred by CBP. The other half of the payment, collected in lieu of the MPF, is set by statute at equal to the payment for providing services to express consignment and centralized hub facilities.

Affected Regulatory Provisions

Regulations implementing those provisions of 19 U.S.C. 58c(b)(9) that were amended by section 337(a) of the

Trade Act of 2002 and section 2004(f) of the Trade Act of 2004 are contained in parts 24 and 128 of title 19 of the CFR (19 CFR parts 24 and 128).

Part 24 sets forth rules pertaining to CBP's financial and accounting procedures. The provision within part 24 most directly affected by the statutory changes discussed above is § 24.23, which concerns fees for processing merchandise and which, in paragraph (b)(2)(ii), reflects the terms of subparagraph (A) of the statute prior to its amendment by sections 337(a) and 2004(f). Also affected is § 24.17, which provides for reimbursable services of CBP employees. Specifically, paragraph (a)(12) of that section refers to reimbursement of the compensation and expenses of a CBP employee assigned to a centralized hub facility for the purpose of processing express consignment shipments under part 128 of the regulations, and paragraph (a)(13) contains a similar reimbursement reference regarding a CBP employee assigned to an express consignment carrier facility, with the facility being responsible for the reimbursement in each case.

Part 128 sets forth regulations that apply specifically to express consignment carrier and hub facilities and their operators and users. The only provision within part 128 that is directly affected by the statutory changes discussed above is § 128.11, which concerns the express consignment carrier and hub facility application process. Paragraphs (b)(7)(iv) and (v) of that section require the express consignment entity to agree to timely pay all reimbursable costs and to pay to CBP all relocation, training and other costs and expenses incurred by CBP in relocating necessary staff to or from the facility.

This document proposes amendments to title 19 of the CFR to address the statutory changes made by section 337(a) of the Trade Act of 2002 and 2004(f) of the Trade Act of 2004. In addition to the proposed changes to parts 24 and 128 mentioned above, this document also contains a proposed amendment to the CBP bond provisions of part 113 of title 19 of the CFR (19 CFR part 113). The proposed changes to the regulations contained in this document are discussed below.

Discussion of Proposed Amendments

Section 24.17

In this section, which includes in paragraph (a) a list of various contexts in which parties-in-interest are required to reimburse CBP for services rendered, it is proposed to remove paragraph (a)(12) (which refers to services rendered at a centralized hub facility) and paragraph (a)(13) (which refers to services rendered at an express consignment carrier facility) and redesignate paragraph (a)(14) as paragraph (a)(12).

The proposed removals are necessary because those two provisions: (1) correspond to clause (ii) of subparagraph (A) of the statute as it existed prior to the amendments made by sections 337(a) and 2004(f); and (2) are inconsistent with the ''only payment required'' language in clause (ii) of new subparagraph (B) of the statute.

Section 24.23

In this section, it is proposed to modify paragraph (b) to incorporate the terms of the proposed $1.00 fee (increased from the existing $0.66 fee) and paragraph (c) to include conforming cross-reference changes. The following points are noted regarding the proposed paragraph (b) changes:

1. In paragraph (b)(1)(i)(A), which concerns the 0.21 percent *ad valorem* fee (merchandise processing fee) applicable to merchandise that is formally entered or released, a new sentence is added with a cross-reference to new paragraph (b)(4) to reflect the terms of section 2004(f) whereby, in the case of an express consignment carrier facility or centralized hub facility, merchandise that is formally entered is subject to a $1.00 per individual air waybill or bill of lading fee and, if applicable, to a merchandise processing fee.

2. Paragraph (b)(2), which concerns fees for informal entry or release, is revised to refer to only the $2, $6, and $9 specific fees which, under the statute and the regulations, have never applied to express consignment carrier facilities, centralized hub facilities, and small airports and other facilities. The revised paragraph (b)(2) text includes new exception language regarding merchandise covered by paragraph (b)(3) or paragraph (b)(4).

3. A new paragraph (b)(3) concerning small airports and other facilities is added. It is based on the relevant portion of current paragraph (b)(2)(ii)(A) of § 24.23 that is proposed to be removed in the revision of paragraph (b)(2). The fee for small airports and other facilities is authorized by 19 U.S.C. 58c(b)(9)(A)(i). The fee is determined by application of 31 U.S.C. 9701. New paragraph (b)(3) follows that statutory structure.

4. Paragraph (b)(4) is entirely new. Pursuant to 19 U.S.C. 58c(b)(9)(A)(ii)(I) and (II), as amended by sections 337(a) and 2004(f), paragraph (b)(4) requires each carrier using an express consignment carrier facility or a centralized hub facility to pay to CBP a fee (set forth in 19 U.S.C. 58c(b)(9)(A)(ii)(I) at $0.66 and now proposed to be increased to $1.00, as discussed above) assessed on each individual air waybill or individual bill of lading and, if merchandise is formally entered, the 0.21 *ad valorem* fee, if applicable.

The assessment of this fee on each individual air waybill or bill of lading means that each shipment transported by a carrier and processed by CBP will be assessed the fee. Each shipment transported by a carrier and processed by CBP is represented by an individual air waybill and subject to the fee. Therefore, these proposed regulations apply the fee to each shipment covered by an individual air waybill. For purposes of these proposed regulations, an individual airway bill is the bill at the lowest level, and would not include a master bill. An example of an individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. The use of master bills of lading, or other practices of consolidation by or for the convenience of the carrier, or its customers or for any other reason is irrelevant to the application of this user fee intended to cover CBP's costs associated with processing each individual shipment as represented by each individual air waybill or bill of lading. Moreover, the number and kind of entries filed, and the carrier's billing system for charging its customers, are irrelevant factors and are not considered in determining the fee's application.

Paragraph (b)(4) also includes the quarterly payment requirement specified in clause (iii) of new subparagraph (B) of the amended statute. As in the case of paragraph (b)(3), discussed above, the text of paragraph (b)(4) includes the ''processing of letters, documents * * *'' and the ''$2,000 or less (or such higher amount * * *)'' language of the introductory text of subparagraph (A) of the amended statute, and also contains the exception reference regarding items entered for transportation and exportation or immediate exportation that clearly is relevant to the transaction-by-transaction assessment of the $1.00 fee.

The text of paragraph (b)(4) also proposes some additional requirements and conditions regarding the payment of this fee, of which the following points are noted:

1. In addition to identifying the due date for each timely quarterly payment as well as the CBP address to which the payments must be sent, the text sets forth specific information that must accompany the payment. The specified information is necessary to enable CBP to verify whether the proper amount of fees required under the statute has been paid.

2. The text allows carriers to make adjustments of overpayments and underpayments in the next quarterly payment, similar to what is allowed in the case of railroad car and passenger arrival fees under § 24.22(d) and (g) of the CBP regulations (19 CFR 24.22(d) and (g)). However, if an adjustment is not made in the next quarterly payment, a request for a refund of an overpayment must be made within one year, similar to the practice in the case of harbor maintenance fees under § 24.24(e)(4)(ii) of the CBP regulations (19 CFR 24.24(e)(4)(ii)), and interest will accrue in the case of an underpayment from the date payment was initially due.

3. Paragraph (b)(4)(iv) provides that the underpayment or failure of a carrier using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed pursuant to paragraph (b) may result in the assessment of penalties under 19 U.S.C. 1592 and any other action authorized by law.

Section 113.64

In this section, which specifies the international carrier bond conditions, it is proposed to add a new sentence at the end of paragraph (a) to refer to the obligation of the carrier and its surety under the bond in the event that the carrier fails to pay the fees required under § 24.23(b)(4). This provision is modeled on the approach taken in the case of quarterly payments of passenger processing fees.

Section 128.11

In this section, which concerns the express consignment facility application process, the following changes are proposed:

1. Paragraph (b)(2) is revised to require inclusion of a list of users of the facility with the application if the applicant is an express consignment carrier facility (a list of users is not necessary in the case of a hub facility because the operator of the facility and the user of the facility are one and the same). This information is necessary to assist CBP in verifying proper payment of the statutory fees.

2. Paragraphs (b)(7)(iv) and (b)(7)(v), which refer to elements of the superseded statutory reimbursement concept, have been replaced with new provisions. New paragraph (b)(7)(iv) provides for an agreement on the part of an express consignment carrier facility to provide quarterly, and update, a list of all carriers using the facility and is intended to assist CBP in verifying the proper payment of fees by those carriers. Paragraph (b)(7)(v) refers to an agreement on the part of a hub facility or an express consignment carrier to timely pay all applicable processing fees prescribed in § 24.23.

Comments

Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of title 19 of the CFR (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 799 9th St., NW., Washington, DC. Arrangements to inspect submitted documents should be made in advance by calling Joseph Clark at (202) 572–8768.

Executive Order 12866

This rule is not considered a ''significant regulatory action'' as defined in E.O. 12866. Accordingly, a regulatory assessment is not required.

Initial Regulatory Flexibility Act Analysis

CBP has examined the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, codified at 5 U.S.C. chapter 6) and has prepared an Initial Regulatory Flexibility Act Analysis (IRFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

In this proposed rulemaking, small businesses are those that employ fewer than 1,500 employees or have annual revenues under $6.5 million. Based on annual data collected by CBP, there are 22 businesses that will be affected by the proposed rule. Of these, 10 are large businesses, 11 are small businesses, and 1 is a small, foreign-owned business. Sixteen of these companies (both large and small) are members of an association that owns and operates a consignment facility. That association acts as a single respondent for its members.

Reason for Agency Action; Objectives of and Legal Basis for the Proposed Rule

Pursuant to the authority established in 19 U.S.C. 58c(a)(9)(b)(ii), it is proposed to raise the existing $0.66 fee assessed on individual air waybills or bills of lading to $1.00 to more equitably align it with the actual costs incurred by CBP in processing these items.

Number and Types of Small Entities to Which the Proposed Rule Will Apply

As previously noted, there are 12 small businesses that will be affected by the proposed rule. These companies are either courier services (NAICS code 492110) or arrange freight transportation (NAICS code 488510).

An estimated 91 percent of the bills of lading submitted for fee assessment were from the three largest affected companies (approximately 41 million waybills in FY 2005). The waybills from the remaining large companies accounted for 2 percent (approximately 865,000 in FY 2005). The remaining 1.5 million bills of lading were submitted by the 12 small businesses.

Based on data from FY 2003 to FY 2005, half of the large companies have experienced annual increases in bills of lading; the remainder have experienced annual decreases. Data for the 12 small businesses also show increases and decreases in waybills. If current trends continue, a net increase in waybills of approximately 20 percent annually is projected for these small companies over the next several years.

In FY 2005, the 12 small businesses submitted 1.5 million bills of lading at a cost of $1.0 million ($0.66 per bill of lading). If, in FY 2006, 1.9 million bills of lading were submitted, this would result in a cost of $1.3 million under the current fee structure. Under the proposed fee of $1.00 per bill, we would expect costs to reach $1.9 million, a difference of $0.6 million. The $0.6 million represents only 4 percent of the total increase in fees CBP expects to be incurred as a result of growth in bills of lading and the fee increase proposed in this rule.

CBP collected annual revenue data for the 12 small businesses affected. To determine the impact of the proposed rule on annual revenues, CBP calculated the projected difference in costs between the old and proposed fee and compared that (as a percentage) to average annual revenues. Based on these calculations, CBP estimates that the proposed rule will have a 5-percent impact or less on annual revenues for 5 of the small businesses. The rule will have a 5 to 10-percent impact on one of the companies and a greater than 10-

percent impact on four companies. CBP could not find data for one small business, and one was foreign-owned.

In the course of CBP's examination of the impacts on annual revenues for these small businesses, CBP has determined that these entities will likely pass the cost of the increased fee on to their customers to the extent that they are able.

On the basis of the foregoing analysis, CBP concludes that this proposed rule could have a significant impact on a substantial number of small entities. CBP is seeking comments on any of the regulatory requirements that could minimize the cost to small businesses. Comments may be submitted to the regulatory docket using any of the methods listed under ''Comments'' or **ADDRESSES** above. All input received during the public comment period will be considered.

Reporting and Recordkeeping

This proposed rule will change current paperwork requirements. No new professional skills will be necessary for the preparations of the reports and records. For more detail, see ''Paperwork Reduction Act'' below.

Other Federal Rules

This proposed rule does not duplicate, overlap, or conflict with other federal regulations.

Regulatory Alternatives

CBP did not consider any alternatives to the proposed rule.

Paperwork Reduction Act

The collections of information in this document are contained in §§ 24.23 and 128.11 (19 CFR 24.23 and 128.11). This information is used by CBP to determine whether user fees required by statute have been properly paid. The likely respondents are business organizations including importers and air carriers.

The collections of information for paying fees for customs services provided in connection with the informal entry or release of shipments at express consignment carrier facilities and centralized hub facilities was previously approved by the Office of Management and Budget under control number 1651–0052. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), CBP has submitted to OMB for review the following adjustments to the information provided to OMB for the previously approved OMB control number to account for the changes proposed in this rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Report for quarterly payment under § 24.23(b)(4)(ii):

Estimated annual reporting and/or recordkeeping burden: *176* hours.

Estimated average annual burden per respondent/recordkeeper: *8* hours.

Estimated number of respondents and/or recordkeepers: *22.*

Estimated annual frequency of responses: *4.*

Report for refund of overpayment under § 24.23(b)(4)(iii):

Estimated annual reporting and/or recordkeeping burden: *5* hours.

Estimated average annual burden per respondent/recordkeeper: *1* hour.

Estimated number of respondents and/or recordkeepers: *5*.

Estimated annual frequency of responses: *2*.

Report by operators including the list of carriers under § 128.11(b):

Estimated annual reporting and/or recordkeeping burden: *6* hours.

Estimated average annual burden per respondent/recordkeeper: *2* hours.

Estimated number of respondents and/or recordkeepers: *3*.

Estimated annual frequency of responses: *4*.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the 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 startup costs and costs of operations, maintenance, and purchase of services to provide information.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Exports, Imports, Interest, Reporting and recordkeeping requirements, Taxes, User fees, Wages.

19 CFR Part 113

Air carriers, Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 128

Administrative practice and procedure, Carriers, Couriers, Customs duties and inspection, Entry, Express consignments, Freight, Imports, Informal entry procedures, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, parts 24, 113, and 128 of title 19 of the CFR (19 CFR parts 24, 113, and 128), are proposed to be amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112; Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

2. In § 24.17:

a. The section heading is revised to read as set forth below;

b. Paragraphs (a) through (d) are amended by removing the words ''Customs employee'' where they appear and adding in each place the term ''CBP employee; and

c. Paragraphs (a)(12) and (a)(13) are removed and paragraph (a)(14) is redesignated as paragraph (a)(12).

§ 24.17 Reimbursable services of CBP employees.

* * * * *

3. In § 24.23:

a. Paragraph (a) is amended by removing the word ''Customs'' each

place that it appears and adding the term ''CBP'';

b. Paragraphs (b)(1)(i)(A) and paragraph (b)(2) are revised;

c. New paragraphs (b)(3) and (b)(4) are added;

d. The introductory text of paragraph (c)(1) is amended by removing the reference ''(b)(2)(i)'' and adding, in its place, the reference ''(b)(2)'';

e. Paragraph (c)(2)(i) is amended by removing the reference ''(b)(2)(i)'' and adding, in its place, the reference ''(b)(2)'';

f. The first sentence of paragraph (c)(3) is amended by removing the reference ''(b)(2)(i)'' and adding, in its place, the reference ''(b)(2)''; and

g. Paragraph (c)(5) is amended by removing the reference ''(b)(2)(i)'' and adding, in its place, the reference ''(b)(2)''.

The revisions and additions read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(b) *Fees* (1) *Formal entry or release* (i) *Ad valorem fee* (A) *General.* Except as provided in paragraph (c) of this section, merchandise that is formally entered or released is subject to the payment to CBP of an *ad valorem* fee of 0.21 percent. The 0.21 *ad valorem* fee is due and payable to CBP by the importer of record of the merchandise at the time of presentation of the entry summary and is based on the value of the merchandise as determined under 19 U.S.C. 1401a. In the case of an express consignment carrier facility or centralized hub facility, merchandise that is formally entered is subject to a $1.00 per individual air waybill or bill of lading fee and, if applicable, to the 0.21 percent *ad valorem* fee which must be paid by the carrier as provided in paragraph (b)(4) of this section.

* * * * *

(2) *Informal entry or release.* Except in the case of merchandise covered by paragraph (b)(3) or paragraph (b)(4) of this section, and except as otherwise provided in paragraph (c) of this section, merchandise that is informally entered or released is subject to the payment to CBP of a fee of:

(i) $2 if the entry or release is automated and not prepared by CBP personnel;

(ii) $6 if the entry or release is manual and not prepared by CBP personnel; or

(iii) $9 if the entry or release, whether automated or manual, is prepared by CBP personnel.

(3) *Small airport or other facility.* With respect to the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at $2,000 or less, or any higher amount prescribed for purposes of informal entry in § 143.21 of this chapter, a small airport or other facility must pay to CBP an amount equal to the reimbursement (including overtime) which the facility is required to make during the fiscal year under § 24.17.

(4) *Express consignment carrier and centralized hub facilities.* Each carrier using an express consignment carrier facility or a centralized hub facility must pay to CBP a fee in the amount of $1.00 per individual air waybill or individual bill of lading and, if merchandise is formally entered, the *ad valorem* fee specified in paragraph (b)(1) of this section, if applicable. An individual air waybill or individual bill of lading is the individual document issued by the carrier for transporting and/or tracking an individual item, letter, package, envelope, record, document, or shipment. An individual air waybill is the bill at the lowest level, and is not a master bill or other consolidated document. An individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. Payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter. The following additional requirements and conditions apply to each quarterly payment made under this section:

(i) The quarterly payment must conform to the requirements of § 24.1, must be mailed to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, and must be received by CBP no later than the last day of the month that follows the close of the calendar quarter to which the payment relates.

(ii) The following information must be included with the quarterly payment:

(A) The identity of the calendar quarter to which the payment relates;

(B) The identity of the facility for which the payment is made and the port code that applies to that location and, if the payment covers multiple facilities, the identity of each facility and its port code and the portion of the payment that pertains to each port code; and

(C) The total number of individual air waybills and individual bills of lading covered by the payment, and a breakdown of that total for each facility covered by the payment according to the number covered by formal entry procedures, the number covered by informal entry procedures specified in §§ 128.24(e) and 143.23(j) of this chapter, and the number covered by other informal entry procedures.

(iii) Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to CBP. In the case of an overpayment or underpayment that is not accounted for by an adjustment of the next due quarterly payment to CBP:

(A) In the case of an overpayment, the carrier may request a refund by writing to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278. The refund request must specify the grounds for the refund and must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP; and

(B) In the case of an underpayment, interest will accrue on the amount not paid from the date payment was initially due to the date that payment to CBP is made.

(iv) The underpayment or failure of a carrier using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed to CBP pursuant to paragraph (b)(4) of this section may result in the assessment of penalties under 19 U.S.C. 1592 and any other action authorized by law.

* * * * *

PART 113—CUSTOMS BONDS

4. The authority citation for part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

5. In § 113.64, paragraph (a) is amended by adding a new sentence at the end to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(a) * * * If the principal (carrier) fails to pay the fees for processing letters, documents, records, shipments, merchandise, or other items on or before the last day of the month that follows the close of the calendar quarter to which the processing fees relate pursuant to § 24.23(b)(4) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the processing fees not timely paid to CBP as prescribed by regulation.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

6. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

7. In § 128.11, paragraphs (b)(2), (b)(7)(iv) and (b)(7)(v) are revised to read as follows:

§ 128.11 Express consignment carrier application process.

* * * * *

(b) * * *

(2) A statement of the general character of the express consignment operations that includes, in the case of an express consignment carrier facility, a list of carriers that intend to use the facility.

* * * * *

(7) * * *

(iv) If the entity is an express consignment carrier facility, provide to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, at the beginning of each calendar quarter, a list of all carriers currently using the facility and notify that office whenever a new carrier begins to use the facility or whenever a carrier ceases to use the facility.

(v) If the entity is a hub facility or an express consignment carrier, timely pay all applicable processing fees prescribed in § 24.23 of this chapter.

* * * * *

Deborah J. Spero,

Acting Commissioner, Bureau of Customs and Border Protection.

Approved: July 24, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E6–12067 Filed 7–27–06; 8:45 am]

BILLING CODE 9111–14–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2400

Regulations Implementing the Privacy Act of 1974

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) is proposing to amend its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The Privacy Act has been amended multiple times since OSHRC first promulgated its regulations in 1979. The proposed amendments to OSHRC's regulations at 29 CFR part 2400 will assist the agency in complying with the requirements of the Privacy Act.

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

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: regsdocket@oshrc.gov.* Include ''PRIVACY ACT PROPOSED RULEMAKING'' in the subject line of the message.
- *Fax:* (202) 606–5417.
- *Mail:* One Lafayette Centre, 1120–20th Street, NW., Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* Same as mailing address.

Instructions: All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as ''PRIVACY ACT PROPOSED RULEMAKING.'' If you submit comments by e-mail, you will receive an automatic confirmation e-mail from the system indicating that we have received your submission. If, in response to your comment submitted via e-mail, you do not receive a confirmation e-mail within five working days, contact us directly at (202) 606–5410.

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606–5410, or via e-mail at *rbailey@oshrc.gov*.

SUPPLEMENTARY INFORMATION: OSHRC's regulations implementing the Privacy Act of 1974 were first promulgated on January 19, 1979, 44 FR 3968. These regulations have not been revised, except for changes made to the office address referenced in §§ 2400.6 and 2400.7, 58 FR 26065, April 30, 1993. Since 1979, however, the Privacy Act has been amended on numerous occasions. As explained below, these statutory changes, along with intervening case law, compel OSHRC to propose various amendments to its regulations. Because OSHRC proposes extensive revisions to its existing regulations implementing the Privacy Act, OSHRC has reproduced, for the convenience of the reader, the revised regulations to 29 CFR part 2400 in their entirety in its proposed rulemaking.

The specific amendments that OSHRC proposes include the following changes which are discussed in regulatory sequence.

OSHRC proposes amending its authority citation to exclude all references to popular names and statutes at large. The Office of the Federal Register has expressed a preference for citing only to the United States Code when referencing a Federal statute.

In § 2400.1 (Purpose and scope), OSHRC proposes making several changes to clarify what 29 CFR part 2400 covers. In accordance with the amendments to the Privacy Act contained in section 2(b), Public Law 97–365 (5 U.S.C. 552a(m)(2)), OSHRC proposes amending § 2400.1 to reflect that part 2400 no longer covers systems of records ''that are disclosed to consumer reporting agencies under [section] 3711(e) of title 31, United States Code.'' Additionally, OSHRC proposes amending § 2400.1 to reflect that part 2400 applies only to ''records that are maintained by [OSHRC].'' Presently, § 2400.1 states that OSHRC's Privacy Act regulations ''are applicable only to such items of information as relate to the agency or are within its custody.'' However, the term ''record'' is defined in the Privacy Act at 5 U.S.C. 552a(a)(4) while the term ''items of information'' is not. Therefore, amending § 2400.1 to substitute ''record'' for ''items of information'' would more appropriately limit the purpose and scope of the regulations in accordance with the statute. OSHRC also proposes deleting the last sentence of § 2400.1, which states ''[t]his part is intended to protect individual privacy, and affects all personal information collection and usage activity of the agency,'' because it is overly broad. Based on these proposed amendments, new § 2400.1 would read as follows:

> The purpose of the provisions of this part is to provide procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). This part is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated on behalf of OSHRC, pursuant to a contract, to accomplish an agency function, except for records that are disclosed to consumer reporting agencies under section 3711(e) of title 31, United States Code. This part is not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure, which are published at 29 CFR 2200.1 *et seq.*

Revising § 2400.1 in this manner would incorporate a statutory change to the Privacy Act, as well as clarify the proper scope of the agency's regulations under this Part.

In § 2400.2 (Description of agency), OSHRC proposes adding a sentence to the end of the section that provides additional details about the designation of one of the Commissioners as the Chairman and his responsibilities for the administrative operations of the

Commission, consistent with section 12(e) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 661(e). OSHRC also proposes a simple change in nomenclature by deleting ''Occupational Safety and Health Review Commission'' and replacing it with ''The Commission.'' The agency's full name would first be noted in revised § 2400.1 based on the amendments to that section discussed above.

OSHRC proposes amending several items in § 2400.3 (Delegation of authority). In paragraph (a) of § 2400.3, OSHRC proposes revised language providing that ''[t]he Chairman shall designate an OSHRC employee as the Privacy Officer, and shall delegate to the Privacy Officer the authority to insure agency-wide compliance with this part.'' In the current version of paragraph (a), this authority is delegated to the Executive Director. In recent years, the Office of Management and Budget (OMB) has issued various guidance memoranda regarding the responsibilities of executive departments and agencies on privacy matters, including Safeguarding Personally Identifiable Information, OMB–06–15 (May 22, 2006); Designation of Senior Agency Officials for Privacy, OMB Memorandum M–05–08 (Feb. 11, 2005); and OMB Guidance for Implementing the Privacy Provision of the E-Government Act of 2002, OMB Memorandum M–03–22 (Sept. 30, 2003). By creating the position of Privacy Officer and providing this individual with the authority to handle Privacy Act matters, OSHRC would be better able to respond to future changes in requirements and subsequent guidance in the privacy arena.

In paragraph (b) of § 2400.3, OSHRC proposes replacing the term ''[c]ustodians'' with the more specific term ''[c]ustodians of the systems of records'' in order to better define those persons covered by paragraph (b). In accordance with the changes proposed to § 2400.3(a), OSHRC would also replace the term ''Executive Director'' with ''Privacy Officer.'' OSHRC further proposes to break out existing paragraph (b) into paragraphs (b)(1) and (b)(2) and to add a new paragraph (b)(3) in order to highlight the various duties of the custodians of the systems of records. Specifically, OSHRC proposes to reformat paragraph (b) by turning the first and second sentences of the current paragraph (b) into new paragraphs (b)(1) and (b)(2), respectively. OSHRC proposes making several grammatical changes in new paragraph (b)(1) by transforming the words ''adherence,'' ''collection,'' ''use,'' and ''disclosure'' into present participles. OSHRC also proposes to replace (1) the word ''information'' and the phrase ''personal information'' with the word ''records,'' and (2) the phrase ''personal records systems'' with the phrase ''systems of records.'' Because the terms ''record'' and ''system of records'' are defined in the Privacy Act at 5 U.S.C. 552a(a)(4) and (5), use of these terms would better delineate the scope of revised paragraph (b). OSHRC then proposes adding a new paragraph (b)(3), which would make the custodians of the systems of records responsible for maintaining an accurate accounting of each disclosure in conformance with § 2400.4(d) and its statutory counterpart in the Privacy Act at 5 U.S.C. 552a(c). Although § 2400.4(d) presently requires that ''[a]n accurate accounting of each disclosure'' be maintained, the current regulations do not specify who is responsible for complying with this provision. OSHRC believes, however, that custodians of the systems of records are best suited to maintain an accounting of each disclosure because they have the most interaction with the systems of records and are usually involved in processing the requests for records.

With regard to § 2400.4 (Collection and disclosure of personal information), OSHRC proposes making several structural and substantive changes, as well as some minor changes in wording. In paragraph (a)(1)(i) of § 2400.4, OSHRC proposes adding the phrase ''in its records'' after ''[s]olicit, collect and maintain'' to clarify that OSHRC's responsibilities under this provision only extend to information that is maintained in a record. OSHRC also proposes adding a new paragraph (a)(1)(ii) that lists the responsibilities set forth in 5 U.S.C. 552a(e)(5), which requires each agency to—

> Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

While this provision has always been in the Privacy Act, it was never incorporated into OSHRC's regulations. With the addition of new paragraph (a)(1)(ii), § 2400.4(a)(1) would better reflect OSHRC's responsibilities under the Privacy Act. OSHRC then proposes to renumber current paragraphs (a)(1)(ii) and (iii) as new paragraphs (a)(1)(iii) and (iv). In order to better track the statutory language of 5 U.S.C. 552a(e)(2), OSHRC further proposes adding the phrase ''under Federal programs'' after ''benefits or privileges'' in the newly renumbered paragraph (a)(1)(iii). Finally, OSHRC proposes a minor change by deleting ''the'' before ''OSHRC'' in new paragraph (a)(1)(iv).

OSHRC proposes no changes to paragraph (a)(2), however, in paragraph (a)(3) of § 2400.4, OSHRC proposes replacing the word ''information'' with ''record'' because the term ''record'' is defined in the Privacy Act at 5 U.S.C. 552a(a)(4) while the term ''information'' is not. Amending paragraph (a)(3) in this manner would better define this paragraph's scope. OSHRC also proposes adding the phrase ''or maintenance of the record'' after ''collection'' to clarify that all of the requirements and exceptions in the paragraph apply to both the collection and maintenance of records. Finally, OSHRC proposes amending paragraph (a)(3) to include language excluding records that are ''pertinent to and within the scope of an authorized law enforcement activity'' in accordance with 5 U.S.C. 552a(e)(7). We propose no changes to § 2400.4(a)(4).

OSHRC proposes making structural and substantive changes to paragraphs (b)(1) and (b)(2) of § 2400.4. Specifically, OSHRC proposes amending paragraph (b)(1) to incorporate the opening statutory language contained in 5 U.S.C. 552a(b). The revised paragraph (b)(1) would thus read:

> OSHRC shall not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

The current regulation at § 2400.4(b)(1) regarding disclosures-which, in part, prevents OSHRC from disseminating records ''unless reasonable efforts have been made to assure that the information is accurate, complete, timely and relevant''—could be construed as applying to Freedom of Information Act (FOIA) requests. Under 5 U.S.C. 552a(e)(6), however, agency responses to FOIA requests are specifically exempted from the Privacy Act requirement that agencies must make reasonable efforts to ensure, when disclosing records about an individual to any person, that such records are accurate, complete, timely, and relevant. This exemption makes sense because the purpose of a FOIA request may be, for example, to gather information that reflects an agency's propensity for maintaining inaccurate records. Consequently, it would not be appropriate to require that such records requested under the FOIA be examined in this manner under the Privacy Act. Thus, in order to eliminate such an interpretation, OSHRC proposes

amending paragraph (b)(1) in the aforementioned manner, amending paragraph (b)(2) to list exceptions to revised paragraph (b)(1), and adding new paragraph (b)(5) which would define when records should be ''accurate, complete, timely and relevant.''

As to paragraph (b)(2) of § 2400.4, OSHRC proposes the following changes. First, in order to reflect that revised paragraph (b)(2) lists exceptions to the rule set forth in revised paragraph (b)(1), OSHRC proposes revising the opening clause to read, ''*Exceptions:* A record may be disseminated without satisfying the requirements of paragraph (b)(1) of this section if disclosure is made: * * *'' Second, OSHRC proposes replacing the word ''information'' with ''record'' in paragraphs (b)(2)(ii) and (b)(2)(iv), because the term ''record'' is defined in the Privacy Act at 5 U.S.C. 552a(a)(4), while the term ''information'' is not. Third, in paragraph (b)(2)(iv), OSHRC proposes adding the words ''OSHRC with'' between ''provided'' and ''adequate advance written assurance'' in order to clarify that notice must be provided to OSHRC. In that paragraph, OSHRC also proposes replacing the phrase ''individually identifiable'' with ''personally identifiable'' because this is a term of art used in the privacy field. Fourth, OSHRC proposes a change in nomenclature by spelling out ''United States'' in paragraph (b)(2)(v) and deleting ''the'' before ''OSHRC'' in paragraph (b)(2)(viii). Fifth, in accordance with the amendments to the Privacy Act contained in section 107(g)(1), Public Law 98–497 (5 U.S.C. 552a(b)(6)), OSHRC proposes modifying, in paragraph (b)(2)(vi), ''National Archives of the United States'' to read ''National Archives and Records Administration,'' and ''Administrator of General Services'' to read ''Archivist of the United States or the designee of the Archivist.'' Sixth, OSHRC proposes modifying, in paragraph (b)(2)(viii), ''Federal agency'' to read ''another agency.'' This revision better tracks the statutory language at 5 U.S.C. 552a(b)(7) and makes clear that the records can be disclosed to federal, state, or local agencies. In this regard, OMB states in its guidelines, 40 FR 28948, 28955, July 9, 1975, that in addition to providing for disclosures to federal law enforcement agencies, section 552a(b)(7) allows an agency, ''upon receipt of a written request, [to] disclose a record to another agency or unit of State or local government for a civil or criminal law enforcement activity.'' Seventh, in order to better track the language of 5 U.S.C. 552a(b)(9), OSHRC proposes modifying paragraph (b)(2)(ix) of § 2400.4 to read, ''To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee.'' Eighth, in accordance with the GAO Human Capital Reform Act of 2004, Public Law 108–271, 118 Stat. 811, OSHRC proposes modifying, in paragraph (b)(2)(x), ''General Accounting Office'' to read ''Government Accountability Office.'' Finally, OSHRC proposes adding a new paragraph (b)(2)(xii) which, in accordance with the amendments to the Privacy Act contained in section 2(a), Public Law 97–365 (5 U.S.C. 552a(b)(12)), would permit disclosures ''[t]o a consumer reporting agency in accordance with section 3711(e) of title 31, United States Code.''

OSHRC further proposes some minor changes, such as capitalizing ''Service'' in paragraph (b)(3) and revising ''§ 2400.4(b)(3) above'' to read ''paragraph (b)(3) of this section'' in paragraph (b)(4). In paragraph (b)(3), OSHRC also proposes changing ''The Personnel Office'' to ''OSHRC's Office of Administration'' based on the agency's recent reorganization.

OSHRC next proposes adding new paragraphs (b)(5) and (b)(6) to § 2400.4, which would essentially incorporate the statutory language of 5 U.S.C. 552a(e)(6) and (d)(5), respectively. Paragraph (b)(5) would read:

> *Disclosures to third parties.* OSHRC shall not disseminate any record about an individual to any person other than an agency unless the record is disseminated pursuant to paragraph (b)(2)(i) of this section, or reasonable efforts have been made to ensure that the record is accurate, complete, timely and relevant.

Paragraph (b)(6) would read:

> *Anticipated legal action.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

OSHRC believes that these provisions should be added to § 2400.4 in order to track the statute and make the regulations comprehensive.

Additionally, OSHRC proposes moving current § 2400.4(c) and re-designating it as new § 2400.5(c). Current section 2400.4(c), which pertains to notifying certain persons and agencies about corrections made to a record, is a better fit for new § 2400.5(c), which pertains to ''notification of amendment.'' Proposed modifications to the language in the re-designated § 2400.5(c) are discussed below in that section.

In response to the change above, OSHRC proposes re-designating paragraph (d) of § 2400.4, which sets forth the procedures for maintaining an accounting of disclosures, as new paragraph (c) of § 2400.4. OSHRC proposes streamlining the language of new paragraph (c)(1). Rather than spelling out that the accounting requirements do not pertain to instances ''in which disclosure is made to OSHRC employees in the performance of their duties or is required by the Freedom of Information Act (5 U.S.C. 552), in conformance with section 552a(c) of the Privacy Act,'' OSHRC proposes simply stating that ''any disclosure made pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section'' is excepted. Also, OSHRC proposes inserting the phrase ''OSHRC shall maintain'' at the beginning of paragraph (c)(1) to emphasize that it is, in fact, OSHRC's responsibility to maintain an accurate accounting of certain disclosures. OSHRC further proposes adding a new paragraph (c)(2) that lists the information required, in accordance with 5 U.S.C. 552a(c)(1), for a proper accounting of each disclosure. New paragraph (c)(2) would read as follows:

> When an accounting is required under paragraph (c)(1) of this section, the following information shall be recorded: The date, nature, and purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

OSHRC proposes renumbering current paragraph (d)(2) as new paragraph (c)(3), and modifying the language ''for at least five (5) years or the life of the record'' to read ''for at least five (5) years after disclosure or for the life of the record'' in order to clearly define the length of time that an accounting must be maintained. Finally, OSHRC proposes renumbering current paragraph (d)(3) as new paragraph (c)(4), adding a cross-reference to ''§ 2400.6 for suggested form of request,'' and deleting the word ''provision'' because it adds nothing to the sentence.

With regard to § 2400.5 (Notification), OSHRC proposes making various changes in substance and nomenclature. In the opening sentence of paragraph (a) of § 2400.5, OSHRC proposes modifying the phrase ''personal records systems'' to read ''systems of records'' because only the latter phrase is defined in the Privacy Act at 5 U.S.C. 552a(a)(5).

In paragraph (a)(2) of § 2400.5, OSHRC proposes deleting the word ''personal'' because the definitions of ''record'' and ''system of records'' in the Privacy Act at 5 U.S.C. 552a(a)(4) and (5), respectively, already reflect that personal identifiable information is at issue. In accordance with the amendments to the Privacy Act

contained in section 201(a), Public Law 97–375 (5 U.S.C. 552a(e)(4)), OSHRC also proposes deleting the word ''annually'' from paragraph (a)(2) and adding the phrase ''[u]pon establishing or revising a system of records.'' Additionally, OSHRC proposes modifying paragraph (a)(2) to reflect the data elements that are required by the Office of the Federal Register for Privacy Act notices. These fields include: (i) System name and location; (ii) security classification; (iii) categories of individuals covered by the system; (iv) categories of records in the system; (v) authority for maintenance of the system; (vi) purpose(s) of the system; (vii) routine uses of records maintained in the system, including categories of users and the purpose(s) of such uses; (viii) disclosures to consumer reporting agencies; (ix) policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; (x) system manager(s) and address; (xi) procedures by which an individual can be informed whether a system contains a record pertaining to himself, gain access to such record, and contest the content, accuracy, completeness, timeliness, relevance, and necessity for retention of the record; (xii) record source categories; and (xiii) exemptions claimed for the system. Finally, in the opening sentence of paragraph (a)(2) of § 2400.5, OSHRC proposes minor grammatical changes, such as inserting ''the'' before the words ''existence'' and ''systems.''

In accordance with the amendments to the Privacy Act contained in section 3(b), Public Law 100–503 (5 U.S.C. 552a(r)), OSHRC proposes adding a new paragraph (a)(3) to § 2400.5 that sets forth the reporting requirements for system-of-records notices. New paragraph (a)(3) would read as follows:

> OSHRC shall submit a report, in accordance with guidelines provided by the Office of Management and Budget (OMB), in order to give advance notice to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB of any proposal to establish a new system of records or to significantly change an existing system of records.

OSHRC believes it is necessary to add new paragraph (a)(3) to § 2400.5 in order to provide a comprehensive explanation of the notification requirements.

In paragraph (b) of § 2400.5, OSHRC proposes replacing the phrase ''personal information'' with ''record pertaining to the individual'' because the term ''record'' is defined in the Privacy Act at 5 U.S.C. 552a(a)(4), while the term ''information'' is not.

OSHRC also proposes substantial changes to paragraph (c) of § 2400.5. Presently, paragraph (c) states as follows: ''*Notification of amendment.* (See § 2400.7 relating to amendment of records upon request.)'' OSHRC proposes deleting this language, and, as discussed earlier, inserting the text of current § 2400.4(c), which pertains to notifying certain persons and agencies about corrections made to a record, and designating it as new paragraph (c)(1) in § 2400.5. OSHRC would thus modify the text to read as follows:

> OSHRC shall inform any person or other agency about any correction or notation of dispute made by OSHRC to any record that has been disclosed to the person or agency, if the correction or notation was made pursuant to § 2400.8, and an accounting of the disclosure was made pursuant to § 2400.4(c).

The current version of this paragraph states that its requirements apply where a ''personal record has been or is to be disclosed.'' However, the phrase ''is to be disclosed'' is not included in 5 U.S.C. 552a(c)(4), the regulation's statutory counterpart. Moreover, from a practical standpoint, it would be difficult to notify a person or an agency of a correction if the record has not yet been disclosed to that person or agency. The remaining changes to new paragraph (c)(1), shown above, are based on the statutory text at section 552a(c)(4).

OSHRC proposes adding a new paragraph (c)(2) to § 2400.5 setting forth the requirements of 5 U.S.C. 552a(d)(4), which explains how agencies are to treat disputed portions of the record. New paragraph (c)(2) would read as follows:

> In any disclosure to a person or other agency containing information about which the individual has filed a statement of disagreement and occurring after the statement was filed, OSHRC shall clearly note any portion of the record which is disputed and provide copies of the statement and, if OSHRC deems appropriate, copies of a concise statement of OSHRC's reasons for not making the requested amendments.

OSHRC believes that adding this statutory requirement to § 2400.5 would help ensure that the rights of those covered by the Privacy Act are preserved.

In accordance with 5 U.S.C. 552a(e)(11), OSHRC proposes amending paragraph (d) of § 2400.5 to allow interested persons to ''submit written data, views, or arguments to OSHRC'' after a system-of-records notice has been published in the **Federal Register**. OSHRC also proposes adding the word ''routine'' before ''use,'' and replacing ''personal information'' with ''a system of records'' because, under section 552a(e)(11), notification is required only for new and revised routine uses of systems of records. OSHRC proposes no changes to paragraph (e) of § 2400.5.

With regard to § 2400.6 (Procedures for requesting records), OSHRC proposes various substantive and structural changes, as well some changes in nomenclature. Throughout § 2400.6, OSHRC proposes replacing ''personal information'' with ''record'' because the term ''record'' is defined in the Privacy Act at 5 U.S.C. 552a(a)(4) and the term ''information'' is not. OSHRC also proposes a change in nomenclature by replacing ''Executive Director,'' ''responsible official,'' and ''disclosure officer'' with ''Privacy Officer'' in accordance with the proposed changes to § 2400.3(a).

In the opening sentence of § 2400.6, OSHRC proposes a change in wording by replacing the word ''have'' with ''gain.'' OSHRC also proposes deleting the phrase ''within a comprehensive format'' as unnecessary.

In paragraph (a)(1) of § 2400.6, OSHRC proposes deleting the last sentence which says the following:

> Access to OSHRC records maintained in National Archives and Records Service Centers may be obtained in accordance with the regulations issued by the General Services Administration.

According to section 107(g)(2), Public Law 98–497 (5 U.S.C. 552a(l)(1)), the records that OSHRC sends to the Federal processing center are still considered to be under OSHRC's control. Thus, disclosure of such records must be in accordance with OSHRC's regulations. OSHRC also proposes amending the agency's mailing address to include the last four digits of the ZIP code and to spell out ''Ninth Floor.''

OSHRC proposes deleting the last sentence in paragraph (a)(2) of § 2400.6, which reads, ''Upon request, OSHRC also shall disclose to the individual an accounting of any disclosures made from the individual's records.'' This sentence is redundant because new § 2400.4(c)(4) (current § 2400.4(d)(3)) already covers an individual's request for an accounting.

In paragraph (a)(3) of § 2400.6, OSHRC proposes revising the Privacy Officer's period for response to read ''10 working days'' rather than ''10 days,'' because 5 U.S.C. 552a(d)(2)(A) states that Saturdays, Sundays, and legal holidays are excluded from the 10-day requirement.

Paragraphs (b)(1) and (b)(2) of § 2400.6 would remain unchanged. However, OSHRC proposes amending paragraph (b)(3) of § 2400.6 to reflect that a declaration made in accordance

with 28 U.S.C. 1746 may serve as an alternative to a notarized statement, in accordance with section 1(a), Public Law 94–550 (28 U.S.C. 1746) and *Summers* v. *United States Dep't of Justice*, 999 F.2d 570, 573 (D.C. Cir. 1993).

While paragraph (c) on verification of guardianship remains unchanged, OSHRC proposes modifying paragraph (d) of § 2400.6 to indicate that the authorization form discussed in that paragraph must be provided by OSHRC. Because the form is intended, in part, to protect OSHRC from liability that may arise when records are disseminated to a third party accompanying the individual whose records are being accessed, OSHRC must make certain that the form is legally adequate.

OSHRC also proposes deleting current paragraph (e) of § 2400.6, which sets forth special rules for requesting medical records, and adding a new section § 2400.7 that provides a more legally sound procedure for requesting such records. OSHRC also proposes re-designating current paragraph (f) as new paragraph (e).

OSHRC proposes re-designating paragraph (g) of § 2400.6 as new paragraph (f) and amending its language to require that the Privacy Officer, upon denying an individual's request for personal records, notify the individual of his or her right to an administrative appeal. The paragraph presently requires that the requester be advised of his right to judicial review in a district court of the United States. However, the administrative appeal is an equally important aspect of the review process and, therefore, should be included in the Privacy Officer's statement. OSHRC also proposes deleting the phrase ''or other appropriate official,'' thereby requiring that the Privacy Officer sign any reply denying an individual's written request to review a record. Placing clear limits on who has authority to deny such a request is necessary to maintain the integrity of the administrative appeal process.

As discussed above, OSHRC proposes creating a new § 2400.7 by carving out current paragraph (e) of § 2400.6 and revising it to comport with new case law regarding special procedures for medical records. Under 5 U.S.C. 552a(f)(3), OSHRC must—

> Establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him[.]

Current paragraph (e) of § 2400.6 states the following:

> Medical records shall be disclosed to the requester to whom they pertain unless the Executive Director, in consultation with a medical doctor named by the requesting individual, determines that access to such record could have an adverse effect upon such individual. In such a case, the Executive Director shall transmit such information to the named medical doctor.

However, in light of *Benavides* v. *United States Bureau of Prisons*, 995 F.2d 269 (D.C. Cir. 1993), current paragraph (e) may no longer be valid. In Benavides, the United States Court of Appeals for the District of Columbia Circuit found that, while an agency is authorized to devise a ''special'' methodology for disclosing medical records under section 552a(f)(3), the devised methodology must lead to disclosure of the medical records to the requesting individual. *Id.* at 272. Thus, the court held that a regulation which expressly contemplates that the requesting individual may never see certain medical records is not a permissible special procedure. *Id.* The court, however, rejected the argument that the Privacy Act requires direct disclosure of medical records to the requesting individual. *Id.* at 273. Recognizing the ''potential harm that could result from unfettered access to medical and psychological records,'' the court provided that an agency should have the freedom to craft special procedures to limit such harm, as long as the agency guarantees ''the ultimate disclosure of the medical records to the requesting individual.'' *Id.* Therefore, new § 2400.7 would address the concerns expressed in Benavides by setting forth a procedure that guarantees ''the ultimate disclosure of medical records to the requesting individual,'' but still requires the intervention of a physician in order ''to limit the potential harm.'' *Id.* In part, OSHRC's proposed procedures under this section are based on the procedures utilized by the Central Intelligence Agency, 32 CFR 1901.31.

OSHRC next proposes re-designating current § 2400.7 (Procedures for requesting amendment) as new § 2400.8. Throughout new § 2400.8, OSHRC would replace ''Executive Director'' with ''Privacy Officer'' in accordance with the proposed amendments to § 2400.3(a). OSHRC then proposes revising paragraph (b)(4) to reflect that the Privacy Officer will ''[n]otify the requester of a determination not to amend the record, of the reasons for the refusal, and of the requester's right to appeal in accordance with [new] § 2400.9.'' Inexplicably, the current version of paragraph (b)(4) does not require OSHRC to explain why a person's request for amendment is being denied. OSHRC also proposes severing paragraphs (c) and (d) of current § 2400.7 and renumbering them to create a new § 2400.9 pertaining to appeal procedures. Creating new § 2400.9 by separating the appeal procedures from current § 2400.7, which pertains to ''procedures for requesting amendment,'' is necessary because individuals should be permitted to appeal the agency's denial of inspection and copy requests, not just the denial of amendment requests.

In new § 2400.9 (current § 2400.7(c) and (d)), OSHRC proposes changing ''Executive Director'' to ''Privacy Officer.'' OSHRC also proposes the following changes. New paragraphs (a)(1) and (a)(2) of proposed § 2400.9 would coincide with current § 2400.7(c)(1) and (c)(2), new paragraph (b) would coincide with current § 2400.7(c)(3), new paragraph (c) would coincide with current § 2400.7(c)(4), and new paragraph (d) would coincide with current § 2400.7(d). In new paragraph (a)(1) (current § 2400.7(c)(1)), OSHRC proposes amending the last four digits of the ZIP code in its mailing address, spelling out ''Ninth Floor,'' and adding ''Attn: Privacy Appeal'' as the second line in the address. In new paragraph (b) of § 2400.9 (current § 2400.7(c)(3)), OSHRC proposes the following: (1) Adding the word ''working'' after the first mention of ''30'' because 5 U.S.C. 552a(d)(3) states that Saturdays, Sundays, and legal holidays are excluded from the 30-day requirement; (2) replacing the word ''determination'' with ''decision'' in order to make new paragraph (b) consistent with paragraph (c) (current § 2400.7(c)(4)); and (3) for the sake of readability, modifying ''not complete, accurate, relevant, or timely,'' to read ''incomplete, inaccurate, irrelevant, or untimely.'' In new paragraph (c) (current § 2400.7(c)(4)), OSHRC proposes to title the paragraph as ''Decision requirements'' and to add the phrase ''of the United States'' after ''district court.'' Finally, in new paragraph (d) (current § 2400.7(d)), OSHRC proposes adding ''then'' after ''the requester,'' and deleting the word ''personal'' because the definition of ''record'' in the Privacy Act at 5 U.S.C. 552a(a)(4) already reflects that personal identifiable information is at issue.

OSHRC proposes deleting current § 2400.7(e). This paragraph states that the Executive Director ''is available to provide an individual with assistance in exercising rights pursuant to this part.'' OSHRC believes that this language creates no affirmative duty and is therefore unnecessary. Moreover, OSHRC believes that its proposed regulations already adequately ensure

that an individual requesting records or amendment to records would be provided with the information necessary to exercise his or her rights.

OSHRC proposes re-designating current § 2400.8 (Schedule of fees) as new § 2400.10. OSHRC would amend the schedule of fees to reflect the change in costs since the original promulgation of the current regulations in 1979. Rather than specifying a specific copying fee, OSHRC would incorporate by reference Appendix A to 29 CFR Part 2201—Schedule of Fees in the agency's proposed rulemaking implementing the FOIA published at 71 FR 41384, July 21, 2006. OSHRC proposes this revision for administrative ease and to ensure that the fees charged for FOIA and Privacy Act requests are consistent. Lastly, in accordance with 5 U.S.C. 552a(f)(5), OSHRC would amend paragraph (c) to reflect that no fee would be charged for reviewing records.

OSHRC proposes deleting current § 2400.9 (Exemptions), which states that ''[s]ubsections 552a(j) and (k) of title 5 * * * empower the Chairman to exempt systems of records meeting certain criteria from various other subsections of section 552a.'' Under 5 U.S.C. 552a(j) and (k), the head of an agency may promulgate rules, in some circumstances, to exempt various systems of records from certain Privacy Act requirements. A system of records cannot be exempted, however, unless a specific rule regarding it has been published. If ever there is a system of records that the head of the agency wants to exempt, he or she can simply publish a regulation at that time to exempt the system. Thus, deleting § 2400.9 would not in any way deprive the Chairman of this authority.

Executive Order 12866

The Commission is an independent regulatory agency, and, as such, is not subject to the requirements of E.O. 12866.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Executive Order 13132

The Commission is an independent regulatory agency, and, as such, is not subject to the requirements of E.O. 13132. However, as independent regulatory agencies are encouraged to comply with this executive order, OSHRC has examined the proposed regulatory action in light of its requirements. This proposed regulatory action does not have Federalism implications. Moreover, the action 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.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

Unfunded Mandates Reform Act of 1995

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 29 CFR Part 2400

Administrative practice and procedure, Archives and records, Government employees, Privacy.

Signed at Washington, DC, on July 24, 2006.

W. Scott Railton,

Chairman.

For the reasons set forth in the preamble, OSHRC proposes that Chapter XX, Part 2400 of Title 29, Code of Federal Regulations, be revised as follows:

PART 2400—REGULATIONS IMPLEMENTING THE PRIVACY ACT

Sec.

Authority: 5 U.S.C. 552a(f); 5 U.S.C. 553.

§ 2400.1 Purpose and scope.

The purpose of the provisions of this part is to provide procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). This part is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated on behalf of OSHRC, pursuant to a contract, to accomplish an agency function, except for records that are disclosed to consumer reporting agencies under section 3711(e) of title 31, United States Code. This part is not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure, which are published at 29 CFR 2200.1 *et seq.*

§ 2400.2 Description of agency.

The Commission adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651–677). Decisions of the Commission on such actions are issued only after the parties to the case are afforded an opportunity for a hearing in accordance with section 554 of title 5, United States Code. All such hearings are conducted by an OSHRC Administrative Law Judge at a place convenient to the parties and are open to the public. Each Commission member has the authority to direct that a decision of a Judge be reviewed by the full Commission before becoming a final order. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

§ 2400.3 Delegation of authority.

(a) The Chairman shall designate an OSHRC employee as the Privacy Officer, and shall delegate to the Privacy Officer the authority to insure agency-wide compliance with this part.

(b) Custodians of the systems of records are responsible for the following:

(1) Adhering to this part within their respective units and, in particular, collecting, using and disclosing records, and affording individuals the right to

inspect, obtain copies of and correct records concerning them;

(2) Reporting the existence of systems of records, changes to the contents of those systems and changes of routine use to the Privacy Officer, and also establishing the relevancy of records within those systems; and

(3) Maintaining an accurate accounting of each disclosure in conformance with § 2400.4(c) of this part.

§ 2400.4 Collection and disclosure of personal information.

(a) The following rules govern the collection of personal information throughout OSHRC operations:

(1) OSHRC shall:

(i) Solicit, collect and maintain in its records only such personal information as is relevant and necessary to accomplish a purpose required by statute or executive order;

(ii) Maintain all records which are used by OSHRC in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(iii) Collect information, to the greatest extent practicable, directly from the subject individual when such information may result in adverse determinations about an individual's rights, benefits or privileges under Federal programs; and

(iv) Inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what authority it is solicited, the principal purposes for which it is intended to be used, the routine uses which may be made of it, and any penalties or consequences known to OSHRC which shall result to the individual from such non-disclosure.

(2) OSHRC shall not discriminate against any individual who fails to provide personal information unless that information is required or necessary for the conduct of the system or program in which the individual desires to participate. See § 2400.4(a)(1)(i).

(3) No record shall be collected or maintained which describes how any individual exercises rights guaranteed by the First Amendment unless the Commission specifically determines that such information is relevant and necessary to carry out a statutory purpose of OSHRC, and the collection or maintenance of the record is expressly authorized by statute or by the individual about whom the record is maintained, or unless the record is pertinent to and within the scope of an authorized law enforcement activity.

(4) OSHRC shall not require disclosure of any individual's Social Security account number or deny a right, privilege or benefit because of the individual's refusal to disclose the number unless disclosure is required by Federal law.

(b) *Disclosures*—(1) *Limitations.* OSHRC shall not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(2) *Exceptions.* A record may be disseminated without satisfying the requirements of paragraph (b)(1) of this section if disclosure is made:

(i) To a person pursuant to a requirement of the Freedom of Information Act (5 U.S.C. 552);

(ii) To those officers and employees of OSHRC who have a need for the record in the performance of their duties;

(iii) For a routine use as contained in the system notices published in the **Federal Register**;

(iv) To a recipient who has provided OSHRC with adequate advance written assurance that the record shall be used solely as a statistical reporting or research record, and the record is to be transferred in a form that is not personally identifiable;

(v) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual;

(viii) To another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if such activity is authorized by law and if the head of the agency or instrumentality has made a written request to OSHRC specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the Government Accountability Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with section 3711(e) of title 31, United States Code.

(3) *Employee credit references.* OSHRC's Office of Administration shall verify the following information provided by an employee to a credit bureau or commercial firm from which an employee is seeking credit: Length of service, job title, grade, salary, tenure of employment, and Civil Service status.

(4) *Employee job references.* Prospective employers of an OSHRC employee or a former OSHRC employee may be furnished with the information in paragraph (b)(3) of this section in addition to the date and reason for separation if applicable, upon the request of the employee or former employee.

(5) *Disclosures to third parties.* OSHRC shall not disseminate any record about an individual to any person other than an agency unless the record is disseminated pursuant to paragraph (b)(2)(i) of this section, or reasonable efforts have been made to ensure that the record is accurate, complete, timely and relevant.

(6) *Anticipated legal action.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(c) *Accounting of disclosures*—(1) OSHRC shall maintain an accurate accounting of each disclosure, except for any disclosure made pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(2) When an accounting is required under paragraph (c)(1) of this section, the following information shall be recorded: The date, nature, and purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(3) The accounting shall be maintained for at least five (5) years after disclosure or for the life of the record, whichever is longer.

(4) The accounting shall be made available to the individual named in the record upon inquiry, except for disclosures made pursuant to paragraph

(b)(2)(viii) of this section relating to law enforcement activities. See § 2400.6 for suggested form of request.

§ 2400.5 Notification.

(a) *Notification of systems.* The following procedures permit individuals to determine the types of systems of records maintained by OSHRC.

(1) Upon written request, OSHRC shall notify any individual whether a specific system named by him contains a record pertaining to him. See § 2400.6 for suggested form of request.

(2) Upon establishing or revising a system of records, OSHRC shall publish in the **Federal Register** a notice of the existence and character of the system of records. This notice shall contain the following information:

(i) System name and location;

(ii) Security classification;

(iii) Categories of individuals covered by the system;

(iv) Categories of records in the system;

(v) Authority for maintenance of the system;

(vi) Purpose(s) of the system;

(vii) Routine uses of records maintained in the system, including categories of users and the purpose(s) of such uses;

(viii) Disclosures to consumer reporting agencies;

(ix) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system;

(x) System manager(s) and address;

(xi) Procedures by which an individual can be informed whether a system contains a record pertaining to himself, gain access to such record, and contest the content, accuracy, completeness, timeliness, relevance and necessity for retention of the record;

(xii) Record source categories; and

(xiii) Exemptions claimed for the system.

(3) OSHRC shall submit a report, in accordance with guidelines provided by the Office of Management and Budget (OMB), in order to give advance notice to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB of any proposal to establish a new system of records or to significantly change an existing system of records.

(b) *Notification of disclosure.* OSHRC shall make reasonable efforts to serve notice on an individual before any record pertaining to the individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(c) *Notification of amendment*—(1) OSHRC shall inform any person or other agency about any correction or notation of dispute made by OSHRC to any record that has been disclosed to the person or agency, if the correction or notation was made pursuant to § 2400.8, and an accounting of the disclosure was made pursuant to § 2400.4(c).

(2) In any disclosure to a person or other agency containing information about which the individual has filed a statement of disagreement and occurring after the statement was filed, OSHRC shall clearly note any portion of the record which is disputed and provide copies of the statement and, if OSHRC deems appropriate, copies of a concise statement of OSHRC's reasons for not making the requested amendments.

(d) *Notification of new routine use.* Any new or revised routine use of a system of records maintained by OSHRC shall be published in the **Federal Register** thirty (30) days before such use becomes operational. Interested persons may then submit written data, views, or arguments to OSHRC.

(e) *Notification of exemptions.* OSHRC shall publish in the **Federal Register** its intent to exempt any system of records and shall specify the nature and purpose of that system.

§ 2400.6 Procedures for requesting records.

The purpose of this section is to provide procedures by which an individual may gain access to his records.

(a) *Submission of requests for access*—(1) *Manner.* An individual seeking information regarding the contents of records systems or access to records about himself in a system of records should present a written request to that effect either in person or by mail to the Privacy Officer, OSHRC, One Lafayette Centre, 1120–20th Street, NW., Ninth Floor, Washington, DC 20036–3457.

(2) *Specification of records sought.* Requests for access to records shall describe the nature of the record sought, the approximate dates covered by the record, and the system in which the record is thought to be included as described in the ''Notification'' for that system as published in the **Federal Register**. The requester should also indicate whether he wishes to review the record in person or obtain a copy by mail. If the information supplied is insufficient to locate or identify the record, the requester shall be notified promptly and, if necessary, informed of additional information required.

(3) *Period for response.* Upon receipt of an inquiry the Privacy Officer shall respond promptly to the request and no later than 10 working days from receipt of such inquiry.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself:

(1) An individual seeking access to records about himself in person may establish his identity by the presentation of a single document bearing a photograph (such as a passport, employee identification card, or valid driver's license) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a valid driver's license, or credit card).

(2) An individual seeking access to records about himself by mail shall establish his identity by a signature, address, date of birth, place of birth, employee identification number, if any, and one other identifier such as a photocopy of an identifying document.

(3) An individual seeking access to records about himself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement, or a declaration in accordance with 28 U.S.C. 1746, swearing or affirming to his identity and to the fact that he understands the penalties for false statements pursuant to 18 U.S.C. 1001. Forms for notarized statements may be obtained on request from the Privacy Officer.

(c) *Verification of guardianship.* The parent or guardian of a minor or a person judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his own identity, establish the identity of the minor or other person he represents as required in paragraph (b) of this section and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records about himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign a form provided by OSHRC indicating that OSHRC is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *When compliance is possible*—(1) The Privacy Officer shall inform the requester of the determination to grant the request and shall make the record available to the individual in the

manner requested, that is, either by forwarding a copy of the information to him or by making it available for review, unless:

(i) It is impracticable to provide the requester with a copy of a record, in which case the requester shall be so notified, and, in addition, be informed of the procedures set forth in paragraph (b)(2) of this section, or

(ii) The Privacy Officer has reason to believe that the cost of a copy of a record is considerably more expensive than anticipated by the requester, in which case he shall notify the requester of the estimated cost, and ascertain whether the requester still wishes to be provided with a copy of the information.

(2) Where a record is to be reviewed by the requester in person, the Privacy Officer shall inform the requester in writing of:

(i) The date on which the record shall become available for review, the location at which it may be reviewed, and the hours for inspection;

(ii) The type of identification that shall be required in order for him to review the record;

(iii) Such person's right to have a person of his own choosing accompany him to review the record; and

(iv) Such person's right to have a person other than himself review the record.

(3) If the requester seeks to inspect the record without receiving a copy, he shall not leave OSHRC premises with the record and shall sign a statement indicating he has reviewed a specific record or category of record.

(f) *Response when compliance is not possible.* A reply denying a written request to review a record shall be in writing signed by the Privacy Officer and shall be made only if such a record does not exist or does not contain personal information relating to the requester, or is exempt. This reply shall include a statement regarding the determining factors of denial, and the requester's rights to administrative appeal and thereafter judicial review in a district court of the United States.

§ 2400.7 Special procedures for requesting medical records.

(a) Upon an individual's request for access to his medical, including psychological records, the Privacy Officer shall make a preliminary determination on whether access to such records could have an adverse effect upon the requester. If the Privacy Officer determines that access could have an adverse effect on the requester, OSHRC shall notify the requester in writing and advise that the records at issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician to review the documents with the requesting individual, to explain the meaning of the documents, and to offer counseling designed to temper any adverse reaction, OSHRC shall forward such records to the designated physician.

(b) If, within sixty (60) days of OSHRC's written request for a designation, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, then OSHRC shall hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. OSHRC shall also advise the requester of his rights to administrative appeal and thereafter judicial review in a district court of the United States.

§ 2400.8 Procedures for requesting amendment.

(a) *Submission of requests for amendment.* Upon review of an individual's personal record, that individual may submit a request to amend such record. This request shall be submitted in writing to the Privacy Officer and shall include a statement of the amendment requested and the reasons for such amendment, e.g., relevance, accuracy, timeliness or completeness of the record.

(b) *Action to be taken by the Privacy Officer.* Upon receiving an amendment request, the Privacy Officer shall promptly:

(1) Acknowledge in writing within ten (10) working days the receipt of the request;

(2) Make such inquiry as is necessary to determine whether the amendment is appropriate; and

(3) Correct or eliminate any information that is found to be incomplete, inaccurate, irrelevant to a statutory purpose of OSHRC, or untimely and notify the requester when this action is complete; or

(4) Notify the requester of a determination not to amend the record, of the reasons for the refusal, and of the requester's right to appeal in accordance with § 2400.9.

§ 2400.9 Procedures for appealing.

(a) *Submission of appeal*—(1) If a request to inspect, copy or amend a record is denied, in whole or in part, or if no determination is made within the period prescribed by this part, then the requester may appeal to the Chairman, Attn: Privacy Appeal, OSHRC, One Lafayette Centre, 1120–20th Street, NW., Ninth Floor, Washington, DC 20036–3457.

(2) The requester shall submit his appeal in writing within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure of the Privacy Officer to make a determination. The letter of appeal should include, as applicable:

(i) Reasonable identification of the record to which access was sought or the amendment of which was requested.

(ii) A statement of the OSHRC action or failure to act being appealed and the relief sought.

(iii) A copy of the request, the notification of denial and any other related correspondence.

(b) *Final decisions.* The Chairman shall make his final decision not later than thirty (30) working days from the date of the request, unless he extends the time for good cause to be shown by him but not to exceed ninety (90) days from the date of the request. Any record found on appeal to be incomplete, inaccurate, irrelevant, or untimely, shall within thirty (30) working days of the date of such findings be appropriately amended.

(c) *Decision requirements.* The decision of the Chairman constitutes the final decision of OSHRC on the right of the requester to inspect, copy, change or update a record. The decision on the appeal shall be in writing and, in the event of a denial, shall set forth the reasons for such denial and state the individual's right to obtain judicial review in a district court of the United States. An indexed file of the agency decisions on appeal shall be maintained by the Privacy Officer.

(d) *Submission of statement of disagreement.* If the final decision does not satisfy the requester, then any statement of reasonable length, provided by that individual, setting forth a position regarding the disputed information, shall be accepted and included in the relevant record.

§ 2400.10 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit reproduction of records for concerned individuals.

(b) *Reproduction*—(1) For the fees associated with reproduction of records, refer to Appendix A to Part 2201, Schedule of Fees.

(2) OSHRC shall not normally furnish more than one copy of any record.

(c) *Limitations.* No fee shall be charged to any individual for the

process of retrieving, reviewing, or amending records.

[FR Doc. E6–12124 Filed 7–27–06; 8:45 am]

BILLING CODE 7600–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060712190–6190–01; I.D. 070606B]

RIN 0648–AU55

Fisheries of the Northeastern United States; Atlantic Hagfish Fishery; Reaffirmation of Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); reaffirmation of a control date for the Atlantic hagfish fishery; request for comments.

SUMMARY: NMFS announces consideration of proposed rulemaking to control future access to the Atlantic hagfish fishery. The New England Fishery Management Council (Council) has indicated that limiting access to the hagfish fishery may be necessary to control participation in the fishery at a level that reduces capitalization and constrains fishing to sustainable levels, while ensuring that the fishery does not become overfished, as defined by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by 5 p.m., local time, August 28, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- Mail: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, ''Comments on Reaffirmation of Atlantic Hagfish Control Date.''
- Facsimile (fax): (978) 465–3116.
- Email: HagfishControlDate@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: ''Comments-Hagfish Control Date.''
- Federal e-Rulemaking portal *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The Atlantic hagfish (*Myxine glutinosa*) fishery in New England was developed in the early 1990s, with the first reported landings of around 1 million lb (454 mt) in 1993. Korean buyers quickly recognized that a fishery in the New England area could provide the high-quality hagfish skins used in making leather, as well as hagfish meat for human consumption. Reported hagfish landings in New England quadrupled during the first 4 years of the fishery (1993–1996), exceeding the highest reported landings in other North American hagfish fisheries (including British Columbia, Oregon, Washington, California, and Nova Scotia) by 1994.

Since there is currently no management program for this fishery, and consequently no permitting or reporting requirements, there is considerable uncertainty regarding the actual level of hagfish landings. Moreover, the level of discards and discard mortality of hagfish culled at sea or rejected by the dealer or processor in port is unknown. In 2003, a working group comprised of scientists, fishery analysts, fishermen, and administrators met to review biological and fishery information for hagfish. The group identified important information gaps, as well as a number of potential approaches to acquiring the data needed to fill them. Hagfish have been collected in limited numbers throughout the 40 years of the Northeast Fisheries Science Center (NEFSC) groundfish trawl survey. These NEFSC surveys provide the best available stock abundance information, but none of the surveys cover the entire range of hagfish habitat, which extends from depths of 25 m to greater than 1,000 m. The results of this working group effort were reviewed by the 37th Northeast Regional Stock Assessment Workshop (37th SAW), and the Stock Assessment Review Committee's Consensus Summary can be found at: *http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0316/index.htm*.

The Council initially considered limiting entry into the hagfish fishery by establishing August 28, 2002 (67 FR 55191), as the date for determining eligibility criteria (i.e., a control date). In a letter dated June 21, 2006, the Council requested that NMFS publish an ANPR to reaffirm the August 28, 2002, hagfish control date and to notify the public of the potential development of a limited access program for hagfish. This reaffirmation of the control date is to inform interested parties of potential limitations on future access, commonly referred to as limited access, and to discourage speculative entry into the hagfish fishery while the Council considers how access to the fishery can and should be controlled during the proposed development of the Atlantic Hagfish Fishery Management Plan (FMP). By this notification, NMFS reaffirms, on behalf of the Council, that August 28, 2002, may be used as the ''control date'' to establish eligibility criteria for determining future levels of access to the hagfish fishery. Fishermen who have not participated in the hagfish fishery or who change their level of participation in this fishery are notified that entering this fishery or changing their level of participation after August 28, 2002, may not qualify them as previous participants, should such a criterion be the basis for future access to the hagfish resource. This notification also gives the public notice that interested participants should locate and save records that substantiate their participation in the hagfish fishery in Federal waters. Fishermen are not guaranteed future participation in the fishery, regardless of their entry dates or intensity of participation in this fishery before or after the control date. In addition, the Council and NMFS may choose to give variably weighted consideration to participants active in the fishery before and after the control date. In order to be approved and implemented, any measures proposed by the Council to limit entry into the hagfish fishery must be found consistent with the requirements of the Magnuson-Stevens Act and other applicable law. The public will have the opportunity to comment on the measures and alternatives being considered for inclusion to the FMP by the Council. Various forums exist to allow opportunities for input, including public meetings and public comment periods as required by the National Environmental Policy Act and the Magnuson-Stevens Act, and as provided for by the Administrative Procedure Act.

Classification

This ANPR has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2006.

John Oliver,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6–12128 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 145
Friday, July 28, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, Office of the Under Secretary, Research, Education, and Economics.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: August 29–30, 2006, 8 a.m. to 5 p.m. on August 29 and 8 a.m. to 4 p.m. on August 30. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Room 107A, USDA Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250. Members of the public should enter the building through the Jefferson Drive entrance. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; e-mail *michael.schechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The thirteenth meeting of the AC21 has been scheduled for August 29–30, 2006. The AC21 consists of 19 members representing the biotechnology industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, the Office of the United States Trade Representative, and the National Association of State Departments of Agriculture serve as ''ex officio'' members. At this meeting, the Committee plans to: transmit its latest consensus report, entitled, ''Opportunities and Challenges for Agricultural Biotechnology: The Decade Ahead'' to the Office of the Secretary, USDA; and consider outside presentations, organize, and begin work on the effects (in terms of planting decisions, markets, and rural communities) of coexistence issues on the development and use of new crops derived through modern biotechnology.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?navid=BIOTECH&parentnav=AGRICULTURE&navtype=RT.*

On August 29, 2006, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Debra Lindsay at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at *debra.lindsay@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Michael Schechtman,

Acting Special Assistant for Biotechnology, Office of the Secretary, Biotechnology Coordinator, Agricultural Research Service.

[FR Doc. E6–12071 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0030]

National Animal Identification System (NAIS); Availability of a Revised Cooperative Agreement for Private Animal Tracking Databases

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a revised cooperative agreement that organizations may enter into with the Animal and Plant Health Inspection Service in order to participate in the animal tracking database component of the National Animal Identification System (NAIS). This revised cooperative agreement is intended to facilitate the integration of private and State animal tracking databases into the NAIS, which remains a voluntary program.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, National Coordinator, National Animal Identification System, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION:

Background

As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of the National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The main objective of the NAIS is to develop and implement a comprehensive information system which will support ongoing animal disease programs and enable State and Federal animal health officials to respond rapidly and effectively to animal health emergencies such as foreign animal disease outbreaks or emerging domestic diseases.

NAIS is a voluntary program and is being established through a phased-in approach by implementing three key components: Premises registration, animal identification, and animal tracking. The USDA has already developed information systems to

support the first two components. The third component will be developed through a government/industry partnership, in which animal movement information will be maintained in private and/or State databases. USDA will operate a portal system that will enable animal health officials to submit requests for information to the animal tracking databases (ATDs) when investigating an animal disease event. The USDA's objective is to support the privatization of the animal tracking information component of the NAIS in the most practical, timely, and least burdensome manner possible.

On April 7, 2006, we published in the **Federal Register** (71 FR 17805–17806, Docket No. APHIS–2006–0030) a notice announcing the availability of three documents related to the NAIS: A document providing an update on the implementation plans, including operational milestones and participation goals; a document describing how private and State animal tracking databases (ATDs) may be integrated into the NAIS to provide animal health officials with animal movement information when conducting a disease investigation; and a template for a cooperative agreement (CA) that organizations that wish to participate in the ATD component of the NAIS may enter into with APHIS for that purpose.

The second of the three documents referred to above, entitled ''Integration of Private and State Animal Tracking Databases with the NAIS; Interim Development Phase,'' presented our initial plans for moving forward with the implementation of the Animal Trace Processing System (ATPS), a system for processing animal movement data. The document described a two-phase implementation plan, consisting of an interim/development phase, which began in 2006, and an implementation phase, which is targeted for early 2007. The document also provided data standards and basic technical requirements that databases must meet to be eligible for participation in the interim/development phase.

In order to participate in this interim/development phase, an organization with an ATD must complete a ''Request for Evaluation of Interim Private/State Animal Tracking Database'' to initiate an APHIS review of its system. If its system meets the interim requirements, the organization may then enter into a CA with APHIS. The CA provides for a government and industry collaborative process for the development of the technical details for the integration of private and State ATDs to ensure that animal health officials have the information when necessary to perform their duties. Entering into a CA does not imply that an organization's ATD will be eligible to participate in the NAIS as a fully compliant system after ATPS implementation is completed and final eligibility requirements are established.

Since the April 2006 notice, we have revised the CA. This notice announces the availability of the revised CA.

The revised CA may be viewed on the Internet at *http://www.usda.gov/nais* or on the Regulations.gov Web site.[1] You may request paper copies of the document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document (''Cooperative Agreement Between APHIS and Organizations with Qualifying Systems for Interim/Development Phase'') when requesting copies.

Done in Washington, DC, this 20th day of July 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–12069 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of a Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Department's intention to request an extension for a currently approved information collection in support of the Dairy Tariff-Rate Import Quota Licensing program.

DATES: Comments should be submitted no later than September 26, 2006 to be assured of consideration.

Additional Information and Comments: Contact Bettyann Gonzales, Dairy Import Specialist, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021, telephone (202) 720–1344.

SUPPLEMENTARY INFORMATION:

Title: Dairy Tariff-Rate Import Quota Licensing Program.

OMB Number: 0551–0001.

Expiration Date of Approval: December 31, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The currently approved information collection supports the Dairy Tariff-Rate Import Quota Regulation (the Regulation) (7 CFR 6.20–6.37) which governs the administration of the import licensing system applicable to most dairy products subject to tariff-rate quotas (TRQs). The TRQs were established in the Harmonized Tariff Schedule of the United States (HTS) as a result of entry of certain provisions in the Uruguay Round Agreements Act (Pub. L. 103–465) that converted existing absolute quotas to TRQs. Imports of nearly all cheese made from cow's milk (except soft-ripened cheese such as Brie) and certain non-cheese dairy products (including butter and dried milk) are subject to TRQs and the Regulation. Licenses are issued each quota year to eligible applicants and are valid for twelve months (January 1 through December 31). Only licensees may enter specified quantities of the subject dairy articles at the applicable in-quota tariff-rates. Importers who do not hold licenses may enter dairy articles only at the over-quota tariff-rates.

Each quota year, all applicants must submit form FAS 923 (rev. 7–96). This form, available online, requires applicants to: (1) Certify they are either an importer, manufacturer or exporter of certain dairy products; (2) certify they meet the eligibility requirements of § 6.23 of the Regulation; and (3) submit documentation required by § 6.23 and § 6.24 as proof of eligibility for import licenses. Applicants for non-historical licenses must also submit form FAS 923–A (rev. 7–96) (cheese) and/or FAS 923–B (rev. 7–96) (non-cheese dairy products). This form requires applicants to request licenses in descending order of preference for specific products and countries listed on the form.

After licenses are issued, § 6.26 requires licensees to surrender by October 1 on form FAS 924–A, License Surrender Form, any license amount that a licensee does not intend to enter that year. These amounts are reallocated, to the extent practicable, to existing licensees for the remainder of that year based on requests submitted on form FAS 924–B, Application for Additional License Amounts. Form 924A and 924B requires the licensee to complete a scannable table listing the surrendered amount by license number,

[1] To view the revised CA and the other documents referenced in this notice, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0030, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

or listing the additional amounts requested by dairy article, supplying country and amount requested, in descending order of preference.

The estimated total annual burden of 426 hours in the OMB inventory for the currently approved information collection will be decreased by 135 hours to 291 hours. The estimated public reporting burden for this collection of currently approved FAS 923, FAS 923–A and 923–B (one form) (rev. 7–96) is estimated to average 270 hours; and FAS 924–A and FAS 924–B (one form) is 21 hours. The estimated decrease in burden hours is based on the agency's new online program, the Dairy Accelerated Importer Retrieval and Information Exchange System (DAIRIES).

Estimate of burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated at .50 hour for form FAS 923, 923–A, 923–B (rev. 7–96) and .15 hour for form 924–A, 924–B.

Respondents: Importers and manufacturers of cheese and non-cheese dairy products, and exporters of non-cheese dairy products.

Estimated number of respondents: 540 for form FAS 923, 923–A, 923–B (rev. 7–96) and 140 for form 924–A, 924–B (rev. 7–96).

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden: 291 hours.

Requests for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may b sent to Bettyann Gonzales, Dairy Import Specialist, Stop 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021, or telephone (202) 720–1344 or e-mail *gonzalesb@fas.usda.gov.*

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record. FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Electronic submission of the information collection was implemented September 2005 in compliance with the GPEA.

Signed at Washington, DC on July 20, 2006.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. 06–6526 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Aerial Application of Fire Retardant Environmental Assessment, in Accordance With the National Environmental Policy Act of 1969 (47 U.S.C. 4321 et seq.)

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed action to conduct an environmental analysis and prepare an environmental assessment; request for comment.

SUMMARY: The Forest Service proposes to conduct an environmental analysis and prepare an environmental assessment on the continued nationwide aerial application of fire retardant for fire suppression. The responsible official for this action is Dale Bosworth, Chief of the Forest Service. The Forest Service invites comments at this time on the proposed action.

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

ADDRESSES: The scoping letter and other information related to the proposed action are available at *http://www.fs.fed.us/fire/retardant/index.html.* Written comments concerning this notice should be addressed to USFS Fire Retardant EA, c/o The Content Analysis Group, P.O. Box 2000, Bountiful, UT 84001–2000. Comments may also be sent electronically to *fireas@contentanalysisgroup.com,* or via facsimile to 801–397–2601. Please prepare electronic files in either rich text format (.rft) or as a Microsoft Word document (.doc).

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may electronically inspect comments received and should call 801–517–1037 to obtain Web site address and a password. The public may also inspect comments hardcopy at the USDA Forest Service in Salt Lake City, Utah. Visitors are encouraged to call ahead to 801–517–1037 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Please contact Chris Wehrli, interdisciplinary team leader, at 202–205–1332.

Individuals who use telecommunication devices 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 Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act of 1969, the Forest Service will conduct an environmental analysis and prepare an environmental assessment to determine whether the continued nationwide aerial application of fire retardant to fight fires would result in any significant environmental impacts.

It is important that those interested in this proposed action participate at this time. To be most helpful, comments should be as specific as possible. Written comments provide a record of concerns and will be considered to conduct an environmental analysis and prepare an environmental assessment. The Forest Service is seeking information, comments, and assistance from federal, state, and local agencies, tribes, and other individuals or organizations that might be interested in or affected by the proposal.

After completing a detailed environmental analysis and a review and response to the public comments received on the proposed action, the Forest Service will prepare an environmental assessment and a Decision Notice that will be signed by the Chief of the Forest Service.

The Forest Service is working to restore fire-adapted ecosystems through prescribed fire, other fuel treatments and wildland-fire use. However, in some circumstances, fire must be suppressed. For example, fires might need to be suppressed to protect and preserve natural resources, critical habitat for threatened and endangered species, and protect life and property. Fire retardant is one of the tools used to suppress fires.

The Forest Service is taking two mitigation measures to lessen the impact of fire retardant on the environment. First, after the 2006 fire

season, the Forest Service will no longer purchase or use fire retardants that contain sodium ferrocyanide because, under certain conditions, it poses greater toxicity to aquatic species and aquatic environments than retardant solutions that do not contain this ingredient. Second, the Forest Service prohibits the aerial application of fire retardant within 300 feet of waterways visible to pilots, with certain limited exceptions. See the *Guidelines for Aerial Application of Retardants and Foams in Aquatic Environments* (April 20, 2000) at *http://www.fs.fed.us/rm/fire/retardants/current/gen/appguide.htm* for more details.

The Forest Service proposes to analyze at a nationwide scale the environmental effects of the continued aerial application of fire retardants. In preparing an environmental assessment, the Forest Service will determine whether there are significant effects on the human environment. If there are significant effects, the Forest Service will prepare an environmental impact statement. If the Forest Service determines that there are no significant effects, the Forest Service will issue a finding of no significant impact. The Forest Service seeks comments at this time on this proposal.

The Forest Service has previously consulted with the Fish and Wildlife Service and with the National Marine Fisheries Service in developing the *Guidelines for Aerial Application of Retardants and Foams* referenced above. The Forest Service will consult with the above agencies when conducting the environmental analysis and preparing an environmental assessment on the proposed action.

Dated: July 21, 2006,

Dale N. Bosworth,

Chief, Forest Service.

[FR Doc. E6–12115 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hoosier National Forest, IN; German Ridge Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The USDA Forest Service, Hoosier National Forest intends to prepare a supplement to an environmental impact statement (EIS) that discloses the environmental consequences of a vegetation restoration project. In the supplement to the EIS, the USDA Forest Service will bring the document and the project into compliance with the Forest Plan that has come into effect since the previous documents were prepared and will make improvements to the cumulative effects sections. The EIS addresses potential environmental impacts of replacing pine plantations in the German Ridge area of Perry County, Indiana with native hardwood communities.

DATES: The Draft supplement to the environmental impact statement is expected in September 2006, and the final supplement to the environmental impact statement is expected in December 2006.

ADDRESSES: Send written comments to Kenneth Day, Forest Supervisor; Hoosier National Forest; 811 Constitution Avenue; Bedford, IN 47421. Send electronic comments to *r9_hoosier_website@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Ron Ellis, NEPA Coordinator, Hoosier National Forest, USDA Forest Service; telephone: 812–275–5987. See address above. Copies of documents may be requested at the same address. Information concerning the project can also be obtained on the Forest Web page at *http:/www.fs.fed.us/r9/hoosier/projects.htm.*

SUPPLEMENTARY INFORMATION: On January 24,m 2oo6, Acting Forest Supervisor James L. Lowe singed a record of decision (ROD) and released the final EIS for the German Ridge Restoration Project. This EIS and ROD were appealed to the Regional. Forester for the Eastern Region of the Forest Service. The appellants raised numerous issues, including the adequacy of the cumulative effects analysis in the final EIS. The Regional Forester upheld the decision on most points but reversed the decision because of an incomplete analysis of cumulative effects for some resources. I have decided the public can be best served by preparing a Supplement to the EIS.

This notice begins the public involvement processed for the Supplement. The proposed action, the purpose and need, the issues, and the alternatives remain unchanged from the January 2006 final, EIS.

Responsible Official

Kenneth G. Day, Forest Supervisor; Hoosier National Forest; 811 Constitution Avenue; Bedford, Indiana 47421.

Nature of Decision To Be Made

The decision to be made is whether or not to actively convert any or all of the 2,180 acres of pine plantations to native hardwood communities by harvesting and prescribed burning.

Early Notice of Public Participation in Subsequent Environmental Review: A draft supplemental to the environmental impact statement will be prepared for comment. The comment period on the draft statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978).

Also, environmental objections that could be raised at the draft supplemental environmental impact statement stage but that are not raised until after completion of the final supplement to the environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so that comments are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the proposed draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement (Authority 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 20).

Dated July 18, 2006.

Kenneth G. Day,

Forest Supervisor, Hoosier National Forest.

[FR Doc. 06–6561 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product previously furnished by such agencies.

DATES: *Effective Date:* August 27, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On May 26, 2006 and June 2, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (71 FR 30377 and 32030) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Fluorescent Highlighter.
7520–01–238–0978—Blue.
7520–01–238–0979—Green.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Services

Service Type/Location: Custodial Services, GSA, PBS, Region 6, 1114 Market Street, St. Louis, Missouri.
NPA: MGI Services Corporation, St. Louis, Missouri.
Contracting Activity: GSA, PBS—Region 6, Kansas City, Missouri.

Service Type/Location: Laundry Service, 21st Medical Group (Medical Clinic), Peterson AFB, Colorado, Area Dental Laboratory (ADL), Peterson Air Force Base, Colorado, Schriever Troop Clinic, Schriever Air Force Base, Colorado.
NPA: Goodwill Industrial Services Corporation, Colorado Springs, Colorado.
Contracting Activity: Headquarters, Air Force Space Command, Peterson AFB, Colorado.

Service Type/Location: Pest Control, Healthy Beginnings Child Development Center, 5610 Fishers Lane, Rockville, Maryland. Parklawn Building, 5600 Fishers Lane, Rockville, Maryland.
NPA: Davis Memorial Goodwill Industries, Washington, DC.
Contracting Activity: Department of Health and Human Services, Rockville, Maryland.

Deletion

On May 26, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 30377) of proposed deletion to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSN: Accustamp.
7520–01–207–4213—OFFICIAL—Red.
NPA: The Arbor School, Houston, Texas.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–12103 Filed 7–27–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: August 27, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the

notice for each product or service will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Tool Kit, Highway Safety. 5180–01–434–5068.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: General Services Administration, Federal Supply Service—Region 6, Kansas City, Missouri.
Product/NSN: Stainless Steel Scrubber. 7920–00–926–5176.
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Service

Service Type/Location: Document Destruction, DOI Acquisition & Property Management Division, Building 22208, Auger Street, 2nd Floor, Fort Huachuca, Arizona.
NPA: Beacon Group SW, Inc., Tucson, Arizona.
Contracting Activity: DOI/NBC—Acquisition & Property Management Division, Fort Huachuca, Arizona.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. E6–12104 Filed 7–27–06; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 30–2006)

Proposed Foreign–Trade Zone, Lehigh Valley, Pennsylvania, Application and Public Hearing

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Lehigh Valley Economic Development Corporation, a Pennsylvania non–profit agency, to establish a general–purpose foreign–trade zone at sites in Lehigh and Northampton Counties, Pennsylvania, adjacent to the Philadelphia Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 18, 2006. The applicant is authorized to make the proposal under Pennsylvania Statute 66 Pa.C.S.§ 3102.

The proposed zone would consist of 7 sites covering 1,927 acres in Lehigh and Northampton Counties, Pennsylvania: **Site 1** (727 acres) - Lehigh Valley Industrial Park VII, 1805 East 4th Street, Bethlehem; **Site 2** (96 acres) - Arcadia East Industrial Park, intersection of Route 512 and Silver Crest Road, East Allen Township; **Site 3** (83 acres) - Arcadia West Industrial Park, intersection of I–78 and Route 863, Weisenberg Township; **Site 4** (226 acres) - West Hills Business Center, intersection of I–78 and Route 863, Weisenberg Township; **Site 5** (399 acres) - Boulder Business Center, intersection of Boulder Drive and Industrial Blvd., Breinigsville; **Site 6** (183 acres) - Lehigh Valley West Corporate Center, intersection of Nestle Way and Schantz Road, Breinigsville; and, **Site 7** (213 acres) within the LogistiCenter, 4950 Hanoverville Road, Bethlehem. The sites are owned by a number of private corporations. A portion (70 acres) of proposed Site 7 is currently designated as Site 15 of FTZ 147. Approval of this request would transfer the site from FTZ 147 to the Lehigh Valley Economic Development Corporation. The Foreign–Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, has concurred with the request.

The application indicates a need for zone services in Lehigh and Northampton Counties, Pennsylvania. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on September 7, 2006 at 1:00 pm, in the Lincoln Room of the Best Western Lehigh Valley, 300 Gateway Drive, Bethlehem, PA 18107.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following location: Foreign–Trade Zones Board, U.S. Department of Commerce, 1401 Constitution Ave., NW, Room 1115, Washington, DC 20230.

The closing period for their receipt is September 26, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [October 11, 2006]).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of Foreign–Trade Zones Board's Executive Secretary at the first address listed above, and at the office of the Lehigh Valley Economic Development Corporation, 2158 Avenue C, Suite 200, Bethlehem, Pennsylvania 18017.

Dated: July 18, 2006.

Andrew McGilvray,
Acting Executive Secretary.
[FR Doc. E6–12059 Filed 7–27–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

T–1–2006

Foreign–Trade Subzone 84C – La Porte, Texas, Temporary/Interim Manufacturing Authority, E.I. du Pont de Nemours and Company, Inc., (Crop Protection Products), Notice of Approval

On March 24, 2006, the Executive Secretary of the Foreign–Trade Zones (FTZ) Board filed an application submitted by E.I. du Pont de Nemours and Company, Inc. (Du Pont), operator

of FTZ Subzone 84C, on behalf of the Port of Houston Authority, grantee of FTZ 84, requesting export–only temporary/interim manufacturing (T/IM) authority within Subzone 84C, at Du Pont's facilities located in La Porte, Texas.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Order 1347, including notice in the **Federal Register** inviting public comment (71 FR 16756–16757, 4/4/06). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in Board Order 1347, the application was approved, effective June 6, 2006, until June 6, 2008, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: July 18, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–12061 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–837

Extension of Time Limits for Preliminary Results and Final Results of the Reconsideration of the Sunset Review for Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 2006.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Katherine Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136, or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2006, the Department of Commerce (the Department) initiated a reconsideration of the sunset review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Japan. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Reconsideration of Sunset Review*, 71 FR 19164 (April 13, 2006). On May 15, 2006, the Department received substantive responses from Goss International Corp., a domestic interested party, and from Mitsubishi Heavy Industries, Ltd. and Tokyo Kikai Seisakusho, Ltd., foreign producers and exporters of the subject merchandise, during the review period of September 4, 1996, through September 3, 2001. In the adequacy determination memorandum dated June 8, 2006, the Department stated that it would conduct a full review for this reconsideration of the sunset review, as provided for in section 751(c)(5)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218 (e)(2)(i).

Extension of Time Limits

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated. The Department has determined, pursuant to section 751(c)(5)(C)(ii) of the Act, that the reconsideration of the sunset review of the antidumping duty order on LNPP from Japan is extraordinarily complicated due to the complex issues raised by parties to this proceeding. Therefore, the Department requires additional time to complete its analysis. The Department's preliminary results of the sunset review reconsideration of the antidumping duty order on LNPP are scheduled for August 1, 2006. However, the Department will extend the deadline in this proceeding for the above–stated reason. As a result, the Department intends to issue the preliminary results of the full sunset review reconsideration by October 30, 2006, and the final results of that review by March 9, 2007. These dates are 90 days from the original scheduled dates of the preliminary and final results of the sunset review reconsideration. This notice is issued in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: July 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. E6–12119 Filed 7–27–06; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–813)

Certain Preserved Mushrooms from India: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2006, the Department published in the **Federal Register** (70 FR 5239) a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from India for the period February 1, 2005, through January 31, 2006. On February 28, 2006, Agro Dutch Industries, Ltd. (Agro Dutch) requested an administrative review of its sales. On February 28, 2006, the petitioner[1] requested an administrative review of the antidumping duty order for the following companies: Agro Dutch and Himalya International, Ltd. (Himalya). On April 5, 2006, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006).

On July 10, 2006, the petitioner withdrew its request for review of Himalya and requested that the Department under 19 CFR 351.213(d)(1) retroactively extend the July 5, 2006, deadline to July 19, 2006, in order to consider its withdrawal request.

Partial Rescission of Review

Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will rescind an administrative review, in whole or in

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, unless the Secretary decides that it is reasonable to extend this time limit. In this case, the petitioner withdrew its request for review of Himalya past the 90–day deadline. However, for the reasons stated in the petitioner's July 10, 2006, letter, we have retroactively extended the deadline to withdraw the review request, and accepted the petitioner's withdrawal request. Because the petitioner was the only party to request the administrative review of Himalya, we are rescinding, in part, this review of the antidumping duty order on certain preserved mushrooms from India with respect to Himalya. This review will continue with respect to Agro Dutch.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties for the rescinded company shall be assessed at a rate 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.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–12123 Filed 7–27–06; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–428–830

Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 3, 2006, the Department of Commerce (''the Department'') published its preliminary results of the administrative review of the antidumping duty order on stainless steel bar from Germany. The period of review is March 1, 2004, through February 28, 2005. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. Consequently, the final results differ from the preliminary results. The final weighted–average dumping margin is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Natalie Kempkey, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–1698, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the February 3, 2006, publication of the preliminary results in this review (*see Stainless Steel Bar from Germany: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 5811 (February 3, 2006) (''*Preliminary Results*'')), the following events have occurred:

We invited parties to comment on the *Preliminary Results* of the review. On March 6, 2006, the respondent BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, ''BGH'') filed a case brief and requested a hearing. On March 7, 2006, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., and Electralloy Corp. (collectively, ''Petitioners'') filed a case brief. At the Department's request, BGH removed certain information from its case brief and submitted a redacted case brief on April 6, 2006. BGH also filed its rebuttal brief on April 6, 2006. Petitioners filed their rebuttal brief on April 7, 2006. The Department met with BGH in lieu of a hearing to discuss BGH's concerns regarding this final determination. *See* ''March 8, 2006 - Ex Parte Meeting with Counsel and Advisors for BGH Group, Inc.'' from Natalie Kempkey, Analyst, dated May 8, 2005.

Scope of the Order

For the purposes of the order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the Harmonized Tariff Schedule of the United States (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Period of Review

The period of review is March 1, 2004, through February 28, 2005.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs filed by parties to this review are addressed in the ''Issues and Decision Memorandum for 2004–2005 Administrative Review of Stainless Steel Bar from Germany'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated July 17, 2006, (''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit (''CRU''), located in Room B–099 of the main Department building. In addition,

a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

To determine whether sales of stainless steel bar by BGH to the United States were made at less than normal value, we compared export price to normal value. Our calculations followed the methodologies described in the *Preliminary Results*, except as noted below and in the final results calculation memorandum cited below, which is on file in the CRU.

Export Price

- We have recalculated BGH's imputed U.S. credit expenses using a more appropriate U.S. dollar short–term interest rate.
- We have included in our analysis transactions that entered the United States during the period of review, but were sold prior to the period of review.

Normal Value

- We have reclassified home market commissions reported by BGH to a certain commission agent as indirect selling expenses, and, consequently have recalculated BGH's indirect selling expense ratio.
- We have included in our analysis additional home market sales to ensure an appropriate window period for the added U.S. sales.
- We have discontinued the preliminary adjustment to BGH's cost of manufacturing under the Transactions Disregarded Rule (19 U.S.C. 1677b(f)(2)) with respect to affiliated scrap and alloy purchases
- We recalculated certain allocable common G&A expenses by removing both the lease G&A expenses and the lease depreciation expenses from the company's total expenses.

These changes are discussed in the Decision Memorandum and in the Final Results calculation memoranda. *See* ''Final Results Calculation Memorandum for the BGH Group of Companies,'' dated July 17, 2006; *see also* Memorandum from Joseph Welton, Accountant, to Neal Halper, Director, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results- BGH Group,'' dated July 17, 2006, which are on file in the CRU.

Final Results of the Review

We determine that the following percentage margin exists for the period March 1, 2004, through February 28, 2005:

Exporter/manufacturer	Weighted–average margin percentage
BGH	0.62

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003, (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from Germany entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted–average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 16.96 percent, the ''all others'' rate established in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany*, 67 FR 3159 (January 23, 2002) and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany*, 67 FR 10382 (March 7, 2002).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers 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 antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to Administrative Protective Order (''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.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 17, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Issues and Decision Memorandum

Comment 1: The Department Should Assign Total Adverse Facts Available to BGH's Sales Information
Comment 2: The Department Should Assign Total Adverse Facts Available to BGH's Cost Information
Comment 3: BGH Mislead the Department Regarding Its Home Market Sales to BGH SL–Stahl GmbH
Comment 4: BGH Withheld Information Regarding Its Claimed Levels of Trade
Comment 5: BGH Incorrectly Claimed Home Market Commissions for Certain Sales
Comment 6: BGH Incorrectly Claimed Home Market Rebates on Certain Sales
Comment 7: The Department Should Reject BGH's Claim for Home Market Inland Freight Because BGH's Claim is for Non–Qualifying Expenses
Comment 8: BGH has Improperly Reported Its Home Market Warranty Expenses
Comment 9: BGH Improperly Classified Certain U.S. Sales as Export Price Sales, when Those Sales are Constructed Export Price Sales
Comment 10: BGH Has Understated its U.S. Credit Expenses
Comment 11: Affiliated Purchases of Scrap and Alloy Inputs
Comment 12: BOB's Common G&A Expenses
Comment 13: Company–Specific G&A Expense Ratios
Comment 14: The Department Erred in Rejecting Certain Portions of BGH's Case Brief

[FR Doc. E6–12057 Filed 7–27–06; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–428–830

Stainless Steel Bar from Germany: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Damian Felton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–0133, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department of Commerce (''the Department'') published an antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany*, 67 FR 10382 (March 7, 2002). On October 10, 2003, the Department published an amended antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Antidumping Duty Orders: Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom*, 68 FR 58660 (October 10, 2003).

On March 2, 2006, the Department published its *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 71 FR 10642 (March 2, 2006). In response to a request made on March 29, 2006, by BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, ''BGH''), the Department initiated an administrative review of the antidumping duty order on stainless steel bar from Germany, covering the period March 1, 2005, through February 28, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006). On May 23, 2006, BGH withdrew its request for review. As a result of a timely withdrawal of the request for review by BGH, and because no other parties requested a review, we are rescinding this administrative review.

Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Review

The Department's regulations at 351.213(d)(1) provide that the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. BGH withdrew its request for an administrative review on May 23, 2006, which is within the 90-day deadline, and no other party requested a review with respect to this company, or any other company. Therefore, the Department is rescinding this administrative review.

This notice is issued and published in accordance with sections 771(i) and 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 21, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–12062 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–807)

Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656 and (202) 482–0498, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey on April 17, 1997. (*See Antidumpting Duty Order: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 18748). On May 27, 2005, the Department published a notice of initiation of an administrative review of the order on rebar from Turkey for the period April 1, 2004, through March 31, 2005. *See* 70 FR 30694. This review covers the following 15 producers/exporters: Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret; Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Turizm Ticaret A.S., and Diler Dis Ticaret A.S.; Ege Metal Demir Celik Sanayi ve Ticaret A.S.; Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S.; Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.; Ilhanlar Rolling and Textile Industries, Ltd., Sti. and Ilhanlar Group; Intermet A.S.; Iskenderun Iron & Steel Works Co.; Koc Dis Ticaret A.S.; Kroman Celik Sanayi A.S.; Nurmet Celik Sanayi ve Ticaret A.S.; Nursan Celik Sanayi ve Haddecilik A.S.; Sozer Steel Works; Ucel Haddecilik Sanayi ve Ticaret A.S.; and the Yolbulan Group (Yolbulanlar Nak. ve Ticaret A.S., Yolbulan Metal Sanayi ve Ticaret A.S. and Yolbulan Dis Ticaret Ltd. Sti.). On May 5, 2006, the Department published the preliminary results of the administrative review of the antidumping duty order on rebar from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455 (May 5, 2006). The final results are currently due no later than September 5, 2006, the next business day after 120 days from publication of the preliminary results.

Extension of the Time Limit for Final Results of Administrative Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to make a final determination in an administrative review within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

In accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame because analysis of the issues presented in the case briefs, including issues related to the treatment of one company which did not respond to the Department's questionnaire, requires additional time. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is fully extending the time limit for completion of the final results of this administrative review to 180 days, until November 1, 2006.

This notice is issued and published 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. E6–12063 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–428–829); (C–421–809); (C–412–821)

Rescission of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 5, 2006, the Department of Commerce (the Department) initiated administrative reviews of the countervailing duty (CVD) orders on low enriched uranium (LEU) from Germany, the Netherlands, and the United Kingdom (UK) for the period January 1, 2005, through December 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006) (*Initiation Notice*). The Department is now rescinding the administrative reviews for the 2005 period of review (POR) because these CVD orders have been revoked subsequent to the initiation of these reviews. *See Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom: Final Results of Countervailing Duty Administrative Reviews and Revocation of Countervailing Duty Orders*, 71 FR 38626 (July 7, 2006) (*Revocation Notice*).

EFFECTIVE DATE: July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2849.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2006, the Department published a notice of opportunity to request an administrative review of these CVD orders. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 27, 2006, we received a timely request for review of Urenco Deutschland GmbH of Germany, Urenco Nederland B.V. of the Netherlands, Urenco (Capenhurst) Limited of the UK, Urenco Ltd., Urenco Inc., and Urenco Enrichment Company Ltd. (collectively, the Urenco Group), the producers and exporters of the subject merchandise, from the United States Enrichment

Corporation (USEC) and USEC Inc. On February 28, 2006, we received timely requests for review from the Urenco Group.

On April 5, 2006, the Department initiated administrative reviews of the CVD orders on LEU from Germany, the Netherlands, and the UK for the POR January 1, 2005, through December 31, 2005 with respect to Urenco. *See Initiation Notice*.

Scope of the Orders

The product covered by these orders is LEU. LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down–blending of highly enriched uranium).

Certain merchandise is outside the scope of these orders. Specifically, these orders do not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders is LEU owned by a foreign utility end–user and imported into the United States by or for such end–user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end–user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re–exported within eighteen (18) months of entry of the LEU for consumption by the end–user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end–user.

The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Rescission of Countervailing Duty Administrative Reviews

On July 7, 2006, the Department revoked the CVD orders on LEU from Germany, the Netherlands, and the UK. *See Revocation Notice*.

Since the Department revoked the orders effective January 1, 2005, there is no basis for continuing the administrative reviews of these orders for the 2005 POR. Therefore, the Department hereby rescinds these administrative reviews of the CVD orders on LEU from Germany, the Netherlands, and the UK for the POR January 1, 2005, through December 31, 2005.

Instructions to U.S. Customs and Border Protection

Pursuant to sections 751(d)(2) and 751(d)(3) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222, the Department has instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, all unliquidated entries of LEU from Germany, the Netherlands, and the UK, entered, or withdrawn from warehouse, for consumption on or after January 1, 2005, the effective date of the revocation of the orders. The Department has further instructed CBP to refund with interest any estimated duties collected with respect to unliquidated entries of LEU from Germany, the Netherlands, and the UK entered, or withdrawn from warehouse, for consumption on or after January 1, 2005, in accordance with section 778 of the Act.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition 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 return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 21, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–12122 Filed 7–28–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Revocation of Export Trade Certificate of Review; Application No. 92–00012.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to Balmac International Inc. on December 29, 1992. Because this Certificate Holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Balmac International Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a Toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''The Act'') (Pub. L. 97–290, 15 U.S.C. 4011–21) Authorizes the Secretary of Commerce to Issue Export Trade Certificates of Review. The Regulations Implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1999). Pursuant to this Authority, a Certificate of Review was issued on December 29, 1992 to Balmac International Inc.

A Certificate Holder is required by law to submit to the Secretary of Commerce Annual Reports that update financial and other information relating to business activities covered by its Certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The Annual Report is due within 45 days after the Anniversary Date of the Issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete Annual Report may be the Basis for Revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)). On April 8, 2004, the Secretary of Commerce sent to Balmac International Inc. a letter containing Annual Report questions stating that its annual report was due on May 31, 2004. A reminder was sent on November 8, 2005 with a due date of December 23, 2005. The Secretary has received no written response from

Balmac International Inc. to any of these letters. On March 24, 2006, and in accordance with Section 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Secretary of Commerce sent a letter by Certified Mail to notify Balmac International Inc. that the Secretary was formally initiating the process to revoke its Certificate for failure to file an annual report. The Secretary received notification that the letter was received by Balmac International Inc. on April 3, 2006. Pursuant to Section 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Secretary considers the failure of Balmac International Inc., to respond to be an admission of the statements contained in the notification letter. The Secretary has determined to revoke the Certificate issued to Balmac International Inc. for its failure to file an annual report. The Secretary has sent a letter, dated July 21, 2006, to notify the Balmac International Inc. of its final determination.

The Revocation is effective thirty (30) days from the date of publication of this notice (325.10(©))(4) of the Regulations, 15 CFR 325.10(©))). Any person aggrieved by this decision may appeal to an appropriate U.S. District Court within 30 days from the date of publication of this notice in the **Federal Register** ''(325.11 of the Regulations, 15 CFR 325.11).''

Dated: July 19, 2006.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E6–12096 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 2006.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between April 1, 2006, and June 30, 2006. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of June 30, 2006. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0498.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent ''Notice of Scope Rulings'' was published on May 3, 2006. *See* 71 FR 26050. The instant notice covers all scope rulings and anticircumvention determinations completed by Import Administration between April 1, 2006, and June 30, 2006, inclusive. It also lists any scope or anticircumvention inquiries pending as of June 30, 2006, as well as scope rulings inadvertently omitted from prior published lists. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between April 1, 2006 and June 30, 2006:

Canada

A–122–838, C–122–839: Certain Softwood Lumber Products from Canada

Requestor: Montana Reclaimed Lumber Co.; antique softwood lumber reclaimed from demolition projects is within the scope of the orders; May 2, 2006.

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Yasmina Fashion Corp.; its large and small ''Lazer Snowman'' candles are not included within the scope of the antidumping duty order; June 29, 2006.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Mac Industries (Shanghai) Co., Ltd., Jiaxing Yinmao International Treading Co., Ltd., and Fujian Zenithen Consumer Products Co., Ltd.; their ''moon chair'' is not included within the scope of the antidumping duty order; May 1, 2006.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Consolidated Packaging LLP; 35 of its 58 plastic bags are not included within the scope of the antidumping duty order; June 5, 2006.

A–570–891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Gleason Industrial Products, Inc. and Precision Products, Inc.; the ''Black and Decker Workmate 525'' and ''Black and Decker Workmate 500'' are included within the scope of the antidumping duty order; June 15, 2006.

Anticircumvention Determinations Completed Between April 1, 2006 and June 30, 2006:

Socialist Republic of Vietnam

A–552–801: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

Requestor: Catfish Farmers of America and certain individual U.S. catfish processors; imports of frozen fish fillets produced by Lian Heng Trading Co. Ltd. and Lian Heng Investment Co. Ltd. (collectively, ''Lian Heng''), are circumventing the antidumping duty order on frozen fish fillets from the Socialist Republic of Vietnam, as provided in section 781(b) of the Act, and frozen fish fillets produced by Lian Heng are within the scope of the antidumping duty order on frozen fish fillets from the Socialist Republic of Vietnam; June 30, 2006.

Scope Inquiries Terminated Between April 1, 2006 and June 30, 2006:

Socialist Republic of Vietnam

A–552–801: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

Requestor: Piazza Seafood World LLC; whether certain basa and tra fillets from Cambodia which are a product of Vietnam are included within the antidumping duty order; rescinded June 30, 2006.

Scope Inquiries Pending as of June 30, 2006:

Italy

A–475–059: Pressure Sensitive Plastic Tape from Italy

Requestor: Ritrama, Inc.; whether certain varieties of plastic tape are within the scope of the antidumping duty order; requested December 13, 2005; initiated January 30, 2006.

People's Republic of China

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: Unisource International, Inc.; whether certain frames and grates are within the scope of the antidumping duty order; requested May 11, 2006.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Atico International, Inc.; whether its ''Christmas Stocking Tealight,'' ''Halloween Witch Shoe,'' ''Halloween Novelty Ghost,'' ''Halloween Novelty Tombstone,'' ''Halloween Bloody Skull,'' ''Halloween

Novelty JOL,'' ''Halloween Novelty Pumpkin,'' ''Halloween Novelty Frankenstein,'' and ''Santas Boot'' candles are within the scope of the antidumping duty order; requested April 27, 2006.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Freight Expediters; whether its ''Small Artichoke'' and ''Large Artichoke,'' ''Small Pinecone'' and ''Large Pinecone,'' ''Cabbage'' and ''Radishes'' candles are within the scope of the antidumping duty order; requested May 17, 2006.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Kohl's Department Stores; whether its ''Santa Head'' candle, Style No. L50050, is within the scope of the order; requested June 30, 2006.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Kohl's Department Stores; whether its ''Berry Ball Candle,'' Style No. X5478, is within the scope of the order; requested June 30, 2006.

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Central Purchasing, LLC; whether its gooseneck claw wrecking bar is within the scope of the bars and wedges antidumping duty order; requested March 13, 2006.

A–570–832: Pure Magnesium from the People's Republic of China

Requestor: U.S. Magnesium LLC; whether pure and alloy magnesium processed in Canada, France, or any third country and exported to the United States using pure magnesium ingots originally produced in the PRC is within the scope of the antidumping duty order; requested July 19, 2005; initiated September 2, 2005.

A–570–864: Granular Pure Magnesium from the People's Republic of China

Requestor: ESM Group Inc.; whether atomized magnesium produced in the PRC from pure magnesium manufactured in the United States is within the scope of the antidumping duty order; requested April 11, 2006.

A–570–878: Saccharin from the People's Republic of China

Requestor: PMC Specialities Group, Inc.; whether certain saccharin products originating in the PRC and further–processed in Israel are within the scope of the antidumping duty order; requested August 12, 2005; initiated October 26, 2005.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Consolidated Packaging LLP; whether 23 of its 58 plastic bags are within the scope of the antidumping duty order; requested August 19, 2006; initiated June 5, 2006.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Dorel Asia; whether infant (baby) changing tables and toddler beds are within the scope of the antidumping duty order; requested February 15, 2005; initiated November 14, 2005.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Tuohy Furniture Corporation; whether certain storage towers, headboards, wainscoting, wood panels, a TV stand, bedside tables, and coffee tables are within the scope of the antidumping duty order; requested April 5, 2006.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Maersk Customs Services, Inc.; whether a vanity mirror and a vanity are within the scope of the antidumping duty order; requested April 19, 2006.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: American Signature Incorporated; whether its mirrored chests, leather bed, and micro–fiber bed are within the scope of the antidumping duty order; requested June 5, 2006.

A–570–896: Magnesium Metal from the People's Republic of China

Requestor: U.S. Magnesium LLC; whether pure and alloy magnesium processed in Canada, France, or any third country, and exported to the United States using pure magnesium ingots originally produced in the PRC, is within the scope of the antidumping duty order; requested July 19, 2005; initiated September 2, 2005.

Anticircumvention Inquiries Pending as of June 30, 2006:

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the PRC can be considered later–developed merchandise which is now circumventing the antidumping duty order; requested October 8, 2004; initiated February 25, 2005.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the PRC can be considered a minor alteration to the subject merchandise for purposes of circumventing the antidumping duty order; requested October 12, 2004; initiated February 25, 2005.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of candles from the PRC without wicks, into which wicks are then inserted after importation, can be considered ''merchandise completed or assembled in the United States'' and are circumventing the antidumping duty order; requested December 14, 2005; initiated May 11, 2006.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Meco Corporation; whether adding a cross–brace to folding metal tables from the PRC to join two legs into pairs can be considered minor alterations to merchandise, which is now circumventing the antidumping duty order (the scope defines the legs of folding metal tables as ''legs that mechanically fold independently of one another''); requested October 31, 2005; initiated June 1, 2006.

Scope Rulings Inadvertently Omitted from Prior Published Lists:

None.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: July 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–12120 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062006A]

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposal for issuance of permit; request for comments.

SUMMARY: NMFS proposes to issue a permit for a period of three years, to authorize the incidental, but not intentional, taking of three stocks of threatened or endangered marine mammals by the California/Oregon (CA/OR) drift gillnet large mesh (≥ 14 inch mesh) (DGN) fishery. NMFS must issue this permit provided that we can make the determinations that: the incidental take will have a negligible impact on the affected marine mammal stocks; a recovery plan for all affected stocks of threatened or endangered marine mammals has been developed or is being developed; and as required by the MMPA, a take reduction plan and monitoring program have been implemented and vessels in the CA/OR DGN fishery are registered. NMFS solicits public comments on the negligible impact determination and on the proposal to issue a permit to this fishery for the taking of affected threatened or endangered stocks of marine mammals.

DATES: Comments must be received by August 28, 2006.

ADDRESSES: A draft of the negligible impact determination is available on the Internet at the following addresses: *http://swr.nmfs.noaa.gov/*. Written copies of the determination may be requested from, and comments on the determination and proposed permit should be sent to: Monica DeAngelis, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments may also be sent by e-mail to: *MMPA.permit-SWR@noaa.gov* or by fax to (301) 427–2582.

The recovery plan for humpback whales is available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*.

The draft recovery plans for fin and sperm whales are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/*. (See ''Recent News and Hot Topics''.)

Regulations implementing the Pacific Offshore Cetacean Take Reduction Plan (POCTRP) are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/interactions/trt/teams.htm*.

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis, NMFS, Southwest Region Protected Resources Division (SWR PRD), (562) 980–3232 or Christina Fahy, NMFS, SWR PRD, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)) requires NMFS to authorize the incidental taking of individuals from marine mammal stocks listed as threatened or endangered under the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 *et seq*.) in the course of commercial fishing operations if NMFS determines that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On August 31, 1995 (60 FR 45399), NMFS issued permits for fisheries meeting the conditions under section 101(a)(5)(E) of the MMPA. At that time, NMFS did not issue a permit to the CA/OR DGN fishery for the CA/OR/WA-Mexico humpback whale stock or the CA/OR/WA sperm whale stock because NMFS was unable to determine that the estimated mortality and serious injury incidental to commercial fishing operations was negligible. In addition, in 1995, NMFS did not consider issuing a permit for the incidental mortality and serious injury of the CA/OR/WA fin whale stock because there had been no reported incidental takes at that time, and NMFS had no reason to anticipate any such takes. However, NMFS did determine that the mortality and serious injury incidental to commercial fishing operations was negligible for the eastern Steller sea lion stock and issued a permit for that stock. On December 30, 1998 (63 FR 71894), NMFS extended the permit until June 30, 1999. At that time, NMFS announced that it was reviewing the criteria for issuance of permits and evaluating whether the criteria were adequate or if changes should be made. No comments were received. On May 27, 1999 (64 FR 28800), NMFS proposed the issuance of permits for those fisheries that have negligible impacts on marine mammal stocks listed as threatened or endangered under the ESA for a period of 3 years. In addition, that document provided further guidance about the process for determining negligible impact. A permit for the mortality and serious injury of the Steller sea lion incidental to the CA/OR DGN fishery was also proposed. NMFS did not finalize the proposed permits.

Since 1995, NMFS has gathered additional data on the status of listed marine mammals. Based on the more recent survey data and analyses, the Stock Assessment Reports (SARs) contain revised estimates of Potential Biological Removal (PBR) levels. PBR is defined in the MMPA as ''the maximum number of animals, not including natural mortalities, that may be removed from a stock while allowing that stock to reach or maintain its optimum sustainable population'' (16 U.S.C. 1362 (20)). Also, since 1995, NMFS has developed and implemented the POCTRP (62 FR 51805, October 30, 1997) for the CA/OR DGN fishery. The initial goal of a take reduction plan is to reduce marine mammal bycatch in the fishery to levels below PBR for all stocks. Since the implementation of the POCTRP, overall cetacean mortality in this fishery has been reduced considerably.

In 2000, NMFS conducted a negligible impact determination and issued an authorization under MMPA section 101(a)(5)(E) for the CA/OR DGN fishery to incidentally take from four stocks of threatened or endangered marine mammals; the humpback whale, sperm whale, fin whale, and Steller sea lion. This authorization was finalized on October 30, 2000 (65 FR 64670) and was effective for three years, expiring in October 2003.

NMFS is now considering the issuance of a permit under MMPA section 101(a)(5)(E) to vessels registered in the CA/OR DGN fishery to incidentally take from three stocks of threatened or endangered marine mammals: the CA/OR/WA stock of fin whales (*Balaenoptera physalus*), the Eastern North Pacific stock of humpback whales (*Megaptera novaeangliae*), and the CA/OR/WA stock of sperm whales (*Physeter macrocephalus*). The data for considering an authorization were reviewed coincident with and following implementation of a Fishery

Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS), publication of the 2005 List of Fisheries (LOF) (71 FR 247, January 4, 2006), and the 2005 SAR (Carretta et al. 2006). The CA/OR DGN fishery is the only fishery on the 2005 list of Category I and II fisheries that operates in the ranges of the affected stocks and has been observed to interact with endangered or threatened marine mammals other than Steller sea lions. The basis for authorizing the take of Steller sea lions incidental to commercial fishing will be considered in a future document.

Under Federal regulations, the CA/OR DGN fishery is restricted to waters outside 200 nautical miles (nm) from February 1 through April 30, outside 75 nm from May 1 through August 14, and is allowed to fish inside 75 nm from August 15 though January 31. Other closures can be found at 50 CFR 660.713. In 2001, a seasonal (15 August to 15 November) area closure was implemented in the DGN fishery north of Point Conception to protect leatherback turtles that feed in the area and have been observed entangled in previous fishing seasons. In addition, fishing effort east of the 120° W. longitude off the coast of southern CA would be prohibited during a forecasted, or occurring, El Nino event from June 1 through August 31, in order to reduce the likelihood of an interaction with loggerhead turtles (68 FR 69962, December 16, 2003).

Basis for Determining Negligible Impact

Section 101(a)(5)(E) of the MMPA requires the authorization of the incidental taking of individuals from marine mammal stocks listed as threatened or endangered under the ESA in the course of commercial fishing operations if NMFS determines, among other things, that incidental mortality and serious injury will have a negligible impact on the affected species or stock. ''Negligible impact,'' as defined in 50 CFR 216.103 and as it applies here is, ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

In 1990 as required by the MMPA, the Marine Mammal Commission (MMC) submitted guidelines to NMFS to govern the incidental taking of marine mammals during the course of commercial fishing operations. In those guidelines, the MMC recommended NMFS determine negligible impact if the mortality and serious injury incidental to commercial fishing operations would cause no more than a 10 percent increase in the time to recovery. The MMC's recommendation was a quantified approach to assessing negligible impact; however, it did not identify what limit on mortality and serious injury would delay a stock's recovery by not more than 10 percent.

NMFS investigated such a limit of annual mortality and serious injury while implementing the MMPA Amendments of 1994. NMFS included the MMC's recommendation when preparing guidelines for the initial marine mammals stock assessment reports and determined that 90 percent of net annual production of endangered stocks of marine mammals should be reserved for recovery, which would increase recovery time of endangered stocks by no more than 10 percent. Accordingly, a default recovery factor of 0.1 was used in the PBR equation for endangered stocks of marine mammals (Barlow *et al.*, 1995). Thus, when human-caused mortality and serious injury of these stocks was limited to no more than the stock's PBR, such mortality and serious injury would cause no more than a 10–percent delay in the recovery of the stock.

On August 31, 1995 (60 FR 45399), NMFS issued permits for fisheries meeting the conditions under section 101(a)(5)(E) of the MMPA. As a starting point for making determinations, NMFS announced it would consider a total annual serious injury and mortality of not more than 10 percent of a threatened or endangered marine mammal's PBR level to be negligible. NMFS also announced that such a criterion would not be the only factor in evaluating whether a particular level of take would be considered negligible and that such factors as population trend and reliability of abundance and mortality estimates should also be considered. Consistent with the provisions of section 101(a)(5)(E)(ii) of the MMPA, NMFS determined that permits were not required for Category III fisheries, which are not required to register under section 118 of the MMPA. The only requirement for Category III fisheries is that any serious injury or mortality be reported, provided that mortality and serious injury incidental to commercial fisheries would have a negligible impact on the affected threatened or endangered stocks of marine mammals.

On December 30, 1998 (63 FR 71894), NMFS extended the permits until June 30, 1999. At that time, NMFS announced that it was reviewing the criteria for issuance of permits and requested public comments on whether the criteria were adequate or whether changes should be made. No comments were received.

On May 27, 1999 (64 FR 28800), NMFS proposed issuing authorization for those fisheries that had negligible impacts on marine mammal stocks listed as threatened and endangered under the ESA, for a period of 3 years. Based on new information, NMFS did not finalize the proposed permits. However, the notice included the adoption by NMFS of new criteria for making a negligible impact determination under section 101(a)(5)(E), based on internal review:

1. The threshold for initial determination will remain at 0.1 PBR. If total human-related serious injuries and mortalities are less than 0.1 PBR, all fisheries may be permitted;

2. If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 0.1 PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality is less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total;

3. If total fisheries-related serious injuries and mortalities are greater than 0.1 PBR and less than PBR and the population is stable or increasing, fisheries may be permitted subject to individual review and certainty of data. Although the PBR level has been set up as a conservative standard that will allow recovery of a stock, there are reasons for individually reviewing fisheries if serious injuries and mortalities are above the threshold level. First, increases in permitted serious injuries and mortalities should be carefully considered. Second, as serious injuries and mortalities approach the PBR level, uncertainties in elements such as population size, reproductive rates, and fisheries-related mortalities become more important;

4. If the population abundance of a stock is declining, the threshold level of 0.1 PBR will continue to be used. If a population is declining despite limitations on human-related serious injuries and mortalities below the PBR level, a more conservative criterion is warranted; or

5. If total fisheries related serious injuries and mortalities are greater than PBR, permits may not be issued.

In applying these criteria, criterion 1 is the starting point for analyses. If this criterion is satisfied, the analysis would be concluded. The remaining criteria describe alternatives under certain

conditions, such as fishery mortality below the negligible threshold but other human-caused mortality above the threshold, or fishery and other human-caused mortality between the negligible threshold and PBR for a stock that is increasing or stable. If criterion 1 is not satisfied, NMFS may use one of the other criteria, as appropriate.

On October 30, 2000 (65 FR 64670), NMFS conducted a negligible impact determination and issued an authorization under MMPA section 101(a)(5)(E) for the CA/OR DGN fishery to incidentally take four stocks of threatened or endangered marine mammals: humpback whales, sperm whales, fin whales, and Steller sea lions. To make this determination, NMFS used the criterion for stable or increasing stocks of threatened or endangered marine mammals and issued the authorization. The negligible impact determination concluded that the estimated mortality and serious injury caused by the CA/OR DGN fishery would cause no more than a 10 percent increase in the time to recovery for each of the four stocks of marine mammals; thus, takes below this level were considered negligible.

Negligible Impact Determination

NMFS evaluated the best available information for species listed as threatened or endangered under the ESA that interact with the CA/OR DGN fishery (using observer data from 1998 (post-POCTRP implementation) through 2005), other fisheries (using primarily stranding and sighting data from 1998–2005), and other sources of human-caused serious injury and mortality, and has determined, on a stock-by-stock basis, whether the incidental mortality and serious injury from all commercial fisheries is having a negligible impact on such stocks. Based on this assessment (see criteria used and assessment below), NMFS concludes that the estimated mortality and serious injury caused by the CA/OR DGN fishery would have a negligible impact on each of the three stocks of marine mammals addressed by this permit. Those stocks for which negligible impact findings were made were then reviewed to confirm that: 1) a recovery plan has been developed or is being developed for each of these species, as listed, and 2) where required under section 118, a monitoring program has been established, vessels engaged in such fisheries are registered, and a take reduction plan has been or is being developed. NMFS has confirmed that all of these requirements are currently being met.

For the following stocks with documented evidence of fishery-related interactions, NMFS has determined that the mortality and serious injury incidental to the CA/OR DGN fishery, which includes the proposed EFP, will have a negligible impact and proposes to issue a permit for incidental takes of the following stocks of endangered marine mammals:

1. Fin whale, CA/OR/WA stock;
2. Humpback whale, Eastern North Pacific stock; and
3. Sperm whale, CA/OR/WA stock.

A stock-by-stock summary of the negligible impact determination follows (see **ADDRESSES** for a draft of the determination).

Fin Whale, CA/OR/WA Stock

The PBR for this stock is 15 whales per year (Carretta *et al.*, 2006). After the implementation of the POCTRP in late 1997, overall cetacean entanglement rates in the CA/OR DGN fishery dropped considerably. Because of the changes in the CA/OR DGN fishery after the implementation of the POCTRP, mean annual mortality and serious injury for this fishery is based on 1998–2005 data. Based on an 8–year average, the annual mean mortality and serious injury rate from the CA/OR DGN fishery is estimated to be 0.63 whales per year. During the past 16 years, only one fin whale has been observed taken by this fishery (1999, which is after implementation of the Plan and prior to the 2001 closure off central CA /southern OR), indicating a remote likelihood of a fin whale take in the CA/OR DGN fishery. The known average annual human-caused mortality or serious injury, including ship strikes (0.88 animals per year) and incidental to commercial fishing (0.63 animals per year) for 1998–2005 is 1.5 fin whales , which is 10 percent of the PBR for the CA/OR/WA fin whale stock. Because total human-caused mortality and serious injury is below 10 percent of PBR, NMFS determines that mortality and serious injury incidental to commercial fishing is having a negligible impact on the CA/OR/WA stock of fin whales.

Humpback Whale, Eastern North Pacific Stock

The PBR for this stock is 2.3 whales per year (Carretta *et al.*, 2006). Because of the changes in the CA/OR DGN fishery after the implementation of the POCTRP, mean annual mortality and serious injury for this fishery is based on 1998–2005 data. Mean annual mortality and serious injury rate over this period is zero humpback whales in this fishery. Commercial fisheries known to incidentally take humpback whales include crab pot fisheries, unknown pot fisheries, and unknown net fisheries, based on entangled humpbacks reported off CA. The known average annual human-caused mortality or serious injury, including ship strikes (0.25 animals per year) and incidental to commercial fishing for 1998–2005 (1.5 animals per year) is 1.75 humpback whales or 76.1 percent of the PBR for the Eastern North Pacific humpback whale stock. Although several humpback whales were entangled in recent years in crab pot gear and in unknown pot/net fisheries in CA, the total fisheries-related serious injury and mortality is less than this stock's PBR. Since the beginning of the NMFS observer program in 1990, there have been no reported mortalities or serious injuries of humpback whales attributed to the CA/OR DGN fishery. In addition, after the implementation of the POCTRP, overall cetacean entanglement rates in the DGN fishery dropped considerably. Lastly, the population for this stock is considered to be at least stable and is likely to be increasing by 6–7 percent per year (Carretta et al., 2006). Based on this, and because the estimated mortality and serious injury caused by all Category I and II commercial fisheries, including the CA/OR DGN fishery, would not cause more than a 10 percent increase in the time to recovery, a negligible determination can be made under Criterion 3 for purposes of issuing a permit under MMPA section101(a)(5)(E).

Sperm Whale, CA/OR/WA Stock

The PBR level for this stock is 1.8 whales per year (Carretta *et al.*, 2006). Because of the changes in the CA/OR DGN fishery after the implementation of the Plan, mean annual takes are based only on observer data from 1998–2005. This results in a mean annual mortality and serious injury rate of 0.63 sperm whales per year from the CA/OR DGN fishery. In 1998, one sperm whale was observed killed in a net that was not in compliance with the Plan (also taken prior to the 2001 closure off central California/southern Oregon). The Pacific Offshore Cetacean Take Reduction Team (Team) and the Pacific Scientific Review Group both recommended no further strategies to reduce sperm whale entanglement be taken until the effectiveness of pingers is better understood. Based upon the recommendation of the Team to increase compliance with the POCTRP (use of pingers), vessel operators were encouraged at skipper education workshops to use the full complement of pingers when deploying their nets.

Furthermore, NMFS enforcement officials met with the United States Coast Guard to train boarding personnel on the requirements of the plan and requested their assistance for at-sea enforcement. The known average annual human-caused mortality or serious injury, including ship strikes (0.38 animals per year) and incidental to commercial fishing (0.75 animals per year) for 1998–2005 is 1.13 sperm whales, or 62.5 percent of the PBR for the CA/OR/WA sperm whale stock.

The minimum population estimate for this stock is considered to be variable, with no obvious trend (Carretta *et al.*, 2006). However, the overall population of sperm whales has increased worldwide since it was listed under the ESA in 1973, and although it is difficult to determine a trend for the CA/OR/WA stock of sperm whales, this stock does not appear to be declining. The average annual fisheries-related mortality and serious injury for this stock is below PBR. There has not been a take of sperm whales in the CA/OR DGN fishery since 1998 and the likelihood that a sperm whale would be taken by the CA/OR DGN fishery is very low, especially given compliance with the POCTRP. Based on the trend of this stock of marine mammals, the existing management measures on the fishery, and that the estimated mortality and serious injury caused by all Category I and II commercial fisheries, including the CA/OR DGN fishery, would not cause more than a 10 percent increase in the time to recovery, a negligible determination can be made under Criterion 3 for purposes of issuing a permit under MMPA section 101(a)(5)(E).

Proposed Actions and Information Solicited

Negligible Impact

As required by the MMPA and as summarized above, NMFS has made a preliminary determination that incidental mortality and serious injury incidental to commercial fishing will have a negligible impact on the CA/OR/WA stock of fin whales, the Eastern North Pacific stock of humpback whales, and the CA/OR/WA stock of sperm whales. A draft of the determination is available for public review (see **ADDRESSES**), and NMFS solicits public comments on this draft determination.

Recovery Plans

A recovery plan for humpback whales was completed and issued in 1991. This plan is available on the Internet (see **ADDRESSES**). NMFS had previously solicited public comments on a draft recovery plan for fin whales and sei whales (*Balaenoptera borealis*) (63 FR 41802, August 5, 1998); however, the plan was not completed. Subsequently, the information related to fin whales was separated from that of sei whales, and more recent information has been included in a draft recovery plan for fin whales. The draft recovery plan for fin whales is available for public review and comment (71 FR 38385, July 6, 2006). Also, NMFS has prepared a draft recovery plan for sperm whales, and this draft plan is available for public review and comment (71 FR 38385, July 6, 2006). These draft plans are available on the Internet (see **ADDRESSES**). Accordingly, NMFS determines that recovery plans for the affected endangered species of marine mammals have been or are being developed.

MMPA Section 118 Requirements

As noted in Carretta *et al.* (2006, see Appendix 1. Descriptions of U.S. Commercial Fisheries) an observer program has been in place in the CA/OR DGN fishery since 1990. The fishery has been included in the LOF since the list was initiated under MMPA section 118. The proposed 2006 LOF (71 FR 20941, April 24, 2006) estimates 85 vessels in the fishery, 57 vessels were registered in 2005, and 49 vessels are currently registered as required by MMPA section 118(c). NMFS anticipates additional vessels will be registered prior to the start of the fishing season. NMFS promulgated final regulations to implement the POCTRP on October 3, 1997 (62 FR 51805). The plan was subsequently revised to modify specifications for deploying pingers, which allowed safer deployment (64 FR 3431, January 22, 1999). These regulations are available on the Internet (see **ADDRESSES**). Accordingly, NMFS determines that the requirements of MMPA section 118 have been satisfied for the CA/OR DGN fishery.

Proposed Action

The impacts of implementing the HMS FMP, including the taking of threatened and endangered species of marine mammals, were analyzed in an Environmental Impact Statement for the HMS FMP and in a biological opinion prepared in February 2004 on the proposed adoption of the HMS FMP. The proposed permit would have no additional impact to the human environment beyond those analyzed in February 2004; therefore, additional environmental analyses were not conducted. Based on requirements of section 101(a)(5)(E) of the MMPA, NMFS proposes to issue a permit to allow the incidental, but not intentional, taking of three stocks of endangered or threatened marine mammals to the CA/OR DGN fishery, fin whale, CA/OR/WA stock; humpback whale, Eastern North Pacific stock; and sperm whale, CA/OR/WA stock. This permit may be suspended or revoked if the level of take is likely to result in an impact that is more than negligible. As required by the MMPA, NMFS has determined that a recovery plan has been developed or is being developed for each of these species and that a monitoring program has been established, vessels engaged in the subject fishery are registered, and a take reduction plan has been developed. NMFS solicits public comments on this proposed permit.

References

Barlow, J., S. Swartz, T. Eagle and P. Wade. 1995. U.S. Marine Mammal Stock Assessments: Guidelines for Preparation, Background, and a Summary of the 1995 Assessments. U.S. Department of Commerce, NOAA-TM-NMFS-SWFSC–219. 162 p.

Carretta, J.V., K.A. Forney, M.M. Muto, J. Barlow, J. Baker, B. Hanson, and M.S. Lowry. 2006. U.S. Pacific Marine Mammal Stock Assessments: 2005. U.S. Department of Commerce, NOAA-TM-NMFS-SWFSC–388.

Pacific Fishery Management Council. 2003. Final Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species.

Dated: July 25, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–12127 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Notice of Intent To Conduct Restoration Planning

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The natural resource trustees (the Trustees) hereby notify the public of their intent to conduct restoration planning activities for injuries to natural resources caused by the Bouchard B–120 Oil Spill that occurred on or about April 27, 2003. On that date, the Bouchard B–120, owned and operated by the Bouchard Transportation Company, grounded on a shoal in Buzzards Bay, which is located off the coasts of Massachusetts and Rhode Island, and released between 22,000 and 98,000 gallons of No. 6 fuel oil into the environment. The Trustees include the:

National Oceanic and Atmospheric Administration, U.S. Department of Commerce; U.S. Fish and Wildlife Service, U.S. Department of the Interior; Executive Office of Environmental Affairs, Commonwealth of Massachusetts; State of Rhode Island and Providence Plantations, Department of Environmental Management.

The purpose of restoration planning is to evaluate potential injuries to natural resources and services resulting from the spill and utilize that information to determine the need for, and scale of, restoration actions.

The public is invited to participate in the restoration planning process by reviewing and commenting on documents contained in the Administrative Record, attending public meetings as scheduled, and reviewing and commenting on the Draft and Final Restoration Plans when such documents have been completed.

FOR FURTHER INFORMATION CONTACT: For further information regarding this document, documents contained in the Administrative Record, or the restoration planning process, contact: Frank Csulak, Injury Assessment Coordinator, National Oceanic and Atmospheric Administration, Office of Response and Restoration, HAZMAT Division, 74 Magruder Road Highlands, NJ 07732, 732–872–3005, *Frank.Csulak@NOAA.gov*.

SUPPLEMENTARY INFORMATION: *Oil Spill Incident:* On the afternoon of April 27, 2003, the Bouchard B–120, owned and operated by the Bouchard Transportation Company, Inc. (Bouchard), grounded on a shoal soon after entering the western approach to Buzzards Bay from the south. The tugboat Evening Tide was towing the barge that was laden with No. 6 fuel oil from Philadelphia to the Mirant Power Generating Facility in Sandwich, Massachusetts. Bouchard notified the United States Coast Guard (USCG) of a release of oil at approximately 5:30 p.m. and anchored in Buzzards Bay per order of the USCG. That evening, divers discovered a 12 foot by 2 foot hole in the No. 2 starboard holding tank of the barge. After the remaining cargo and oily water was transferred to Bouchard B–10 and both barges proceeded to the Mirant facility.

Between 22,000 and 98,000 gallons of the No. 6 fuel oil cargo was released into Buzzards Bay on April 27, 2003. The actual amount of the release is unknown, but has been estimated by various investigators who have taken into account such factors as the time of impact, water mixing, temperature, wind, current conditions, etc. In the days following the release, the oil was driven ashore by winds and currents. Under the direction of the Unified Command, Bouchard and the response agencies undertook various on-water recovery efforts. Once oil came ashore, the responsible party, response agencies, and others implemented shoreline clean-up activities and emergency restoration efforts. Ultimately, oil impacted approximately 100 miles of shoreline in Massachusetts and Rhode Island to varying degrees. Immediately following the spill, the Massachusetts Division of Marine Fisheries closed approximately 177,000 acres of state shellfish beds and the closures remained in effect for varying amounts of time. Coordinated wildlife collection and reconnaissance efforts, the primary purpose of which was to collect live and dead oiled birds, began on April 30, 2003 and continued daily through May 16, 2003. In the weeks following the spill, a total of 499 birds were collected (all 499 collected birds were not necessarily spill related), including 184 live oiled birds. Of the 184 live oiled birds, 20 were rehabilitated and returned to the wild.

Since the spill, the Trustees have initiated a number of pre-assessment data collection activities and studies. Findings demonstrate or suggest that the spill impacted the following categories of natural resources: (1) Birds and wildlife; (2) recreational use; (3) shorelines; and (4) aquatic resources.

The Trustees (cited above) are designated pursuant to the National Contingency Plan, 40 CFR 300.600 and 300.605.

The Responsible Party (RP) for this incident is Bouchard Transportation Company, Inc. (Bouchard), the owner and operator of the Bouchard B–120 barge. To date, the RP has cooperated with the Trustees in the performance and funding of response, cleanup and pre-assessment data collection activities. The RP has committed to participate in a cooperative natural resource damage assessment.

Administrative Record: The Trustees have established an Administrative Record (AR) in compliance with 15 CFR 990.45. The AR will include documents relied upon by the Trustees during the assessment and restoration planning activities for this incident. To date, the AR contains:

(1) A copy of this notice;

(2) A letter from the Trustees to Bouchard inviting the company to participate in a cooperative natural resource damage assessment;

(3) A letter from Bouchard to the Trustees accepting the invitation to participate in a cooperative natural resource damage assessment; and

(4) The ''*Pre-Assessment Screen Data Report: Bouchard Barge No.120 Oil Spill in Buzzards Bay, Massachusetts, dated June 2005*''.

The AR is on file at the NOAA Damage Assessment Center in Silver Spring, MD and may be viewed electronically by accessing the following Web site address: *http://www.darrp.noaa.gov/northeast/buzzard/index.html*.

Additionally, duplicate copies will be maintained for public review at the following locations:

Jonathan Bourne Library, 19 Sandwich Road, Bourne, MA 02532, for assistance please contact Diane Ranney, Assistant Library Director at 508–759–0644; and New Bedford Public Library, 613 Pleasant Street, New Bedford, MA 2740–6203, for assistance please contact Teresa Coish, Library Director at 508–991–6279.

Trustees' Determination of Jurisdiction

Following notice of the spill, the Trustees initiated pre-assessment data collection activities, as described in the ''*Pre-Assessment Screen Data Report: Bouchard Barge No. 120 Oil Spill in Buzzards Bay, Massachusetts, dated June 2005*''. The following determinations were made as required by 15 CFR 990.41:

(1) The spill of between 22,000 and 98,000 gallons of No. 6 fuel oil from the Bouchard B–120 into Buzzards Bay that occurred on April 27, 2003 was an incident as defined at 15 CFR 990.30.

(2) The incident was not permitted under Federal, state, or local law; it did not occur from a public vessel; and it did not occur from an offshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, *et seq.*

(3) The Trustees have reviewed information gathered during the response and pre-assessment phases of this incident and determined that natural resources under the trusteeship of NOAA, DOI, MA EOEA and RIDEM have been injured as a result of the incident. The discharged oil contained components that are toxic at certain exposure levels to aquatic organisms, birds, wildlife, and vegetation. In addition, the physical characteristics of the oil adversely impacted certain natural resources. The Trustees observed birds, shoreline and aquatic organisms that were exposed to oil from the discharge. Significant portions of shellfish beds in the Commonwealth of Massachusetts were closed immediately following the spill and remained closed for varying amounts of time. Some shoreline recreational areas in

Massachusetts and Rhode Island were also closed to public access following the spill. Additional recreational resources were degraded and/or displaced following the incident.

Based upon the above findings, the Trustees have determined that they have jurisdiction to pursue restoration planning activities pursuant to the Oil Pollution Act of 1990, 33 U.S.C. 2702 and 2706(b)–(c).

Trustees' Determination to Conduct Restoration Activities: For the reasons discussed below, the Trustees have made the determination required by 15 CFR 990.42(a) and are proceeding with restoration planning to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of, the natural resources and/or natural resource services lost as a result of this incident.

(1) Injuries have resulted from the incident. The Trustees base this determination upon data collected and analyzed pursuant to 15 CFR 990.43 demonstrating that injuries are likely to have resulted from the incident, and include but are not limited to, the following natural resource categories: Birds and Wildlife; Shoreline; Recreational Use; and, Aquatic.

(2) Response actions have not adequately addressed the injuries resulting from the incident. Although response actions and innovative emergency restoration actions were initiated promptly, the nature of the discharge, weather and tide conditions, and the sensitivity of the environment precluded the prevention of injuries to some natural resources. It is anticipated that injured natural resources will eventually return to baseline levels, but there is a potential for significant interim losses to have occurred and to continue to occur, until return to baseline is achieved.

(3) Feasible primary and compensatory restoration alternatives exist to address injuries from this incident. Components of the restoration plan may include, but are not limited to, projects involving land acquisition, shoreline stabilization, wetland/marsh enhancement, predator control activities, protection or enhancement of bird nesting areas, and recreational area enhancements.

Public Involvement: Pursuant to 15 CFR 990.44, the Trustees will seek public involvement in restoration planning by establishing public review and comment opportunities.

Dated: July 21, 2006.

Ken Barton,

Acting Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E6–12117 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071406G]

Fisheries in the Western Pacific; American Samoa Longline Limited Entry Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of permit upgrades.

SUMMARY: NMFS is soliciting applications for permit upgrades in the American Samoa longline limited entry program. Eight upgrade permits will be available in 2006 for holders of Class A vessel permits (i.e., less than or equal to 40 ft or 12.2 m in length) to upgrade to permits for larger vessels (Class B-1, C-1, or D-1). The upgrade permits are available only to Class A permit holders who participated in the fishery before March 22, 2002. The highest priority for receiving an upgrade permit will be given to the person with the earliest date of documented participation.

DATES: Completed applications for permit upgrades must be received by NMFS by September 26, 2006.

ADDRESSES: Completed applications should be sent to NMFS Pacific Islands Region, Attn: ASLE Permit Upgrade, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Application forms may be obtained from NMFS Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700, or the NMFS Pacific Islands Region website: *http://swr.nmfs.noaa.gov/pir/*.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, NMFS Pacific Islands Region, (808) 944–2275.

SUPPLEMENTARY INFORMATION: On May 25, 2005, NMFS published a final rule (70 FR 29646) that established a limited entry program for the pelagic longline fishery based in American Samoa, under Amendment 11 to the Fishery Management Plan for Pelagic Fisheries in the Western Pacific Region. American Samoa longline limited entry permits were established for four vessel size classes, based on length, as follows:

1. Class A – less than or equal to 40 ft (12.2 m);

2. Class B (and B-1) – over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive;

3. Class C (and C-1) – over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and

4. Class D (and D-1) – over 70 ft (21.3 m).

A total of 60 initial American Samoa longline limited entry permits were issued, 22 in Class A, five in Class B, 12 in Class C, and 21 in Class D. These numbers are the limits on the number of allowed American Samoa longline limited entry permits for each size class, as defined by the regulations setting the maximum limit on permits under the limited entry program (50 CFR 665.36(f)).

The limited entry program allows for 26 upgrade permits to be made available for the exclusive use of permit holders in Class A, distributed over a four-year period following the issuance of initial limited entry permits. In 2006, eight upgrade permits will be available (four in Class B-1, two in Class C-1, and two in Class D-1). The Regional Administrator may initially issue Class B-1, C-1, and D-1 upgrade permits only to holders of Class A permits who participated in the American Samoa pelagic longline fishery before March 22, 2002 (50 CFR 665.36h)). The highest priority will be given to those with the earliest date of documented participation. Those receiving upgrade permits must surrender their Class A permits, and the surrendered permits are deducted from the allowed Class A permit total.

This notice is intended to announce the availability of permit upgrades and to solicit applications for the upgrades. Complete applications must include the completed and signed application form (available from NMFS, see **ADDRESSES**), legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee. Documents supporting participation should show that fishing was conducted using longline gear. Properly completed applications must be received by NMFS (see **ADDRESSES**) by September 26, 2006 to be considered for eligibility for the 2006 permit upgrades.

Authoritative information on the American Samoa limited entry program may be found in the 50 CFR Part 665.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. E6–12130 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070306C]

Vessel Monitoring Systems; Amendment to the Announcement of Mobile Transmitter Unit and Enhanced Mobile Transmitter Unit Reimbursement Program; Additional Eligibility Criteria

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Amendment to the notice of vessel monitoring systems reimbursement program.

SUMMARY: On July 21, 2006, NMFS announced the availability of approximately $4.5 million in grant funds for fiscal year (FY) 2006 for vessel owners and/or operators who have purchased a Mobile Transmitter Unit (MTU) or Enhanced-Mobile Transmitter Unit (E-MTU) for the purpose of complying with fishery regulations requiring the use of Vessel Monitoring Systems (VMS) which became effective during FY 2006. The funds will be used to reimburse vessel owners and/or operators for the purchase price of the MTU or E-MTU. These amendments are intended to correct the contact information for the Pacific States Marine Fisheries Commission (PSMFC) located under **FOR FURTHER INFORMATION CONTACT** and **ADDRESSES** and to declare an additional reimbursement eligibility criteria.

ADDRESSES: The correct contact information for a reimbursement application is Pacific States Marine Fisheries Commission (PSMFC), 205 SE Spokane Street, Suite 100, Portland, OR 97202, phone 503–595–3100, fax 503–595–3232.

To obtain copies of the list of NOAA-approved VMS mobile transmitting units and NOAA-approved VMS communications service providers write to the VMS Support Center, NOAA Fisheries Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: The correct contact information for questions regarding reimbursement applications is Randy Fisher, Executive Director, Pacific States Marine Fisheries Commission (PSMFC), 205 SE Spokane Street, Suite 100, Portland, OR 97202, phone 503–595–3100, fax 503–595–3232.

For questions regarding MTU or E-MTU type approval or information regarding the status of VMS systems being evaluated by NOAA for approval, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300; fax 301–427–0049.

For questions regarding VMS installation or activation checklists, contact the VMS Support Center, NOAA Fisheries Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910, phone 888–219–9228, fax 301–427–0049.

SUPPLEMENTARY INFORMATION: In addition to the eligibility requirements detailed in the July 21, 2006 (71 FR 41425) notice, the following requirement regarding vessel owners and/or operators with outstanding unpaid civil monetary penalties shall also apply.

Additional Eligibility Criteria

To be eligible to receive reimbursement vessel owners and/or operators must not be in arrears with a payment owed to the Agency for a civil monetary penalty. Affected vessel owners and/or operators may become eligible for the reimbursement if the outstanding penalty is paid in full within 30 days of the denial of the reimbursement. After payment, vessel owners and/or operators must contact the VMS Support Center and provide documentation to support the defrayment of the penalty to receive a confirmation code for reimbursement purposes.

Dated: July 25, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fishery Service.

[FR Doc. E6–12125 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053106C]

Notice of Availability of Draft Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act (MMPA). SARs for marine mammals in the Alaska, Atlantic, and Pacific regions were revised according to new information. NMFS solicits public comments on draft 2006 SARs.

DATES: Comments must be received by October 26, 2006.

ADDRESSES: The 2006 draft stock assessment reports are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/sars/*.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Tina Fahy, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

Send comments or requests for copies of reports to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Comments may also be sent via facsimile (fax) to 301–427–2516 or via e-mail to *mmsar.2006@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss 206- 526–4032, e-mail *Robyn.Angliss@noaa.gov*, regarding Alaska regional stock assessments; Gordon Waring, 508–495–2311, e-mail *Gordon.Waring@noaa.gov*, regarding Atlantic regional stock assessments; or Tina Fahy, 562–280–4060, e-mail *Christina.Fahy@noaa.gov*, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain

information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information. NMFS solicits public comments on the draft 2006 SARs.

Alaska Reports

In the Alaska region, 18 reports were revised, and 18 were not revised. Most changes were updates of abundance or mortality estimates and did not change the status of the stock. SARs for the Alaska harbor seals (Southeast Alaska, Gulf of Alaska, and Bering Sea stocks) were updated to include recent information on abundance, trends in abundance, fishery-related serious injury and mortality, and subsistence harvest levels. Although the abundance estimates now reflected in the Alaska harbor seal SARs are higher than the estimates in the past, this apparent increase is due to changes in analytical procedures and does not necessarily reflect changes in abundance. The best available information on Alaska harbor seal stock structure suggests that there are more than the current three stocks identified in the stock assessment reports; NMFS, in cooperation with appropriate Alaska Native organizations, is evaluating the new genetic information and anticipates making a joint recommendation regarding stock structure in 2006.

Abundance estimates and Potential Biological Removal (PBR) levels increased for northern fur seals and Steller sea lions. The increase in the northern fur seal abundance was due to a recent survey of one rookery on Bogoslof Island, which was last assessed in 1998 and has grown appreciably since that time. The western Steller sea lion stock assessment report acknowledges that genetics differences between animals in western Alaska and Russia may be sufficient to support a designation of an Asian stock of Steller sea lions.

The PBR level for Dall's porpoise is no longer calculated because the abundance estimate is more than 8 years old and, according to NMFS' guidelines for preparing SARs, is considered unreliable for use in conservation decisions. The fisheries with which this stock overlaps are observed regularly and have had low levels of Dall's porpoise serious injury or mortality over at least the past 10 years. Because the best available information indicates that human-related serious injury and mortality is likely not a major concern, the stock remains classified as ''not strategic''.

The PBR level for the Cook Inlet stock of beluga whales is no longer calculated. The abundance is well below the maximum estimate in the late 1970s, and the population may be declining due to unidentified causes. Therefore, underlying assumption (that reducing or eliminating human-caused mortality would allow the population to increase) of the PBR approach does not appear to be valid, and NMFS cannot estimate a maximum number of animals that may be removed from the population while allowing the population to recover to its optimum sustainable population levels.

The three stocks of harbor porpoise in the Alaska region (Southeast Alaska, Gulf of Alaska, and Bering Sea stocks) were changed from ''not strategic'' to ''strategic''. For each stock, abundance estimates are old. A number of fisheries in Alaska overlap harbor porpoise distribution and may take porpoise; however, few fisheries have observer data for estimating mortality. Furthermore, harbor porpoise sightings on surveys for killer whales in Southeast Alaska indicate fewer porpoise sightings per unit effort in recent years than in earlier surveys. NMFS has, therefore, labeled these three stocks of harbor porpoise as ''strategic'' stocks as a precautionary approach.

The status of Pacific white-sided dolphin, North Pacific stock, was changed from ''strategic'' to ''not strategic''. There are no recent, reliable estimates of abundance and mortality/serious injury for this stock; however, white-sided dolphins have been seen during historical surveys in portions of the stock's range at densities that suggest sufficient numbers of dolphins to sustain the low levels of mortality that were previously estimated since the termination of high-seas driftnet fishing in 1991.

Atlantic Reports

Sixteen reports (four strategic and 12 non-strategic) were revised in the Atlantic region, and 39 reports, including all reports for marine mammals in the Gulf of Mexico, were not revised. Most updates were to include new abundance and mortality estimates and did not change the status of the affected stocks.

Estimates of incidental mortality and serious injury for the northeast and mid-Atlantic bottom trawl fisheries were not completed in time for this draft release. SRG review of the estimates will be completed prior to the commencement of the Atlantic trawl take reduction team meeting in September 2006. Therefore, mortality estimates and strategic status determinations are pending for long-finned and short-finned pilot whales, common dolphin, Risso's dolphin and Atlantic white-sided dolphin and will be included in the draft 2007 reports.

Pacific Reports

Of the 61 reports in the Pacific region, nine were revised for 2006. All revisions were updates to abundance and PBR or mortality estimates, and none resulted in a change of the MMPA status (strategic or not strategic). The SAR for killer whales, Eastern North Pacific southern resident stock, was revised to indicate its listing as endangered under the ESA; however, the stock was already ''strategic'' under the MMPA due to its earlier designation as depleted.

Dated: July 25, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–12126 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Publication of North American Datum of 1983 State Plane Coordinates in Feet in New Jersey

AGENCY: National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Geodetic Survey (NGS) will publish North American Datum of 1983 (NAD 83) State Plane Coordinate (SPC) grid values, in both meters, and U.S. Survey Feet (1 ft = 1200/3937 m) in New Jersey, for all well defined geodetic survey control monuments maintained by NGS in the National Spatial Reference System (NSRS) and computed from various geodetic positioning utilities. The

adoption of this standard is implemented in accordance with NGS policy and a request from the New Jersey Department of Transportation, the New Jersey Society of Professional Land Surveyors, and the New Jersey Bureau Office of Information Technology.

DATES: Individuals or organizations wishing to submit comments on the Publication of North American Datum of 1983 State Plane Coordinates in feet in New Jersey, should do by August 28, 2006.

ADDRESSES: Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-West Highway, Silver Spring, Maryland 20910, fax 301–713–4324, or via e-mail *Dave.Doyle@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, Silver Spring, MD 20910; Phone: (301–713–3178).

SUPPLEMENTARY INFORMATION:

Abstract

In 1991, NGS adopted a policy that defines the conditions under which NAD 83 State Plane Coordinates (SPCs) would be published in feet in addition to meters. As outlined in that policy, each state or territory must adopt NAD 83 legislation (typically referenced as Codes, Laws or Statutes), which specifically defines a conversion to either U.S. Survey or International Feet as defined by the U.S. Bureau of Standards in **Federal Register** Notice 59–5442. To date, 48 states have adopted the NAD 83 legislation however, for various reasons, only 33 included a specific definition of the relationship between meters and feet. This lack of uniformity has led to confusion and misuse of SPCs as provided in various NGS products, services and tools, and created errors in mapping, charting and surveying programs in numerous states due to inconsistent coordinate conversions.

Dated: July 20, 2006.

David B. Zilkoski,

Director, Office of National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 06–6523 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Publication of North American Datum of 1983 State Plane Coordinates in Feet in Nevada

AGENCY: National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Geodetic Survey (NGS) will published North American Datum of 1983 (NAD 83) State Plane Coordinate (SPC) grid values, in both meters, and U.S. Survey Feet (1 ft = 1200/3937 m) in Nevada, for all well defined geodetic survey control monuments maintained by NGS in the National Spatial Reference System (NSRS) and computed from various geodetic positioning utilities The adoption of this standard is implemented in accordance with NGS policy and a request from the Nevada Department of Transportation, the Nevada Association of Land Surveyors, and the Nevada Bureau of Mines.

DATES: Individuals or organizations wishing to submit comments on the Publication of North American Datum of 1983 State Plane Coordinates in feet in Nevada, should do by August 28, 2006.

ADDRESSES: Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-West Highway, Silver Spring, Maryland 20910, fax 301–713–4324, or via e-mail *Dave.Doyle@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, Silver Spring, MD 20910; Phone: (301–713–3178).

SUPPLEMENTARY INFORMATION:

Abstract

In 1991, NGS adopted a policy that defines the conditions under which NAD 83 State Plane Coordinates (SPCs) would be published in feet in addition to meters. As outlined in that policy, each state or territory must adopt NAD 83 legislation (typically referenced as Codes, Laws or Statutes), which specifically defines a conversion to either U.S. Survey or International Feet as defined by the U.S. Bureau of Standards in **Federal Register** Notice 59–5442. To date, 48 states have adopted the NAD 83 legislation however, for various reasons, only 33 included a specific definition of the relationship between meters and feet. This lack of uniformity has led to confusion and misuse of SPCs as provided in various NGS products, services and tools, and created errors in mapping, charting and surveying programs in numerous states due to inconsistent coordinate conversions.

Dated: July 20, 2006.

David B. Zilkoski,

Director, Office of National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 06–6524 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–JF–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071806B]

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Prospectus 3.2

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publish this notice to announce the availability of the draft Prospectus for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products (Products) for public comment. This draft Prospectus addresses the following CCSP Topic:

Product 3.2 Climate Projections Based on Emissions Scenarios for long-lived radioactively trace gases and future climate impacts of radioactive gases and aerosols

After consideration of comments received on the draft Prospectus, the final Prospectus along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by August 28, 2006.

ADDRESSES: The draft Prospectus is posted on the CCSP Program Office web site. The web addresses to access the draft Prospectus is:

Product 3.2 (Climate Projections) *http://www.climatescience.gov/Library/sap/sap3–2/default.htm*

Detailed instructions for making comments on the draft Prospectus is provided with the Prospectus. Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Vanessa Richardson, Climate Change

Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3465.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: July 24, 2006.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E6–12129 Filed 7–27–06; 8:45 am]

BILLING CODE 3510–12–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0017, Market Surveys

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before September 26, 2006.

ADDRESSES: Comment may be mailed to Gary J. Martinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, (202) 418–5209; FAX (202) 418–5527; e-mail: *gmartinaitis@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 Section 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Market Surveys, OMB Control No. 3038–0017—Extension

Under Commission Rule 21.02, upon call by the Commission, information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers must be furnished. This rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 8a of the Commodity Exchange Act, 7 U.S.C. 7.

The Commission estimates the burden of this collectionof information as follows:

Estimated Annual Reporting Burden

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 21.02	400	Annually	400	1.75	700

Dated: July 25, 2006.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 06–6539 Filed 7–27–06; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–36 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 24, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2006

In reply refer to:
I-06/005973

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-36, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $5.8 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	**Senate**
Committee on International Relations	**Committee on Foreign Relations**
Committee on Armed Services	**Committee on Armed Services**
Committee on Appropriations	**Committee on Appropriations**

Transmittal No. 06-36

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$3.4 billion
Other	$2.4 billion
TOTAL	$5.8 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: for the continuation of the United States supported effort to modernize the Saudi Arabian National Guard (SANG) by providing Major Defense Equipment (MDE) and non-MDE items:

724 LAV-25, LAV-AG, LAV-M, LAV-AT, LAV-CC, LAV-PC, LAV-A, LAV-AC LAV-E and LAV-R Light Armored Vehicles (LAV);
1,160 AN/VRC-90E Single Channel Ground and Airborne Radio Systems (SINCGARS) Vehicular Single Long-Range Radio Systems;
627 AN/VRC-92E SINCGARS Vehicular Single Long-Range Radio Systems;
518 AN/VRC-119 E SINCGARS Vehicular Single Long-Range Radio Systems;
2,198 SINCGARS Spearhead Handheld;
1,700 AN/AVS-7D Night Vision Goggles (NVG);
432 AN/PVS-14 NVG;
630 AN/PAS-13 Thermal Weapon Sight;
162 84mm Recoilless Rifle; and

Harris Corporation Commercial High Frequency Radios; various commercial vehicles; fixed facilities and ranges; simulations; generators; battery chargers; protective clothing; shop equipment; training devices; spare and repair parts; sets, kits, and outfits; support equipment; publications and technical data; personnel training and training equipment; contractor engineering and technical support services and other related elements of logistics support.

* as defined in Section 47(6) of the Arms Export Control Act.

(iv) **Military Department: Army (ZAC, Amendment 34)**

(v) **Prior Related Cases, if any: numerous cases dating back to 1973**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex Attached**

(viii) **Date Report Delivered to Congress:** 20 JUL 2006

POLICY JUSTIFICATION

Saudi Arabia - Continued Assistance in the Modernization of the SANG

The Government of Saudi Arabia has requested a possible sale for the continuation of the United States supported effort to modernize the Saudi Arabian National Guard (SANG) by providing Major Defense Equipment (MDE) and non-MDE items:

724 LAV-25, LAV-AG, LAV-M, LAV-AT, LAV-CC, LAV-PC, LAV-A, LAV-AC LAV-E and LAV-R Light Armored Vehicles (LAV);
1,160 AN/VRC-90E Single Channel Ground and Airborne Radio Systems (SINCGARS) Vehicular Single Long-Range Radio Systems;
627 AN/VRC-92E SINCGARS Vehicular Single Long-Range Radio Systems;
518 AN/VRC-119 E SINCGARS Vehicular Single Long-Range Radio Systems;
2,198 SINCGARS Spearhead Handheld;
1,700 AN/AVS-7D Night Vision Goggles (NVG);
432 AN/PVS-14 NVG;
630 AN/PAS-13 Thermal Weapon Sight;
162 84mm Recoilless Rifle; and

Harris Corporation Commercial High Frequency Radios; various commercial vehicles; fixed facilities and ranges; simulations; generators; battery chargers; protective clothing; shop equipment; training devices; spare and repair parts; sets, kits, and outfits; support equipment; publications and technical data; personnel training and training equipment; contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $5.8 billion.

The proposed sale coupled with the training, assistance, and advice provided by the U.S. Government through the Office of the Program Manager SANG will serve to make a key regional ally and partner in the Global War on Terror more capable of defeating those who would threaten regional stability and less reliant on the deployment of U.S. combat forces to maintain or restore stability in the Middle East

The SANG needs these defense articles so that it can effectively conduct security and counter-terrorism operations. The continuation of services under the SANG Modernization Program is an evolution of the SANG as an effective defensive force with the advice, assistance, and training of the U.S. Army. The Modernization Program ensures necessary training, logistics, support, doctrine development and force integration for the continuing expansion and use of their weapon systems. These services will remain the cornerstone of an effort to upgrade and enhance the infrastructure of the SANG organization.

The proposed sale will also provide SANG with additional command, control, and communications equipment needed to operate in a secure communications environment that will facilitate the performance of its mission within Saudi Arabia. It is consistent with the National Command Authority's intent for stability in the Central Command Area of Operation. The radios will modernize equipment and provide the critical VHF and HF links necessary for a large fast moving force and integration with the SINCGARS radios SANG already has fielded in its Light Armored Vehicle and Light Infantry Brigades.

The proposed sale of this equipment and support will not affect the basic military balance in the region. Saudi Arabia is capable of absorbing and maintaining this additional MDE equipment in its inventory.

The principle contractors will be:

ITT Aerospace/Communications	**Fort Wayne, Indiana**
Harris Corporation	**Rochester, New York**
General Dynamics Land Systems	**London, Ontario**
Raytheon Corporation	**Tucson, Arizona**

There are no known offset agreements proposed in connection with this potential sale.

At present, there are approximately 250 U.S. Government personnel and 630 contractor representatives in country supporting the SANG modernization program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Light Armored Vehicle (LAV) and all associated documentation are unclassified. Sensitive technologies to include the Improved Thermal Sight System (ITSS) and Drivers Vision Enhancer (DVE) are subsystems integral to the LAV-25 mission role variant and the DVE is integral to the other nine mission role variants as well.

2. The Night Vision Devices (NVDs) proposed for sale include the AN/PVS-7D, Night Vision Goggle (NVG); AN/PVS-14, Individual Weapon Night Vision Sight, and the PAS-13 Long Range Infrared Night Vision Sight. These NVDs will be reviewed in compliance with Golden Sentry requirements during all United States reviews.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6529 Filed 7–27–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–26]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–26 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 24, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 2006

In reply refer to:
I-06/003885

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-26, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $350 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

[illegible]

[illegible]
LIEUTENANT GE[illegible], USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$293 million
Other	$ 57 million
TOTAL	$350 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 24 UH-60L Utility/Assault BLACK HAWK helicopters, spare and repair parts, communications and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (WTW)

(v) Prior Related Cases, if any:
FMS case VNK - accepted 11Dec90 with a value $125 million
FMS case VJB - accepted 20Oct87 with a value of $107 million

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 20 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - UH-60L UTILITY/ASSAULT BLACK HAWK HELICOPTERS

The Government of Saudi Arabia has requested a possible sale of 24 UH-60L Utility/Assault BLACK HAWK helicopters, spare and repair parts, communications and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $350 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The Royal Saudi Land Forces (RSLF) have a long-term plan to use these additional BLACK HAWK helicopters to modernize and increase their rotary wing fleet. Saudi forces have used rotary wing assets in numerous anti-terrorism operations within their borders and view their ability to quickly move troops around the country as a critical capability. The helicopters will allow Saudi to exercise a more flexible and maintainable operation for the protection of critical infrastructure. The additional aircraft will primarily be used to move troops and light equipment over long distances within their kingdom for external defense and internal requirements, as needed.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Sikorsky Aircraft (United Technologies) Corporation of Stratford, Connecticut and General Electric of Fairfield, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one Contract Field Support Representative to Saudi Arabia for up to two years, and will require the assignment of several U.S. Government Quality Assurance Teams to Saudi Arabia when the aircraft arrive in country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Army's BLACK HAWK helicopter system and subsystem equipment (excluding BLACK HAWK systems and subsystem equipment for which the Utility Helicopter Program Office is not the proponent (e.g., MH-60L, M60D, ASE, etc.) is Unclassified.

2. The UH-60L BLACK HAWK helicopter will include the following classified or sensitive components:

a. The Avionics package included in the aircraft configuration contains: HDU-9100 or CDU-700, AN/ARC 210, AN/ARC 201E, and AN/ARC 220(V).

b. The AN/APR-39A(V)1 Radar Warning Receiver (RWR). This equipment receives and displays to the pilot or observer, information concerning the radar environment surrounding the aircraft. This Mission Data Set (MDS) is the classified database and reverse engineering is prohibited. This MDS is country peculiar and the RWR will not work without this piece. Technical manuals are not classified.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

[FR Doc. 06–6530 Filed 7–27–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–24]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–24 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 24, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2006

In reply refer to:
I-06/003308

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-24, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Bahrain for defense articles and services estimated to cost $42 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Bahrain**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$35 million
Other	$ 7 million
TOTAL	$42 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 180 JAVELIN missile rounds and 60 JAVELIN command launch units, simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team services, and other related elements of logistics support.**

(iv) **Military Department: Army (UIT)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 21 JUL 2006

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Bahrain – JAVELIN Anti-tank Missile Systems

The Government of Bahrain has requested a possible sale of 180 JAVELIN missile rounds and 60 JAVELIN command launch units, simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team services, and other related elements of logistics support. The estimated cost is $42 million.

This proposed sale will contribute to the foreign policy and national security of the United States (U.S.) by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The desert warfare missions of Bahrain's infantry and light armored forces require the protection afforded by the capabilities of the JAVELIN system. Bahrain's land forces are small, well-rounded forces that are multi-mission oriented. JAVELIN will provide the forces with a credible anti-armor defense that is critical to success in the open desert. The proposed sale of JAVELIN is consistent with Bahrain's ongoing efforts to modernize its armed forces and the presence of these weapon systems in the land forces' inventory will provide yet another inroad for enhancing interoperability between the U.S. and Bahraini military forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon/Lockheed-Martin JAVELIN Joint Venture in Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team consisting of two U.S. Government and one contractor representatives to Bahrain for one week to assist in the delivery and deployment of the missiles. Several U.S. Government and contractor representatives will travel to Bahrain for two-week intervals twice annually to participate in training, program management, and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The JAVELIN Weapon System hardware and the documentation provided with the proposed sale thereof is Unclassified. However, sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs that instruct the system how to operate in the presence of countermeasures. The JAVELIN system provided to Bahrain is limited to the Block I Version 2 (8 series software) of the system.

2. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components: a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU provides the interface between the operator and the missile. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU's thermal sight is a second-generation Forward Looking Infrared (FLIR) sensor, operating in the 8 to 10 microns wavelength, and is a 240x2 scanning array integral with Dewar/Cooler unit. To facilitate initial loading and subsequent updating of software, all on-broad missile software is uploaded via the CLU after mating and prior to launch. JAVELIN is Unclassified, however, information associated with the system is classified up to the Secret level.

3. The software programs contained in the JAVELIN Weapon System are in the form of microprocessors equipped with available Read Out Memory maps. However, the system does not allow access to the actual software program. The overall hardware is considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure developments.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6532 Filed 7–27–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–25]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–25 with attached transmittal and policy justification.

Dated: July 24, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2006

In reply refer to:
I-06/003309

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-25, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $276 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

[illegible]

[illegible] B. KOHLER
LIEUTEN[illegible] GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-25

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$276 million
TOTAL	$276 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: a Foreign Military Sales Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA) for spare parts in support of M1A2 Abrams Tanks, M2 Bradley Fighting Vehicles, High Mobility Multipurpose Wheeled Vehicles (HMMWVs), construction equipment, and support vehicles and equipment in the inventory of the Royal Saudi Land Forces Ordnance Corps.

(iv) Military Department: Army (KYL)

(v) Prior Related Cases, if any:
FMS case UBW - $ 30 million - 29Mar91
FMS case KSB - $ 95 million - 3Oct04
FMS case KRK - $315 million - 29Mar91

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 21 JUL 2006

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Saudi Arabia – Cooperative Logistics Supply Support Arrangement

The Government of Saudi Arabia has requested a possible sale for a Foreign Military Sales Order (FMSO) to provide funds for blanket order requisitions FMSO II, under the Cooperative Logistics Supply Support Agreement (CLSSA) for spare parts in support of M1A2 Abrams Tanks, M2 Bradley Fighting Vehicles, High Mobility Multipurpose Wheeled Vehicles (HMMWVs), construction equipment, and support vehicles and equipment in the inventory of the Royal Saudi Land Forces Ordnance Corps. The estimated cost is $276 million.

The CLSSA Program for M1A2 Abrams Tanks, M2 Bradley Fighting Vehicles, and HMMWVs consists of two cases: a stock level case which establishes equity in the U.S. supply system, and a requisition case which allows direct orders to be placed on U.S. stocks.

We previously notified transmittal number 91-16 to Congress on 22 March 1991 for a FMSO I amendment to increase the capability value of the stock level equity portion of an existing Cooperative Logistics Supply Support Agreement and a FMSO II sale to provide funds for blanket order spare and repair part requisitions in support of major items of equipment of U.S. origin already delivered to and being operated by Saudi Arabia in support of Desert Storm for an estimated value of $461 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The uninterrupted supply of spare parts will allow Saudi Arabia to keep its vehicle fleet at the highest state of readiness.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items will be from the many contractors providing similar items to the U.S. forces. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–6533 Filed 7–27–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007]

Federal Acquisition Regulation; Information Collection; Summary Subcontract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0007).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning summary subcontract report. The OMB clearance currently expires on October 31, 2006.

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 September 26, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR Subpart 19.7.

B. Annual Reporting Burden

Number of Respondents: *4,253*.
Responses Per Respondent: *1.66*.
Total Responses: *7,098*.
Average Burden Hours Per Response: *15.90*.
Total Burden Hours: *112,864*.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: July 24, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–6528 Filed 7–27–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement (Eis) for the Implementation of the Base Realignment and Closure (BRAC) 2005 Decisions and Related Actions at Eglin Air Force Base (AFB), FL

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing procedural provisions of NEPA (40 Code of Federal Regulation (CFR) Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an EIS evaluating potential environmental impacts associated with implementation of the 2005 BRAC Commission's recommendations and related actions for Eglin AFB, FL.

The 2005 BRAC Commission identified establishment of a Joint Strike Fighter (JSF) Integrated Training Center (ITC), relocation of the Army 7th Special Forces Group (Airborne) [7SFG(A)] from Fort Bragg, North Carolina, and creating an Air Integrated Weapons and Armaments Research, Development and Acquisition, Test and Evaluation Center by relocating the Weapons and Armaments In-Service Engineering Research, Development and Acquisition, and Test and Evaluation from Hill AFB, UT and the Defense Threat Reduction Agency from Fort Belvoir, VA to Eglin AFB. The JSF ITC would be the initial training site for joint Air Force, Navy, and Marine Corps JSF training organizations, as well as the United Kingdom, which is a full partner in this program. The training site would teach aviators and maintenance technicians how to properly operate and maintain 107 F–35 aircraft. As part of this action, F–35 basing, facility construction and renovation, on-site maintenance and use of training airspace are being analyzed. The 7SFG (A)'s principal mission includes planning and executing unconventional warfare, combating terrorism operations, direct action, special reconnaissance, and foreign internal defense. Their realignment to Eglin provides multi-service collocation, joint training synergy with Air Force Special Operations Command and places 7SFG(A) on training lands that match their wartime area of responsibility in Central and South America. Approximately 4,600 personnel are associated with the bed down of both organizations. When including spouses and children, the estimated total of personnel coming to the Eglin AFB area would be 10,000 people. As part of this action, the Air Force is considering various alternatives for facility construction and renovation, land range development, equipment storage and operation, and land-based training/maneuvering to be analyzed in the EIS. The EIS may also include within its scope the potential environmental effects associated with socioeconomics, transportation, noise, cultural resources, water resources, wetlands, floodplains, air quality, land use, infrastructure, and biological resources. The Air Force will conduct scoping meetings to solicit public input concerning this proposal.

The scoping process will help identify issues to be addressed in the environmental analysis. The exact dates, times and location(s) will be announced through local media. Oral and written comments presented at the public meetings, as well as written comments received by the Air Force during this scoping period and throughout the EIS process, will be considered in the preparation of the EIS and will be made a part of the administrative record.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Mr. Michael Spaits, Public Affairs, AAC/EM–PAV, Eglin AFB, FL 32542–5000 (PH: 850–882–2878; *mike.spaits@eglin.af.mil*). Handicap assistance and translation service at the public meetings are available in advance through Mr. Spaits.

Bao–Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–12085 Filed 7–27–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice of Renewal of the Computer Matching Program between the U.S. Department of Education and the Internal Revenue Service, U.S. Department of The Treasury.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching Privacy Protection Act of 1988* (54 FR 25818, June 16, 1989), this document provides notice of the renewal of the computer matching program between the U.S. Department of Education (ED) (the recipient agency), and the U.S. Internal Revenue Service (IRS), Department of Treasury (the source agency). The computer matching program will begin on the effective date as specified in the computer matching agreement and in paragraph 5 of this notice.

Notice of the matching program between ED and IRS was originally published in the **Federal Register** on August 18, 2003 (68 FR 49456). The computer matching program became effective for a period of 18 months on February 18, 2003. On August 18, 2005, IRS and ED extended the computer matching program for an additional 12 months. Unless renewed, the computer matching program will expire on August 17, 2006.

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), OMB *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988* (54 FR 25818, June 16, 1989), and OMB Circular No. A–130, Appendix I (65 FR 77677, December 12, 2000), the following information is provided:

1. Name of Participating Agencies

The U.S. Department of Education and the Internal Revenue Service of the U.S. Department of Treasury.

2. Purpose of the Match

The purpose of this matching program, entitled Taxpayer Address Request (TAR), is to permit ED to have access to the mailing address of any taxpayer who owes an overpayment of a grant awarded to the taxpayer under subpart 1 of part A of Title IV of the Higher Education Act of 1965, as amended, (HEA), or who has defaulted on a loan made under part B, D, or E of Title IV of the HEA or made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education, for the purposes of locating the taxpayer to collect grant overpayment or loan debt.

In accordance with section 6103(m)(4)(B) of the of Internal Revenue Code (IRC) (26 U.S.C. 6103(m)(4)(B)), the computer matching agreement between ED and IRS provides for redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or State or nonprofit guarantee agency, which is participating under part B or D of Title IV of the HEA, or any educational institution with which the Secretary of Education has an agreement under subpart 1 of part A, or part D or E, of Title IV of the HEA.

3. Authority for Conducting the Matching Program

The information contained in the IRS database is referred to as the TAR, and the matching program between ED and IRS is authorized under section 6103(m)(2) and (m)(4) of the IRC (26 U.S.C. 6103(m)(2) and (m)(4)).

4. Categories of Records and Individuals Covered by the Match

The records to be used in the match are described as follows:

ED will provide the Social Security Number (SSN) and first four letters of the last name of each student who has defaulted under a loan program authorized under part B, D, or E of Title IV of the HEA or made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education, or who owes a grant overpayment authorized under subpart 1 of part A of Title IV of the HEA. This information will be extracted from ED's Student Financial Assistance Collection system of records (18–11–07) (64 FR 30166 (June 4, 1999), as amended by 64 FR 72407 (December 27, 1999)).

Note: On January 23, 2006, ED published a notice of a new system of records entitled the Common Services for Borrowers (CSB) system (18–11–16) (71 FR 3503), which, once it is fully phased in, will replace, and will include the records now maintained in, ED's Student Financial Assistance Collection Files system of records.

The ED data described in the preceding paragraph will be matched against the IRS' system of records, CADE Individual Master File (IMF), Treasury/IRS 24.030 (66 FR 63783, 63800 (December 10, 2001)) in order to collect the most recent address of each taxpayer who matches the SSN and first four letters of the last name as provided by ED.

5. Effective Dates of the Matching Program

The matching program will become effective at the latest of the following dates: (1) 40 days after the signing of the transmittal letter sending the computer matching program report to Congress and the OMB, unless OMB disapproves the matching program within the 40-day review period or if OMB waives 10 days of the 40-day review period, then 30 days after the signing of the transmittal letter sending the computer matching program report to Congress and OMB; (2) 30 days after publication of this notice in the **Federal Register**; or, (3) August 18, 2006, the day after the expiration of the current computer matching agreement. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the computer matching agreement between ED and IRS, may contact Marian Currie, Management and Program Analyst, Federal Student Aid,

U.S. Department of Education, 830 First Street, NE., Union Center Plaza, room #41B4, Washington, DC 20202–5320. Telephone: 202–377–3212; and as a secondary contact, Shirley Wheeler, Director, Collections Management, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Union Center Plaza, room #41F1, Washington, DC 20202–5320. Telephone: (202) 377–3294. If you use a telecommunications device for the deaf (TTD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either contact person listed in the previous paragraph.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe portable document format (PDF) on the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader Program, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 5 U.S.C. 552a; Pub. L. 100–503; 26 U.S.C. 6103(m)(2) and (m)(4).

Dated: July 25, 2006.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. E6–12131 Filed 7–27–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for Implementation of the FutureGen Project

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA implementing procedures (10 CFR part 1021), to assess the potential environmental impacts for the proposed action of providing Federal funding (up to $700 million) for the FutureGen Project. The FutureGen Project would comprise the planning, design, construction and operation by a private-sector organization of a coal-fueled electric power and hydrogen gas (H_2) production plant integrated with carbon dioxide (CO_2) capture and geologic sequestration of the captured gas. Following an evaluation of 12 site proposals from seven states, DOE identified four sites as reasonable alternatives: (1) Mattoon, Illinois; (2) Tuscola, Illinois; (3) Jewett, Texas; and (4) Odessa, Texas. DOE has prepared this Notice of Intent (NOI) to inform interested parties of the pending EIS and to invite public comments on the proposed action, including: (1) The proposed plans for implementing the FutureGen Project, (2) the range of environmental issues and alternatives to be analyzed, and (3) the nature of the impact analyses to be considered in the EIS. A general overview of the proposed action was published on February 16, 2006, in an Advance Notice of Intent (71 FR 8283).

DOE has signed a Cooperative Agreement that provides financial assistance to the FutureGen Industrial Alliance, Inc. (Alliance) for implementing the FutureGen Project. The Alliance is a non-profit industrial consortium led by the coal-fueled electric power industry and the coal production industry. Along with planning, designing, constructing and operating the FutureGen power plant and the sequestration facility, the Alliance would also monitor, measure, and verify geologic sequestration of CO_2.

The FutureGen Project aims to establish the technical and economic feasibility of co-producing electricity and H_2 from coal while capturing and sequestering the CO_2 generated in the process. FutureGen would employ integrated gasification combined-cycle (IGCC) power plant technology that for the first time would be integrated with CO_2 capture and geologic sequestration.

DOE is providing technical and programmatic guidance to the Alliance, retains certain review and approval rights as defined in the Cooperative Agreement, and oversees Alliance activities for compliance with the terms of the Cooperative Agreement. DOE is responsible for NEPA compliance activities. Both DOE and the Alliance encourage state and local agencies, local communities, the environmental community, international stakeholders, and research organizations to participate in the FutureGen Project through the NEPA process.

Potential environmental impacts of each of the four alternatives will be analyzed in detail in the EIS. Reasonable power plant technologies and component configurations proposed by the Alliance will be used in the evaluation. In addition, DOE will consider potential mitigation opportunities in the EIS.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received by September 13, 2006, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone [See **ADDRESSES** below], DOE will conduct public scoping meetings in which government agencies, private-sector organizations, and the general public are invited to present oral comments or suggestions with regard to the alternatives and impacts to be considered in the EIS. Scoping meetings will be held during August 2006 near each proposed project site, at locations and on dates to be announced in a future **Federal Register** notice and in local newspapers. Oral comments will be heard during the scoping meetings beginning at 7 p.m. (See Public Scoping Process). The public will be invited to an informal session of the scoping meetings at the same locations beginning at 4 p.m. to learn more about the proposed action. Various displays and other information about the proposed action will be available, and DOE personnel will be present at the informal session to discuss the FutureGen Project and the EIS process.

ADDRESSES: Comments on the proposed scope of the EIS and requests for copies of the Draft EIS may be submitted by fax (304–285–4403), e-mail (*FutureGen.EIS@netl.doe.gov*), or a letter addressed to the NEPA Document Manager for the FutureGen Project: Mr. Mark L. McKoy, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 880, Morgantown, WV 26507–0880, Attn: FutureGen Project EIS.

Comments or requests to participate in the public scoping process also can be submitted by contacting Mr. Mark L. McKoy directly at telephone 304–285–4426; toll free number 1–800–432–8330 (extension 4426); fax 304–285–4403; or e-mail *FutureGen.EIS@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project, contact Mr. Mark L. McKoy by the means provided above. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Telephone: 202–586–4600. Facsimile: 202–586–7031. Or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

President Bush proposed on February 27, 2003, that the United States undertake a $1 billion, 10-year project to build the world's first coal-fueled plant to produce electricity and H_2 with near-zero emissions. In response to this announcement, the DOE developed plans for the FutureGen Project, which would establish the technical and economic feasibility of producing electricity and H_2 from coal—a low-cost and abundant energy resource—while capturing and geologically storing the CO_2 generated in the process.

DOE would implement the FutureGen Project through a Cooperative Agreement that provides financial assistance to the FutureGen Industrial Alliance, Inc., a non-profit corporation that represents a global coalition of coal and energy companies. Members of the Alliance would be expected to provide an estimated $250 million to help fund Project development. The Alliance members are: American Electric Power Company, Inc. (Columbus, Ohio); Anglo American, LLC (London, UK); BHP Billiton Limited (Melbourne, Australia); China Huaneng Group (Beijing, China); CONSOL Energy, Inc. (Pittsburgh, Pennsylvania); Foundation Coal Holdings, Inc. (Linthicum Heights, Maryland); Kennecott Energy (now: Rio Tinto Energy America based in Gillette, Wyoming); Peabody Energy Corporation (St. Louis, Missouri); PPL Corporation (Allentown, Pennsylvania); and Southern Company (Atlanta, Georgia). The U.S. government would invest about $700 million in the FutureGen Project, with up to $80 million of that money coming from foreign governments. Several foreign governments have recently entered into discussions with DOE regarding possible contributions.

Purpose and Need for Agency Action

In pursuing the United States' goal of providing safe, affordable and clean energy for its citizens, coal must play an important role in the Nation's energy mix. A key obstacle, however, is the fact that combustion of fossil fuels leads to increased concentrations of CO_2 and other greenhouse gases in the atmosphere. Combined, the electricity and transportation sectors are responsible for nearly three-fourths of the country's man-made greenhouse gas emissions. Because power plants are stationary sources, it is more feasible to capture these emissions and sequester them than it would be to capture greenhouse gas emissions from mobile sources, such as automobiles.

To this end, DOE has identified a need for a near-zero emissions, coal-to-energy option that would produce electric power and H_2 from coal while permanently sequestering CO_2 in deep geological formations. The technical, economic, and environmental feasibility of producing electric power and hydrogen from coal, when coupled with sequestration technology, must be proven. In the absence of proven operations of a large, integrated, near-zero emissions power plant, the contribution of coal to the nation's energy mix could be reduced, particularly if environmental regulations continue to tighten, thereby potentially increasing use of non-domestic energy resources, and impacting energy security.

Proposed Action

DOE proposes to provide financial assistance (up to $700 million) for the Alliance to implement the FutureGen Project. The Alliance would plan, design, construct, and operate the FutureGen Project, an advanced integrated coal gasification combined cycle power and hydrogen gas production plant and CO_2 sequestration facility sized nominally at 275 MW (equivalent output), and appurtenant facilities (electrical transmission line connector, new pipelines and compressor stations to convey CO_2, injection wells, and monitoring wells). The goal of this initiative would be to prove the technical and economic feasibility of a near-zero emissions, coal-to-energy plant that could be commercially deployed by 2020. During the first phase of the FutureGen Project, the Alliance and DOE would quantify the specific emissions objectives. The FutureGen Project would co-produce electric power and H_2 in an industrial/utility setting while capturing and geologically sequestering approximately one to two million metric tons of CO_2 per year. The FutureGen Project would be a prototype facility that would facilitate large-scale integrated testing of development-stage technologies and could also provide a test platform for cutting-edge research on technologies that support the goal of near-zero emissions.

The FutureGen Project would proceed through 2018 with design, construction, operation, and monitoring. Performance and economic tests results would be shared among all participants, industry, the environmental community, and the public. DOE intends to invite participation from international organizations to maximize the global applicability and acceptance of FutureGen's results, helping to support an international consensus on the role of coal and geological sequestration in addressing global greenhouse gas emissions and energy security.

FutureGen Project Processes

The FutureGen Project would employ advanced coal gasification technology integrated with combined cycle electricity generation, H_2 production, CO_2 capture, and sequestration of the captured gas in geologic repositories. The gasification process would combine coal, oxygen (O_2), and steam to produce a H_2-rich ''synthesis gas.'' After exiting the conversion reactor, the composition of the synthesis gas would be ''shifted'' to produce additional H_2. The product stream would consist mostly of H_2, steam, and CO_2. Following separation of these three gas components, the H_2 would be used to generate electricity in a gas turbine and/or fuel cell. Some of the H_2 could be used as a feedstock for chemical plants or petroleum refineries or as a transportation fuel. Steam from the process could be condensed, treated, and recycled into the gasifier or added to the plant's cooling water circuit. CO_2 from the process would be sequestered in deep underground geologic formations that would be monitored to verify the permanence of CO_2 storage.

Technology Alternatives

The FutureGen Project would incorporate cutting-edge and emerging technologies ready for full-scale or sub-scale testing in a power plant setting prior to their commercial deployment. Identification of technology alternatives is currently in progress for key components of the FutureGen facility, involving gasification, O_2 production, H_2 production, synthesis gas cleanup, H_2 turbines, fuel cells and fuel cell/turbine hybrids, CO_2 sequestration, advanced materials, instrumentation, sensors and controls, and byproduct utilization. Decisions on incorporation of specific technologies would be made by the Alliance consistent with the overall project goal of proving the technical and economic feasibility of the near-zero emissions concept.

In identifying technology alternatives, the FutureGen Alliance started with a list of major components and subsystems of the power plant facility and created a matrix of potential configurations of equipment. Following presentations by various technology vendors and with assistance from numerous power plant experts, the matrix of potential configurations has been gradually reduced to three configurations, which will undergo more detailed cost and project risk analysis. Ultimately, the Alliance will identify the specific technology alternatives that would be most appropriate for the FutureGen Project. The goal of this process is to arrive at an initial conceptual design, which also will provide reference information to be used in the EIS impact analyses.

It is expected that sequestration would be accomplished using existing state-of-the-art technologies for both transmission and injection of the CO_2 stream. Various technologies will be considered for monitoring at the injection sites.

Alternatives, Including the Proposed Action

NEPA requires that agencies evaluate the reasonable alternatives to the proposed action in an EIS. The purpose of the agency action determines the range of reasonable alternatives. In this case, DOE proposes to provide financial assistance to the Alliance to build the first ever coal-fueled plant to produce electricity and H_2 with near-zero emissions. DOE believes the utility and coal industries should lead the project since they have significant interest in the success of near-zero emissions technology.

The EIS will analyze reasonable alternative sites for the FutureGen Project. These sites have been identified through a process that started with a solicitation by the Alliance for proposals. Twelve proposals were submitted by state and local organizations, representing sites in seven states (Illinois, Kentucky, North Dakota, Ohio, Texas, West Virginia, and Wyoming). The Alliance, working through various technical experts, first applied qualifying criteria that eliminated four sites and then subjected the remaining site proposals to scoring criteria. Along with the scoring criteria, best value criteria were applied in the final step of determining which sites are reasonable from a technical, environmental and economic perspective. At the conclusion of the review of proposals, the Alliance provided DOE with a report that describes the screening process, the results of the screening process, and identifies the sites that the Alliance concludes are candidates. The report is available at the Web site of the FutureGen Alliance, *http://www.FutureGenAlliance.org*.

DOE has reviewed the Alliance's selection process for fairness and compliance with the established approach, and DOE is satisfied with the results. Furthermore, having considered all proposed site alternatives in ascertaining which ones were reasonable, DOE has determined that the Alliance's candidate site list is the preliminary list of reasonable alternative sites for detailed analysis in the EIS. The preliminarily identified site alternatives are:

Illinois—Mattoon

The proposed 240-acre Mattoon power plant site is located in east-central Illinois approximately one mile northwest of the city of Mattoon and approximately 150 miles south of Chicago. This Coles County site is currently used as farmland, is flat, and is surrounded by a rural area of low-density population. The Rural King warehouse is located nearby. The site has access to coal delivery via rail and truck, and natural gas can be supplied via connection along rail right-of-way to an existing pipeline located one mile from the site. Cooling water would be gray water from wastewater treatment facilities in Mattoon (five miles southeast of the plant site) and Charleston (13 miles east of the plant site) and would be delivered via proposed new pipelines. Additional water would be supplied from local potable sources or from the Kaskaskia River, which is located about five miles to the north. Lake Shelbyville is more than eight miles to the west. The site would require the construction of two miles of additional transmission line to reach a 138 kV substation southeast of the site or 16 miles of new line to connect to a 345 kV substation south of the site. The site is outside the 500-year floodplain, and while no wetlands were identified onsite, wetlands may be present 0.75 mile downstream of the site and may also exist in the water supply pipeline corridors. CO_2 injection is proposed onsite, requiring no offsite pipeline construction. The Mt. Simon saline-bearing sandstone, the injection target at Mattoon, is expected to be between 1800 and 2100 meters (5900 and 6900 ft) deep beneath the site. The Mt. Simon is capped by the Eau Claire Formation, which is a laterally persistent shale expected to be between 100 and 150 meters (330 and 500 ft) thick at Mattoon.

Illinois—Tuscola

The proposed Tuscola site is a 208-acre parcel of land located in east-central Illinois 1.5 miles west of the city of Tuscola and approximately 20 miles north of the Mattoon site. The city of Champaign is located approximately 20 miles to the north, and Decatur is located approximately 35 miles to the west. This Douglas County site is located on flat farmland near an industrial complex, which is immediately west of the site. To the immediate north and south the area is rural with a very low population density. From this site the proposed project would be able to connect to the power line grid via construction of a one-mile connection to reach the 138 kV line to the north, or a 14-mile connection to reach the 345 kV line to the east. The site is situated along the CSX railroad and is about three miles from Interstate Highway 57. Therefore, it has access to coal delivery via rail and truck, and natural gas would be supplied by an existing onsite pipeline. The site is outside the 500-year floodplain, and while no wetlands were identified on the site, wetlands are likely to occur in the proposed CO_2 and electricity transmission corridors. Cooling water for the plant would be obtained from the Equistar Chemical Company, which draws water directly from the Kaskaskia River 1.5 miles to the west of the site, and would require the construction of a new pipeline of this length. An additional new pipeline between 9.5 and 11.5 miles in length would also be required to transport CO_2 to one of two potential injection fields due south of the plant site. The primary injection site, located 11.5 miles from the plant site, is a 10-acre parcel in a rural, agricultural area. Tuscola's proposed injection target is the Mt. Simon sandstone, a saline-bearing formation expected to be between 1200 and 1800 meters (4000 and 5900 ft) deep at the proposed injection site. The primary cap rock here is the Eau Claire Formation, which is a laterally persistent shale expected to be between 100 and 150 meters (330 and 500 ft) thick at the Tuscola injection site.

Texas—Jewett

Located north of the town of Jewett, in east-central Texas, 65 miles north of Bryan/College Station, and 60 miles east of Waco, the proposed 400-acre Jewett site is also known as the ''Heart of Brazos'' site. The site is located at the intersection of Leon, Limestone and Freestone counties along U.S. Highway 79 and Farm Road 39 in an area characterized by very gently rolling

reclaimed mine lands immediately adjacent to an operating lignite mine and the 1800 MW Jewett power plant. It has access to coal delivery via rail and truck, and natural gas would be supplied by an existing onsite pipeline. Proposed groundwater wells on property immediately west of the site would supply cooling water to the plant via a new pipeline. Transmission infrastructure with excess capacity exists on the site. This site is outside of the 500-year floodplain. There are no jurisdictional wetlands on the site. Lake Limestone and the Navasota River are located about 3.5 miles to the west. It would be necessary to construct 33 miles of new CO_2 pipeline, 25 miles of which would be built along an existing gas pipeline right-of-way, to transport CO_2 to the storage site, which is located on 1550 acres located northeast of the power plant site. The land use at the sequestration site is pastures, wooded hills and open fields. The proposed target injection formations are the Travis Peak sandstone, and the Rodessa and Pettit limestones, all of which are saline-bearing formations between 1400 and 3600 meters (4600 and 11,800 ft) deep. The primary seal overlying these formations is the 120-meter (400 ft) thick Eagleford Shale.

Texas—Odessa

The proposed Odessa site is located on 600 acres, approximately 15 miles southwest of the city of Odessa in Ector County, Texas. The site is on flat land adjacent to Interstate Highway 20. There is an extensive junk yard of abandoned oil and gas equipment along the site's southern border. The proposed power plant property is entirely above the 500-year floodplain and contains no jurisdictional wetlands. Surrounding land is or was used primarily for oil and gas exploration with some scattered industrial plants (sulfur manufacturing, cement kiln, etc.). The site has access to coal delivery via rail and truck, and natural gas would be supplied by an existing onsite pipeline. Water would be provided via a pipeline to be constructed by the City of Odessa to transport water from the Texland Great Plains Water Supply well located 49 miles to the north, which produces water from the Ogallala aquifer. Alternatively, water may be purchased from the West Texas Water Supply System, located 37 miles west of the site. Two miles of new transmission line would be needed to connect the plant to either a 138 kV line or a 345 kV line. The proposed 6,000-acre injection field is 58 miles south of the Odessa plant site. CO_2 would be transported in (and co-mingled in) an existing regional CO_2 pipeline network. A short new CO_2 pipeline would connect the power plant site to the existing pipeline, and a new four-mile (approximately) pipeline would connect the existing CO_2 pipeline to the proposed injection sites. Proposed injection targets for this site are the Queen Formation and the Delaware Mountain Group, both of which are more than 1100 meters (3600 ft) deep beneath grazing lands and scrub lands at the site. The system is capped by layers of anhydrite, dolomitic anhydrite, and anhydrite-halite, which are identified as the upper Queen and the overlying Seven Rivers Formations.

In addition to the site alternatives preliminarily identified in the NOI, the EIS will describe different technologies and strategies for implementing important elements of the FutureGen Project. Critical technology alternatives for various components and subsystems of an integrated gasification combined-cycle power plant exist for the air separation unit (*e.g.*, cryogenic separation versus physical membrane separation), gasifier (various commercial gasifiers with differing feed types, wall structures, and ash/slag recovery and cooler systems), gas turbine (*e.g.*, syngas turbine versus H_2 turbine), CO_2 capture system (*e.g.*, chemical scrubbers, pressure-swing absorption systems, physical membranes), and synthesis gas as well as turbine combustion gas clean-up systems (*e.g.*, selective catalytic reduction versus selective non-catalytic reduction). The Alliance will provide to DOE a conceptual design that will be analyzed in the EIS for each of the alternative sites. This conceptual design will encompass the power plant and sequestration requirements and attributes (*e.g.*, emissions, effluents, feed stocks, workers) for any of the technology alternatives that may be selected by the Alliance in the final designs. Mitigation will be addressed for the potential impacts of the FutureGen Project at each of the four sites and for the conceptual design and technologies considered.

DOE will also consider a no-action alternative whereby DOE would not fund the FutureGen Project. In the absence of DOE funding, it would be unlikely that the Alliance, or industry in general, would soon undertake the utility-scale integration of CO_2 capture and geologic sequestration with a coal-fired power plant. Absent DOE's investment in a utility-scale facility, the development of integrated CO_2 capture and sequestration with power plant operations would occur more slowly.

Decision Making Process

No sooner than 30 days following completion of the Final EIS, DOE will announce in a Record of Decision (ROD) either the no-action alternative or those sites, if any, that are acceptable to DOE. If DOE selects the action alternative, the Alliance will subsequently select a host site from among those, if any, listed in the ROD as acceptable to DOE. Following the tentative selection of a host site, the Alliance will conduct extensive site characterization work on the chosen site. Information obtained from the characterization will be reviewed by the DOE and will support the completion of a supplement analysis (see 10 CFR 1021.314) by DOE to determine whether the newly gained information would have altered in a significant way the findings in the EIS. The supplement analysis will be used to determine whether a Supplemental EIS must be prepared.

Preliminary Identification of Environmental Issues

DOE intends to address the issues listed below when considering the potential impacts resulting from the siting, construction and operation of the FutureGen power plant, sequestration field, and associated facilities. This list is neither intended to be all-inclusive nor a predetermined set of potential impacts. DOE invites comments on whether this is the correct list of important issues that should be considered in the EIS. The environmental issues include:

- Air quality impacts: potential for air emissions during construction and operation of the power plant and appurtenant facilities to impact local sensitive receptors, local environmental conditions, and special-use areas, including impacts to smog and haze and impacts from dust and any significant vapor plumes;
- Noise and light impacts: potential impacts from construction, transportation of materials, and facility operations;
- Traffic issues: potential impacts from the construction and operation of the facilities, including changes in local traffic patterns, deterioration of roads, traffic hazards, and traffic controls;
- Floodplains: potential impacts to flood flow resulting from earthen fills, access roads, and dikes that might be needed in a floodplain;
- Wetlands: potential impacts resulting from fill, sediment deposition, vegetation clearing and facility erection that might be needed in a wetland;
- Visual impacts associated with facility structures: views from

neighborhoods, impacts to scenic views (*e.g.*, impacts from water vapor plumes, power transmission lines, pipelines), internal and external perception of the community or locality;

• Historic and cultural resources: potential impacts from the site selection, design, construction and operation of the facilities;

• Water quality impacts: potential impacts from water utilization and consumption, plus potential impacts from wastewater discharges;

• Infrastructure and land use impacts: potential environmental and socioeconomic impacts of project site selection, construction, delivery of feed materials, and distribution of products (*e.g.*, power transmission lines, pipelines);

• Marketability of products and market access to feedstocks;

• Solid wastes: pollution prevention plans and waste management strategies, including the handling of ash, slag, water treatment sludge, and hazardous materials;

• Disproportionate impacts on minority and low-income populations;

• Connected actions: potential development of support facilities or supporting infrastructure;

• Ecological impacts: potential on-site and off-site impacts to vegetation, terrestrial wildlife, aquatic wildlife, threatened or endangered species, and ecologically sensitive habitats;

• Geologic impacts: potential impacts from the sequestration of CO_2 and other captured gases on underground resources such as potable water supplies, mineral resources, and fossil fuel resources;

• Ground surface impacts from CO_2 sequestration: potential impacts from leakage of injected CO_2, potential impacts from induced flows of native fluids to the ground surface or near the ground surface, and the potential for induced ground heave and/or microseisms;

• Fate and stability of sequestered CO_2 and other captured gases;

• Health and safety issues associated with CO_2 capture and sequestration;

• Cumulative effects that result from the incremental impacts of the proposed project when added to other past, present, and reasonably foreseeable future projects;

• Compliance with regulatory requirements and environmental permitting;

• Environmental monitoring plans associated with the power plant and with the CO_2 sequestration site;

• Mitigation of identified environmental impacts; and

• Ultimate closure plans for the CO_2 sequestration site and reservoirs.

Proposed EIS Schedule

A tentative schedule has been developed for the EIS. The public scoping period will close on September 13, 2006. The Draft EIS is scheduled to be issued for public review and comment in March 2007, followed by a 45-day public comment period and public hearings. The Final EIS is scheduled to be issued in June 2007, followed by the ROD in August 2007.

Public Scoping Process

To ensure that all issues related to this proposed action are addressed, DOE seeks public input to define the scope of the EIS. The public scoping period will begin with publication of the NOI and end on September 13, 2006. Interested government agencies, private-sector organizations and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues. Written, e-mailed, faxed, or telephoned comments should be received by September 13, 2006 (see **ADDRESSES**).

DOE will conduct public scoping meetings at locations, dates and times specified in a future **Federal Register** notice and in notices published in local newspapers. These notices are scheduled to be published within the next two weeks and will provide the public with at least two weeks notice. Generally, one scoping meeting will be held near each proposed power plant site.

An informal session of the public scoping meetings will begin at approximately 4 p.m., followed by a formal session beginning at approximately 7 p.m. Members of the public who wish to speak at a public scoping meeting should contact Mr. Mark L. McKoy, either by phone, fax, e-mail, or in writing (see **ADDRESSES** in this Notice). Those who do not arrange in advance to speak may register at a meeting (preferably at the beginning of the meeting) and may speak after previously scheduled speakers. Speakers will be given approximately five minutes to present their comments. Those speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit all speakers to five minutes initially and provide second opportunities as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration. State and local elected officials and tribal leaders may be given priority in the order of those making oral comments.

DOE will begin the meeting with an overview of the proposed FutureGen Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands the comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 25th day of July, 2006.

Andrew Lawrence,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. E6–12118 Filed 7–27–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6677–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060093, ERP No. D–AFS–K61164–CA, Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance, Implementation, Special-Use-Permit to Twelve Pack Station and Two Outfitter/Guides, Inyo National Forest, CA.

Summary: EPA expressed environmental concerns about adverse impacts to water quality from specific campsites, grazing, and trail use, and recommended implementation of protective measures described in Alternative 3 and the inclusion of a detailed monitoring and enforcement plan in the final EIS. Rating EC2.

EIS No. 20060105, ERP No. D–COE–D01003–WV, Spruce No. 1 Mine, Construction and Operation, Mining for 2.73 Million Ton of Bituminous Coal, NPDES Permit and U.S. Army COE Section 404 Permit, Logan County, WV.

Summary: EPA expressed concerns about cumulative impacts from mountaintop mining activities in the Little Coal Watershed, and recommended that the U.S. Army Corps of Engineers, Federal and State agencies, the applicant, public and other stakeholders agree to develop a Little Coal Watershed cumulative impact assessment and restoration plan. Rating EC2.

EIS No. 20060122, ERP No. D–BIA–L60108–WA, Cowlitz Indian Tribe Trust Acquisition and Casino Project, Take 151.87 Acres into Federal Trust and Issuing of Reservation Proclamation, and Approving the Gaming Development and Management Contract, Clack County, WA.

Summary: EPA expressed environmental objections because project impacts have the potential to exceed water and air quality standards and requested additional information that demonstrates that water and air quality standards will be met and that wetland impacts will be adequately mitigated. Rating EO2.

EIS No. 20060136, ERP No. D–AFS–L65508–AK, Kenai Winter Access Project, Develop a Winter Access Management Plan for 2006/2007 Winter Season, Implementation, Seward Ranger District, Chugach National Forest, Located on the Kenai Peninsula in South-central, AK.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20060167, ERP No. D–FHW–F40435–IL, Illinois Route 29 (FAP 318) Corridor Study, Transportation Improvement from Illinois 6 to Interstate 180, Funding and U.S. Army COE Section 404 Permit, Peoria, Marshall, Putnam and Bureau Counties, IL.

Summary: EPA expressed environmental concerns about potential impacts to wetlands and 142 acres of woodland habitat. Rating EC2.

EIS No. 20060171, ERP No. D–COE–E36185–KY, Levisa Fork Basin Project, Section 202 Flood Damage Reduction, Big Sandy River, Floyd County, KY.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20060182, ERP No. D–COE–K39098–CA, San Clemente Dam Seismic Safety Project, Increase Dam Safety to Meet Current Design Standards, Monterey County, CA.

Summary: EPA expressed environmental concerns about impacts to the steelhead population, and requested additional information regarding the long-term benefits to the River from removal of the dam. Rating EC2.

EIS No. 20060188, ERP No. D–NOA–K90031–CA, Channel Islands National Marine Sanctuary Management Plan Review, Implementation, Santa Barbara and Ventura Counties, CA.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20060222, ERP No. D–COE–H36111–00, Kansas Citys, Missouri and Kansas Flood Damage Reduction Study, Improvements to the Existing Line of Protection, Birmingham, Jackson, Clay Counties, MO and Wyandotte County, KS.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20060223, ERP No. D–FRC–G03031–00, Carthage to Perryville Project, Construction and Operation of a Natural Gas Pipeline Facilities, Center Point Energy Gas Transmission, Located in various counties and parishes in eastern Texas and northern Louisiana.

Summary: EPA does not object to the preferred alternative. Rating LO.

EIS No. 20060227, ERP No. D–COE–G39047–00, White River Minimum Flood Study, Manages the Water and Land Areas at Five Reservoirs: Beaver, Table Rock, Bull Shoals, Norfork and Greers Ferry, Little Rock District, AR and MO.

Summary: EPA does not object to the preferred alternative. Rating LO.

EIS No. 20060041, ERP No. DS–COE–E34031–FL, South Florida Water Management District, (SFWMD), Proposes Construction and Operation Everglades Agricultural Area Reservoir A–1 Project, Lake Okeechobee, Palm Beach County, FL.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action. Rating LO.

Final EISs

EIS No. 20060118, ERP No. F–AFS–L65384–OR, Drew Creek Diamond Rock and Divide Cattle Allotments, Alternative 2 Preferred Alternative, Issuance of Term Grazing Permits on Livestock Allotments on Tiller Ranger District, Implementation, Umpqua National Forest, Douglas and Jackson Counties, OR.

Summary: The Final EIS included data on the cattle management plans and addressed EPA's concerns about water quality; therefore, EPA does not object to the proposed project.

EIS No. 20060121, ERP No. F–CGD–E03013–00, Compass Port and Deepwater Port License Application, To Construct a Liquefied Natural Gas (LNG) Receiving, Storage and Regasification Facility, Proposed Offshore Pipeline and Fabrication Site, NPDES Permit, U.S. Army COE Section 10 and 404 Permits, Mobile County, AL and San Patricio and Nueces County, TX.

Summary: EPA's previous concerns regarding water quality and marine ecosystem impacts will be addressed thru pollutant minimization and prevention measures.

EIS No. 20060144, ERP No. F–FHW–F40421–IN, US–31 Improvement from Plymouth to South Bend, Running from Southern Terminus at US–30 to Northern Terminus at US–20, Marshall and St. Joseph Counties, IN.

Summary: EPA expressed environmental concerns about impacts to upland forest habitat as well as water quality, and recommended additional voluntary upland forest mitigation and BMPs/mitigation measures that enhance water quality and stream integrity.

EIS No. 20060148, ERP No. F–NRC–E05101–NC, Generic—Brunswick Stream Electric Plant, Units 1 and 2 (TAC Nos. MC4641 and MC4642) License Renewal of Nuclear Plants, Supplement 25 to NUREG–1437, Brunswick County, NC.

Summary: EPA continues to have concerns about emergency preparedness.

EIS No. 20060168, ERP No. F–FRC–D03005–00, Cove Point Expansion Project, Construction and Operation of a Liquefied Natural Gas (LNG) Import Terminal Expansion and Natural Gas Pipeline Facilities, US. Army COE Section 404 Permit Docket Nos. CPO5–130–000, CP05–131–000 and CP05–132–00, PA, VA, WV, NY and MD.

Summary: EPA continues to express environmental concerns about wetland impacts/mitigation and NO_X conformity.

EIS No. 20060183, ERP No. F–FAA–J51012–UT, St. George Municipal Airport Replacement, Funding, City of St. George, Washington County, UT.

Summary: EPA continues to have environmental concerns about cumulative impacts.

EIS No. 20060198, ERP No. F–AFS–J65392–MT, Helena National Forest

Noxious Weed Treatment Project, Implementation, Lewis and Clark, Broadwater, Powell, Jefferson and Meagher Counties, MT.

Summary: The Final EIS addressed EPA concerns with the integrated weed management program to control invasion of noxious weeds and protecting water quality; therefore, EPA does not object to the proposed project.

EIS No. 20060214, ERP No. F–NRC–C06015–NY, Generic—License Renewal of Nuclear Plants for Nine Mile Point Nuclear Station, Units 1 and 2, Supplement 24 to NUREG 1437, Implementation, Lake Ontario, Oswego County, NY.

Summary: EPA continues to have environmental concerns about aquatic life impacts, pollution prevention, and waste minimization.

EIS No. 20060215, ERP No. F–AFS–L65501–AK, Whistle Stop Project, Provide Access to Backcountry Recreation Area on National Forest, System (NFS) Lands, on the Kenai Peninsula between Portage and Moose Pass, Chugach National Forest, Kenai Peninsula Borough, AK.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060216, ERP No. F–IBR–H39011–00, Programmatic—Platte River Recovery Implementation Program, Assessing Alternatives for the Implementation of a Basinwide, Cooperative, Endangered Species Recovery Program, Four Target Species: Whooping Crane, Interior Least Tern, Pipping Plover and Pallid Sturgeon, NE, WY, and CO.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20060219, ERP No. F–COE–D35061–VA, Craney Island Eastward Expansion, Construction of a 580-acre Eastward Expansion of the Existing Dredged Material Management Area, Port of Hampton Roads, Norfolk Harbor and Channels, VA.

Summary: EPA continues to have environmental concerns about wetland and oyster reef impacts and the success of the mitigation in compensating for those impacts.

EIS No. 20060234, ERP No. F–AFS–F65051–IL, Shawnee National Forest Proposed Land and Resource Management Plan Revision, Implementation, Alexander, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Union and Williamson Counties, IL.

Summary: EPA does not object to the preferred alternative.

EIS No. 20060217, ERP No. FA–COE–F36163–00, Upper Des Plaines River, Proposed Flood Damage Reduction (Site 37 on Upper Des Plaines River), Prospect Heights, Cook County, IL.

Summary: EPA does not object to the proposed project.

Dated: July 25, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–12140 Filed 7–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6677–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed July 17, 2006 Through July 21, 2006

Pursuant to 40 CFR 1506.9.

EIS No. 20060300, Draft EIS, AFS, CO, White River National Forest Travel Management Plan, To Accommodate and Balance Transportation Needs, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat, Pitkin, Rio Blanco, Routt and Summit Counties, CO

Comment Period Ends: October 25, 2006, Contact: Wendy Haskins 970–945–3303.

EIS No. 20060301, Final EIS, NPS, ID, Minidoka Internment National Monument (Former Minidoka Relocation Center) , General Management Plan, Implementation, Jerome County, ID

Wait Period Ends: August 28, 2006, Contact: Anna Tamura 206–220–4157.

EIS No. 20060302, Final EIS, NPS, FL, Fort King National Historic Landmark, Special Resource Study, Implementation, Second Seminole War Site, City of Ocala, Marion County, FL

Wait Period Ends: August 28, 2006, Contact: Tim Bemisderfer 404–562–3124 Ext. 693.

EIS No. 20060303, Final EIS, NOA, GA, Gray's Reef National Marine Sanctuary Draft Management Plan (DMP), Address Current Resource Conditions and Compatible Multiple Uses, Located 17.5 Nautical mile off Sapelo Island, GA

Wait Period Ends: August 28, 2006, Contact: Elizabeth Moore 301–713–3125 Ext 270.

EIS No. 20060304, Final EIS, AFS, ID, Clear Prong Project, Timber Harvest, Temporary Road Construction, Road Maintenance, Road Decommissioning, Thinning of Sub-Merchantable Tree, and Prescribed Fire, Boise National Forest, Cascade Ranger District, Valley County, ID

Wait Period Ends: August 28, 2006, Contact: Keith Dimmett 208–382–7400.

EIS No. 20060305, Draft EIS, GSA, VT, New U.S. Border Station and Commercial Port of Entry Route I–91 Derby Line, Design and Construction, Vermont

Comment Period Ends: September 11, 2006, Contact: Glenn C. Rotondo 617–565–5694.

EIS No. 20060306, Final EIS, FHW, FL, Indian Street Bridge PD&E Study, New Bridge Crossing of the South Fork of the St. Lucie River County Road 714 (Martin Highway)/SW 36th Street/Indian Street from Florida's Turnpike to East of Willoughby Boulevard, Martin County, FL

Wait Period Ends: August 28, 2006, Contact: J. Chris Richter 850–942–9650 Ext 3022.

EIS No. 20060307, Draft Supplement, FHW, WA, WA–99 Alaskan Way Viaduct and Seawall Replacement Project, Additional Information and Evaluation of Construction Plan, Provide Transportation Facility and Seawall with Improved Earthquake Resistence, U.S. Army COE Section 10 and 404 Permits, Seattle, WA

Comment Period Ends: September 22, 2006, Contact: Margaret Kucharski 206–6382–6356.

EIS No. 20060308, Draft EIS, FTA, TX, Southeast Corridor Project, Proposed Fixed-Guideway Transit System, Funding, Metropolitan Transit Authority (METRO) of Harris County, Houston, Harris County, TX

Comment Period Ends: September 11, 2006, Contact: John Sweek 817–978–0550.

EIS No. 20060309, Draft EIS, NOA, 00, Pacific Coast Groundfish Fishery Management Plan, Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measures for the 2007–2008 Pacific Coast Groundfish Fishery and Amendment 16–4 Rebuilding Plans for Seven Depleted Pacific Coast Groundfish Species, WA, OR and CA

Comment Period Ends: September 11, 2006, Contact: Robert Lohn 206–625–6150.

EIS No. 20060310, Final EIS, IBR, NM, Long-Term Miscellaneous Purposes Contract Abstract, To Use Carlsbad Project Water for Purposes Other than Irrigation, Eddy County, NM

Wait Period Ends: August 28, 2006, Contact: Marsha Carra 505–462–3602.

EIS No. 20060311, Draft EIS, NPS, UT, Utah Museum of Natural History, Construction and Operation, New Museum Facility at University of Utah, Salt Lake City, UT

Comment Period Ends: September 28, 2006, Contact: Bridger Call 801–355–8816.

EIS No. 20060312, Draft EIS, AFS, CA, SPI Road Project, Construction of an Access Road Across National Forest Land, Special Use Permit, Six Rivers National Forest, Lower Trinity Ranger District, Trinity County, CA

Comment Period Ends: September 11, 2006, Contact: Katherine Worn 707–441–3561.

EIS No. 20060313, Draft EIS, BIA, MT, Kerr Hydroelectric Project, Proposed Drought Management Plan, Implementation, Flathead Lake, MT

Comment Period Ends: September 11, 2006, Contact: Jeffery Loman 202–208–7373.

Dated: July 25, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–12136 Filed 7–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0460; FRL–8204–1]

Board of Scientific Counselors Computational Toxicology Subcommittee Meeting—August 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting (via conference call) of the Board of Scientific Counselors (BOSC) Computational Toxicology Subcommittee.

DATES: The conference call will be held on Wednesday, August 16, 2006, from 1 p.m. to 3 p.m. eastern time, and may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the calls from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0460, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2006–0460.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–0460.
- *Mail:* Send comments by mail to: Board of Scientific Counselors Computational Toxicology Meeting—June 2006 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2006–0460.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2006–0460. **Note**: this is not a mailing address. 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–ORD–2006–0460. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors Computational Toxicology Subcommittee Meeting—June 2006 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the conference call may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section. In general, each individual making an oral presentation will be limited to a total of three minutes.

The purpose of this conference call is to review, discuss, and potentially approve a draft letter report prepared by the BOSC Computational Toxicology Subcommittee. Proposed agenda items for the conference call include, but are not limited to: discussion of the draft letter report; subcommittee feedback on the ORD Computational Toxicology Implementation Plan; and next steps. The conference call is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 21, 2006.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. E6–12113 Filed 7–27–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center 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 24, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. U.S. Century Bancorp, Inc., Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of U.S. Century Bank, Miami, Florida.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Inland Bancorp Holding Company, Oak Brook, Illinois; to aquire 100 percent of the voting shares of Cambank, Inc., Lake Zurich, Illinois, and thereby indirectly acquire Cambridge Bank, Lake Zurich, Illinois.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FirsTier II Bancorp, Cheyenne, Wyoming; to acquire 100 percent of the voting shares of FirsTier Bancorp I, Cheyenne, Wyoming, and thereby indirectly acquire FirsTier Bank, Upton, Wyoming.

Board of Governors of the Federal Reserve System, July 25, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–12081 Filed 7–27–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

30-Day Notice; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, New collection;

Title of Information Collection: Body Works Toolkit Evaluation Survey

Form/OMB No.: OS–0990–New;

Use: This information will be used by the Office of Women's Health (OWH) to evaluate effectiveness of the

BodyWorks program and make recommendations on how its distribution and use could be changed or improved while the program is still active.

Frequency: Reporting, on occasion;

Affected Public: Not-for-profit institutions,

Annual Number of Respondents: 425;

Total Annual Responses: 765;

Average Burden Hours per Response: .75;

Total Annual Hours: 574;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/ocio/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, *Attention:* (OMB #0990–New), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: July 20, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–12064 Filed 7–27–06; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0304]

60-Day Notice; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension, of a currently approved collection;

Title of Information Collection: National Outcomes Performance Assessment of the Collaborative Initiative to Help End Chronic Homelessness.

Form/OMB No.: OS–0990–0304;

Use: To help determine whether the goals of the initiative are being met, and to help ensure accountability in local spending of the total $35-million of federal funds invested into the initiative, the three sponsoring federal agencies (HUD, HHS, and VA) are funding an independent performance outcomes evaluation coordinated by the VA Northeast Program Evaluation Center (NEPEC).

Frequency: Reporting, on occasion & quarterly.

Affected Public: Individuals or households.

Annual Number of Respondents: 787.

Total Annual Responses: 1587.

Average Burden Per Response: 90%.

Total Annual Hours: 1,903.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, *Attention:* Sherrette Funn-Coleman (0937–0166), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: July 19, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–12065 Filed 7–27–06; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0001; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision, of a currently approved collection.

Title of Information Collection: Application of Waiver of the 2 Year Foreign Residence Requirement of the Exchange Visitor Program.

Form/OMB No.: OS–0990–0001.

Use: Form and supplementary information sheets (Supplement A—Research and Supplement B—Clinical Care) is used by this Department to make a determination, in accordance with its published regulations, as to whether or not to request from the Department of State, a waiver of the two-year foreign residence requirement for applicants in the United states on a J-l visa. The J-l visa is an exchange visa which carried a two-year return home requirement.

Applicant institutions apply to this Department to request a waiver on behalf of foreign medical graduates to work in their medical facilities. Our current program deals with both research and clinical care waivers. Clinical care waivers allow medical centers, etc. to apply for a waiver of the residence requirement for physicians to work in HHS designated health manpower shortage areas doing primary care.

Frequency: Reporting, single time.

Affected Public: Regulatory or compliance; Application of benefits.

Annual Number of Respondents: 250.

Total Annual Responses: 250.

Average Burden Hours per Response: 10.

Total Annual Hours: 2500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Sherrette Funn-Coleman (0990–0001), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: July 21, 2006.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–12134 Filed 7–27–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 71 FR 37080, dated June 29, 2006) is amended to reflect the title change for the Office of Genomics and Disease Prevention, Coordinating Center for Health Promotion, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title for the *Office of Genomics and Disease Prevention (CUE)* and insert the *National Office of Public Health Geonmics (CUE).*

Dated: July 19, 2006.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 06–6519 Filed 7–27–06; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–372(S), CMS–10190, CMS–10183, CMS–R–262 , CMS–10196 and CMS–10193]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community-Based Services Waivers and Supporting Regulations in 42 CFR 440.180 and 441.300–310; *Use:* States with an approved waiver under Section 1915(c) of the Social Security Act are required to submit a report annually in order for CMS to: (1) Verify that State assurances regarding waiver cost-neutrality are met; and (2) determine the waiver's impact on the type, amount, and cost of services provided under the State Plan and health and welfare of recipients. *Form Number:* CMS–372(S) (OMB#: 0938–0272); *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 50; *Total Annual Responses:* 287; *Total Annual Hours:* 21,525.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Plan Preprints to Implement Sections of the Deficit Reduction Act (DRA) of 2006; *Use:* This information collection is requested to allow States to submit State Plan preprints to CMS for review and approval. The DRA provides States with the flexibility to request through the use of State Plan preprints changes in benefit packages, cost sharing, non-emergency medical transportation services, etc. CMS will send State Medicaid Director letters and State Plan preprints to States in an effort to request these changes, if they so choose, and to make the process as simple as possible.; *Form Number:* CMS–10190 (OMB#: 0938–0993); *Frequency:* Other: One-time; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 56.

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* National Evaluation of the Demonstration to Improve the Direct Service Community Workforce; *Use:* The purpose of this research is to perform a national evaluation of the impact of ten demonstration grants awarded by CMS. These demonstration grants support various interventions to improve the recruitment and retention of direct service workers. The data will permit the national evaluation to compare and contrast the processes and outcomes of the ten demonstration projects. The evaluation will provide an understanding of which types of interventions are most likely to be effective under a range of circumstances. The data collections consist of six components. From participating sites this will include: 200 agencies, 4,000 direct service workers, and 4,000 consumers. From control sites this will include 50 agencies, 1,333 direct service workers, and 1,333 consumers. All data will be collected using mail surveys; *Form Number:* CMS–10183 (OMB#: 0938–NEW); *Frequency:* Other: One-time; *Affected Public:* Individuals or Households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 10,916; *Total Annual Responses:* 10,916; *Total Annual Hours:* 10,916.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDPs); *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. CMS requires that MA and PDP organizations submit a completed formulary and PBP as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval; *Form Number:* CMS–R–262 (OMB#: 0938–0763); *Frequency:* On occasion, Annually, and Other: As required by new legislation; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 553; *Total Annual Responses:* 5,807; *Total Annual Hours:* 13,272.

5. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Part C Audit Guide, Version 4.0 and Supporting Regulation contained in 42 CFR Section 423.502; *Use:* The Medicare Modernization Act provides CMS the regulatory authority to audit, evaluate, or inspect any Part C sponsors' performance related to the law in the areas including enrollment & disenrollment, marketing, benefits and beneficiary protections, quality assurance, provider relations and contracts. The information collected

will be an integral resource for oversight, monitoring, compliance, and auditing activities necessary to ensure quality provision of the Part C Medicare Advantage benefit to beneficiaries; *Form Number:* CMS–10196 (OMB#: 0938–New); *Frequency:* Recordkeeping and Reporting—Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 393; *Total Annual Responses:* 393; *Total Annual Hours:* 12,576.

6. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Clinical Laboratory Services Competitive Bidding Demonstration Project—Bidding Form; *Use:* The Medicare Clinical Laboratory Competitive Bidding Demonstration is mandated by section 302(b) of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003. The purpose of the demonstration is to determine whether competitive bidding can be used to provide quality laboratory services at prices below current Medicare reimbursement rates. The application is to collect information from organizations that supply clinical laboratory services to Medicare beneficiaries in the Competitive Bidding Area (CBA). This information will be used to determine bidding status, winners under the bidding competition, and the competitively-determined fee schedule for demonstration tests. The winning laboratories will be selected based on multiple criteria, including price bid, laboratory capacity, service area, and quality. Multiple winners are expected in each competitive acquisition area.; *Form Number:* CMS–10193 (OMB#: 0938–New); *Frequency:* Reporting—Other: once every three years.; *Affected Public:* Business or other for-profit; *Number of Respondents:* 80; *Total Annual Responses:* 80; *Total Annual Hours:* 7010.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: July 20, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–12035 Filed 7–27–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10202]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Data Collection for Administering the Medicare Health Improvement Survey; *Use:* This beneficiary survey is to obtain information about beneficiary behavior, physical functioning and satisfaction with the care management programs data required to evaluate the Medicare Care Management for High Cost Beneficiaries demonstration (CMHCB). This demonstration provides an opportunity to test new models of care for Medicare beneficiaries who are high-cost and who have complex chronic conditions with the goals of reducing future costs, improving quality of care and quality of life, and improving beneficiary and provider satisfaction. *Form Number:* CMS–10202 (OMB#: 0938–NEW); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 3633; *Total Annual Responses:* 3633; *Total Annual Hours:* 908.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on September 26, 2006. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 20, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–12036 Filed 7–27–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10201]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR 1320(a)(2)(ii). This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event.

The evaluation is to study the MMA Section 702 demonstration, ''Clarify the Definition of Homebound.'' The 2-year demonstration in three regions is to test the effect of deeming certain beneficiaries homebound for purposes of meeting the Medicare home health benefit eligibility requirements. The demonstration began October 2004, and since October 2004, enrollment into the demonstration has been exceedingly small—a total of about 50 beneficiaries. This has occurred despite the fact that CMS has conducted a broad variety of outreach efforts to beneficiaries, home health agencies, and the public. Activities have included special conference calls; demonstration Website; public meetings; mass mailings to physician groups, insurers, hospitals, governments, aging offices, independent living centers, and others who have contact with disabled beneficiaries; letters of information to stakeholders; e-mails to home health agencies and advocacy organizations; attendance/booths/presentations at meetings; article placements; and special messages on carrier and intermediary Medicare explanation of benefits letters.

The purpose of the survey is to understand barriers that may have operated to impede enrollment in the demonstration, such as problems with eligibility definitions, other reasons why beneficiaries may not have qualified, and any other relevant information that agencies may be able to provide. The survey will also be used to understand the way agencies in the demonstration states apply the homebound eligibility criteria in practice. In addition, qualitative information so far has indicated that the role of the homebound criterion may have changed since the Medicare manual was revised to allow for home health beneficiaries to attend religious services and adult day care. If the revised definition has reduced concerns about the restrictiveness of the homebound eligibility criterion, we believe this information is important to include in the report to Congress. The original motivation for the demonstration was to loosen restrictions for certain types of beneficiaries.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Home Health Agency Survey on the Medicare Home Health Independence Demonstration; *Use:* The research evaluation for this information collection is being conducted under contract with Mathematica Policy Research, Inc. Mathematica Policy Research, Inc. (MPR) will use the quantitative data collected with the home health agency survey to supplement the qualitative data collected from other central stakeholders to understand the reasons for the low enrollment rate for the demonstration and ways to change the home health eligibility requirements. MPR has designed this mail questionnaire to collect information from the home health agencies in the following domains: Interpretation of the homebound rule, impact of the homebound rule upon their admissions and discharges, understanding of the demonstration eligibility criteria and determination of the eligibility status of their caseloads. This information will be used by Congress to understand why the demand within the Medicare population for the homebound waiver did not materialize as anticipated. *Form Number:* CMS–10201 (OMB#: 0938-NEW); *Frequency:* Reporting—One-time; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal governments; *Number of Respondents:* 120; *Total Annual Responses:* 120; *Total Annual Hours:* 60.

CMS is requesting OMB review and approval of this collection by *September 1, 2006*, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by August 27, 2006.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by August 27, 2006:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attn: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850,

and,

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: July 20, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–12037 Filed 7–27–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1527–N]

Medicare Program; Request for Nominations and Meeting of the Practicing Physicians Advisory Council, August 28, 2006

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a request for nominations and the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Council will meet to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services (the Secretary). This meeting is open to the public. In addition, this notice invites all organizations representing physicians to submit nominations for consideration to fill five seats that will be vacated by current Council members in 2007.

DATES: The Council meeting is scheduled for Monday, August 28, 2006, from 8:30 a.m. until 5 p.m. e.d.t.

ADDRESSES: The meeting will be held in Room 705A, 7th floor, in the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Meeting Registration: Persons wishing to attend this meeting must register by contacting Kelly Buchanan, the Designated Federal Official (DFO), by e-mail at *PPAC@cms.hhs.gov* or by telephone at (410) 786–6132, at least 72 hours in advance of the meeting. This meeting will be held in a Federal Government Building, Hubert H. Humphrey Building, and persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, and will be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the Hubert H. Humphrey Building and will not be permitted to attend the Council meeting.

Nomination Requirements: Nominations must be submitted by medical organizations representing physicians. Nominees must have submitted at least 250 claims for physician services under the Medicare program in the previous year. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Consideration will be given to each nominee with regard to his or her leadership credentials, geographic and demographic factors, and projected Practicing Physicians Advisory Council needs. Final selections will incorporate the above criteria to maintain a committee membership that is fairly balanced in terms of points of view represented and the committee's function. Selections will be made by February 2007 with new members sworn in during the May 2007 meeting. All nominating organizations will be notified in writing of those candidates selected for committee membership.

Nominations to fill vacancies will be considered if received at the appropriate address, no later than 5 p.m. e.d.t., September 15, 2006. Mail or deliver nominations to the following address: Centers for Medicare and Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: Kelly Buchanan, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–11–07, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Kelly Buchanan, (410) 786–6132, or e-mail *PPAC@cms.hhs.gov*. News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free), (410) 786–9379 local) or the Internet at *http://www.cms.hhs.gov/home/regsguidance.asp* for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before its termination.

Section 1868(a)(2) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Section 1868(a)(3) of the Act provides for payment of expenses and per diem for Council members in the same manner as members of other advisory committees appointed by the Secretary. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: Anthony Senagore, M.D., Chairperson; Jose Azocar, M.D.; M. Leroy Sprang, M.D.; Karen S. Williams, M.D.; Peter Grimm, D.O.; Carlos R. Hamilton, M.D.; Dennis K. Iglar, M.D.; Joe Johnson, D.C.; Vincent J. Bufalino, M.D.; Tye J. Ouzounian, M.D.; Geraldine O'Shea, D.O.; Laura B. Powers, M.D.; Gregory J. Przybylski, M.D.; Jeffrey A. Ross, DPM, M.D.; and Robert L. Urata, M.D.

The meeting will commence with the Council's Executive Director providing a status report, and the CMS responses to the recommendations made by the Council at the May 22, 2006 meeting, as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Medicare Pricing for Fee-for-Service and Medicare Advantage Plans
- Pay for Performance: Cost Measurement Development
- Practice Expense Update
- Medically Unbelievably Edits (MUEs): Update
- 5-Year Review and Physician Fee Schedule

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make a 5-minute oral presentation on agenda issues must contact the DFO by 12 noon, e.d.t., August 11, 2006, to be scheduled. Testimony is limited to agenda topics only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to Kelly Buchanan, DFO, no later than 12 noon, e.d.t., August 11, 2006, for distribution to Council members for review before the meeting. Physicians and medical

organizations not scheduled to speak may also submit written comments to the DFO for distribution no later than 12 noon, e.d.t., August 11, 2006. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodations: Individuals requiring sign language interpretation or other special accommodation must contact the DFO by e-mail at *PPAC@cms.hhs.gov* or by telephone at (410) 786–6132 at least 10 days before the meeting.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).)

Dated: July 14, 2006.

Mark B. McClellan

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E6–11948 Filed 7–27–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2251–N]

RIN 0938–ZA17

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2007

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State Children's Health Insurance Program (SCHIP). This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2007. States may implement SCHIP through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both.

EFFECTIVE DATE: This notice is effective on August 28, 2006. Final allotments are available for expenditures after October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2007 under title XXI of the Social Security Act (the Act). Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for 3 fiscal years, including the year for which the final allotment was provided. The FY 2007 allotments will be available to States for FY 2007, and unexpended amounts may be carried over to 2008 and 2009. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2007. Therefore, the FY 2007 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths

This notice specifies, in the table under section III, the final FY 2007 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for either child health assistance expenditures under approved State child health plans or for claiming an enhanced Federal medical assistance percentage rate for certain SCHIP-related Medicaid expenditures. As discussed below, the FY 2007 final allotments have been calculated to reflect the methodology for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth as prescribed by section 2104(b) of the Act.

Section 2104(a) of the Act provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4,295,000,000 for FY 1998; $4,275,000,000 for each FY 1999 through FY 2001; $3,150,000,000 for each FY 2002 through FY 2004; $4,050,000,000 for each FY 2005 through FY 2006; and $5,000,000,000 for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. The total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 2104(c)(4)(B) of the Act provides for additional amounts for allotment to the Territories and Commonwealths: $34,200,000 for each FY 2000 through FY 2001; $25,200,000 for each FY 2002 through FY 2004; $32,400,000 for each FY 2005 through FY 2006; and $40,000,000 for FY 2007. Since, for FY 2007, title XXI of the Act provides an additional $40,000,000 for allotment to the U.S. Territories and Commonwealths, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2007 is $52,500,000; that is, $40,000,000 plus $12,500,000 (0.25 percent of the FY 2007 appropriation of $5,000,000,000).

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2007 was determined in accordance with the following formula:

$A_T = S_{2104(a)} — T_{2104(c)}$

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2007, this is $5,000,000,000.

$T_{2104(c)}$ = Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 2007, this is: $.0025 \times \$5,000,000,000 = \$12,500,000$.

Therefore, for FY 2007, the total amount available for allotment to the 50 States and the District of Columbia is $4,987,500,000. This was determined as follows: A_T ($4,987,500,000) = $S_{2104(a)}$ ($5,000,000,000)—$T_{2104(c)}$ ($12,500,000).

For purposes of the following discussion, the term ''State,'' as defined in section 2104(b)(1)(D)(ii) of the Act,

''means one of the 50 States or the District of Columbia.''

Under section 2104(b) of the Act, the determination of the number of children applied in determining the SCHIP allotment for a particular fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The determination of the State cost factor is based on the annual average wages per employee in the health services industry, which is determined using the most recent 3 years of such wage data as reported and determined as final by the Bureau of Labor Statistics (BLS) of the Department of Labor to be officially available before the beginning of the calendar year in which the fiscal year begins. Since FY 2007 begins on October 1, 2006 (that is, in calendar year 2006), in determining the FY 2007 SCHIP allotments, we are using the most recent official data from the Bureau of the Census and the BLS, respectively, available before January 1 of calendar year 2006 (that is, through the end of December 31, 2005).

Number of Children

For FY 2007, as specified by section 2104(b)(2)(A)(iii) of the Act, the number of children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. The number of children factor for each State is developed from data provided by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between the Centers for Medicare & Medicaid Services (CMS) and the Bureau of the Census, each fiscal year we obtain the number of children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, the number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census before the beginning of the 2006 calendar year. In particular, through December 31, 2005, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 2003, 2004, and 2005 (representing data for years 2002, 2003, and 2004).

State Cost Factor

The State cost factor is based on annual average wages in the health services industry in the State. The State cost factor for a State is equal to the sum of: 0.15 and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia.

Under section 2104(b)(3)(B) of the Act, as amended by the Balanced Budget Refinement Act of 1999 (BBRA) Public Law 106–113, enacted on November 29, 1999, the State cost factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State using data for each of the most recent 3 years as reported and determined as final by the BLS in the Department of Labor and available before the beginning of the calendar year in which the fiscal year begins. Therefore, the State cost factor for FY 2007 is based on the most recent 3 years of BLS data officially available as final before January 1, 2006 (the beginning of the calendar year in which FY 2007 begins); that is, it is based on the BLS data available as final through December 31, 2005. In accordance with these requirements, we used the final State cost factor data available from BLS for 2002, 2003, and 2004 in calculating the FY 2007 final allotments.

The State cost factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the national average annual wages in the health care industry. Since BLS is required to suppress certain State-specific data in providing us with the State-specific average wages per health services industry employee due to the Privacy Act, we calculated the national average wages directly from the State-specific data provided by BLS. As part of a continuing formal process between CMS and the BLS, each fiscal year CMS obtains these wage data officially from the BLS.

Section 2104(b)(3)(B) of the Act, as amended by the BBRA, refers to wage data as reported by BLS under the ''Standard Industrial Classification'' (SIC) system. However, in calendar year 2002, BLS phased-out the SIC wage and employment reporting system and replaced it with the ''North American Industry Classification System'' (NAICS). In accordance with section 2104(b)(3)(B) of the Act, for purposes of calculating the FY 2007 allotments, BLS provided wage data for the 3 most recent years as available through December 31, 2005; in this case, the 3 years of wage data are 2002, 2003, and 2004. Because of the wage and employment classification change at BLS, the BLS wage data used in calculating the FY 2007 SCHIP allotments necessarily reflect NAICS data, rather than SIC data, to obtain the 3-year average required for the allotments.

Under the SIC system, BLS provided CMS with wage data for each State under the SIC Code. However, the wage data codes under the SIC system do not map exactly to the wage data codes under the NAICS. As a result, BLS provided us with wage data using three NAICS wage data codes that represent approximately 98 percent of the wage data that would have been provided under the related SIC Code 80. Specifically, in lieu of SIC Code 80 data, BLS provided CMS data that are based on the following three NAICS codes: NAICS Code 621 (Ambulatory health care services), Code 622 (Hospitals), and Code 623 (Nursing and residential care facilities).

Under section 2104(b)(4) of the Act, each State and the District of Columbia is allotted a ''proportion'' of the total amount available nationally for allotment to the States. The term ''proportion'' is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment for any given fiscal year. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment for the fiscal year. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$SA_i = P_i \times A_T$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2007, this is $4,987,500,000.

In accordance with the statutory formula for determining allotments, the

State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a ''product'' for each State. The products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

Application of Floors and Ceiling

Under the second step, the preadjusted proportions are subject to the application of proportion floors, ceiling, and a reconciliation process, as appropriate. The SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally for the fiscal year. This proportion ensures that a State's minimum allotment would be $2,000,000. For FY 2007, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is also limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceiling are intended to minimize the fluctuation of State allotments from year to year and over the life of the program as compared to FY 1999. The floors and ceiling on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Territories and Commonwealths.

As determined under the first step for determining the States' preadjusted proportions, which is applied before the application of any floors or ceiling, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceiling under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly equal one. In that case, the statute requires the proportions to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one.

The sum of the proportions would be greater than one if the application of the floors and ceiling resulted in raising the proportions of some States (due to the application of the floors) to a greater degree than the proportions of other States were lowered (due to the application of the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than one, the statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the statute requires the States' proportions to be increased in a ''pro rata'' manner so that the sum of the proportions again equals one. Finally, it is also possible, although unlikely, that the sum of the proportions (after the application of the floors and ceiling) will be exactly one; in that case, the proportions would require no further adjustment.

Determination of Preadjusted Proportions

The following is an explanation of how we applied the two State-related factors specified in the statute to determine the States' ''preadjusted'' proportions for FY 2007. The term ''preadjusted,'' as used here, refers to the States'' proportions before the application of the floors and ceiling and adjustments, as specified in the SCHIP statute. The determination of each State and the District of Columbia's preadjusted proportion for FY 2007 is in accordance with the following formula:

$PP_i = (C_i \times SCF_i) / \Sigma (C_i \times SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(i) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the three most recent March supplements to the CPS of the Bureau of the Census, officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(2)(B) of the Act.)

For fiscal year 2007, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (*See* section 2104(b)(2)(A)(iii) of the Act.)

SCF_i = *State Cost Factor* for a State (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to: $0.15 + 0.85 \times (W_i/W_N)$

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry, as reported and determined as final by the BLS of the Department of Labor for each of the most recent 3 years officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(3)(B) of the Act).

$\Sigma (C_i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceiling specified in the SCHIP statute and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amounts allotted to a State for a fiscal year be available to the State for a total of 3 years; the fiscal year for which the amounts are allotted, and the 2 following fiscal years.

III. Table of State Children's Health Insurance Program Final Allotments for FY 2007

Key to Table

Column/Description

Column A = *State.* Name of State, District of Columbia, U.S. Commonwealth or Territory.

Column B = *Number of Children.* The number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the CPS of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2007 allotments were based on the 2003, 2004, and 2005 March supplements to the CPS. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be without health insurance coverage. The number of children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in its annual March CPS on these topics.

For FY 2007, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C = *State Cost Factor.* The State cost factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State cost factor for each State was calculated based on such wage data for each State as reported and determined as final by the BLS in the Department of Labor for each of the most recent 3 years and available before the beginning of the calendar year in which the fiscal year begins. The FY 2007 allotments were based on final BLS wage data for 2002, 2003, and 2004.

Column D = *Product.* The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E = *Proportion of Total.* This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the Products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F = *Adjusted Proportion of Total.* This is the calculated percentage share for each State of the total allotment available after the application of the floors and ceiling and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the statute are: (1) The percentage calculated by dividing $2,000,000 by the total of the amount available for all allotments for the fiscal year; (2) an annual floor of 90 percent of (that is, 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (that is, 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (that is, 45 percent above) the FY 1999 allotment proportion.

Column G = *Allotment.* This is the SCHIP allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, this is determined as the Adjusted Proportion of Total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealths, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

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STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR:						2007
A	B	C	D	E	F	G
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PROPORTION OF TOTAL (3)	ADJUSTED PROPORTION OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	277	0.9701	268.2199	1.4815%	1.4896%	$74,295,313
ALASKA	40	1.0542	41.6420	0.2300%	0.2313%	$11,534,589
ARIZONA	424	1.0887	461.5930	2.5496%	2.5636%	$127,858,497
ARKANSAS	195	0.9129	178.0092	0.9832%	0.9886%	$49,307,483
CALIFORNIA	2,533	1.1271	2,854.8962	15.7688%	15.8554%	$790,789,213
COLORADO	255	1.0621	270.8420	1.4960%	1.4345%	$71,544,798
CONNECTICUT	128	1.1251	144.0124	0.7954%	0.7998%	$39,890,581
DELAWARE	39	1.0369	39.9198	0.2205%	0.2217%	$11,057,552
DISTRICT OF COLUMBIA	34	1.2432	42.2701	0.2335%	0.2348%	$11,708,552
FLORIDA	1,036	1.0322	1,068.8561	5.9037%	5.9362%	$296,066,768
GEORGIA	574	1.0433	598.8366	3.3076%	3.3258%	$165,874,160
HAWAII	57	1.1199	63.2741	0.3495%	0.3071%	$15,314,228
IDAHO	100	0.8823	87.7868	0.4849%	0.4875%	$24,316,412
ILLINOIS	750	1.0594	794.0428	4.3858%	4.2059%	$209,767,107
INDIANA	352	0.9600	337.4418	1.8638%	1.8741%	$93,469,355
IOWA	141	0.9309	130.7962	0.7224%	0.7264%	$36,229,776
KANSAS	143	0.9258	131.9224	0.7287%	0.7327%	$36,541,720
KENTUCKY	267	0.9480	253.1272	1.3981%	1.4058%	$70,114,712
LOUISIANA	355	0.9123	323.4215	1.7864%	1.7962%	$89,585,836
MAINE	59	0.9284	54.7733	0.3025%	0.3042%	$15,171,887
MARYLAND	221	1.0939	241.7411	1.3352%	1.3426%	$66,960,838
MASSACHUSETTS	244	1.1083	269.8654	1.4906%	1.4704%	$73,334,995
MICHIGAN	532	1.0137	539.2999	2.9788%	2.9951%	$149,382,856
MINNESOTA	181	1.0218	184.9443	1.0215%	0.9747%	$48,613,498
MISSISSIPPI	237	0.9215	218.3966	1.2063%	1.2129%	$60,494,559
MISSOURI	279	0.9352	260.4401	1.4385%	1.4464%	$72,140,346
MONTANA	64	0.8877	56.8115	0.3138%	0.3155%	$15,736,459
NEBRASKA	87	0.9084	79.0326	0.4365%	0.4389%	$21,891,551
NEVADA	159	1.2093	192.2753	1.0620%	1.0437%	$52,056,449
NEW HAMPSHIRE	37	1.0518	38.9149	0.2149%	0.2161%	$10,779,193
NEW JERSEY	335	1.1338	379.8138	2.0979%	2.1094%	$105,206,164
NEW MEXICO	160	0.9445	151.1252	0.8347%	1.0435%	$52,045,406
NEW YORK	1,123	1.0961	1,230.3754	6.7959%	6.8332%	$340,806,655
NORTH CAROLINA	562	0.9771	549.1038	3.0329%	2.7292%	$136,117,313
NORTH DAKOTA	32	0.8729	27.9339	0.1543%	0.1551%	$7,737,529
OHIO	595	0.9587	570.3984	3.1505%	3.1679%	$157,996,958
OKLAHOMA	249	0.8767	218.2966	1.2057%	1.4201%	$70,828,185
OREGON	203	1.0090	204.8210	1.1313%	1.1375%	$56,734,200
PENNSYLVANIA	615	1.0196	626.5640	3.4608%	3.4798%	$173,554,494
RHODE ISLAND	50	1.0096	50.4811	0.2788%	0.2804%	$13,982,960
SOUTH CAROLINA	254	1.0042	255.0648	1.4088%	1.4166%	$70,651,421
SOUTH DAKOTA	41	0.9230	37.3810	0.2065%	0.2076%	$10,354,308
TENNESSEE	348	1.0125	351.8472	1.9434%	1.9541%	$97,459,570
TEXAS	2,080	0.9685	2,014.4123	11.1264%	11.1876%	$557,980,188
UTAH	166	0.8805	146.1615	0.8073%	0.8117%	$40,485,868
VERMONT	23	0.9231	20.7706	0.1147%	0.1154%	$5,753,333
VIRGINIA	329	1.0338	339.6114	1.8758%	1.8861%	$94,070,318
WASHINGTON	318	0.9897	314.2298	1.7356%	1.6017%	$79,883,308
WEST VIRGINIA	111	0.8990	99.3412	0.5487%	0.5517%	$27,516,914
WISCONSIN	263	1.0077	264.5260	1.4611%	1.3948%	$69,563,162
WYOMING	27	0.9458	25.0636	0.1384%	0.1392%	$6,942,463
TOTAL STATES ONLY			18,104.7276	100.0000%	100.0000%	$4,987,500,000
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)						
PUERTO RICO				91.6%		$48,090,000
GUAM				3.5%		$1,837,500
VIRGIN ISLANDS				2.6%		$1,365,000
AMERICAN SAMOA				1.2%		$630,000
N. MARIANA ISLANDS				1.1%		$577,500
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.0%		$52,500,000
TOTAL STATES AND COMONWEALTHS AND TERRITORIES						$5,040,000,000

FOOTNOTES

The numbers in Columns B - F are rounded for presentation purposes; the actual numbers used in the allotment calculations are not rounded

(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,987,500,000; determined as the fiscal year appropriation ($5,000,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($12,500,000)

(2) Total amount available for allotment to the Commonwealths and Territories is $12,500,000 (.25 percent of $5,000,000,000, the fiscal year appropriation), plus $40,000,000, as specified in section 2104(c)(4)(B) of the Act

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Act

IV. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

We have examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the

allotments. This notice merely announces the results of our application of this formula, and therefore does not reach the economic significance threshold of $100 million in any one year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any one year. Individuals and States are not included in the definition of a small entity; therefore, this requirement does not apply.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120 million or more (adjusted each year for inflation) in any one year. Since participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal government are made voluntarily. This notice will not create an unfunded mandate on States, tribal, or local governments because it merely notifies states of their SCHIP allotment for FY 2006. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Low-income children will benefit from payments under SCHIP through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2007 allotments.

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism. We have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities because it does not set forth any new policies.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: (Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: May 17, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: May 25, 2006.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

[FR Doc. E6–12031 Filed 7–27–06; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

On-Demand Protein Microarrays: In Vitro Assembly of Protein Microarrays

Description of Technology: Protein microarrays are becoming an indispensable biomedical tool to facilitate rapid high-throughput detection of protein-protein, protein-drug and protein-DNA interactions for large groups of proteins. The novel Protein Microarray of this invention is essentially a DNA microarray that becomes a protein microarray on demand and provides an efficient systematic approach to the study of protein interactions and drug target identification and validation, thereby speeding up the discovery process. The technology allows a large number of proteins to be synthesized and immobilized at their individual site of expression on an ordered array without the need for protein purification. As a result, proteins are ready for subsequent use in binding studies and other analysis.

The Protein Microarray is based on high affinity and high specificity of the protein-nucleic acid interaction of the Tus protein and the Ter site of E. coli. The DNA templates are arrayed on the microarray to perform dual function: (1) synthesizing the protein in situ (cell-free protein synthesis) in the array and (2) at the same time capturing the protein it synthesizes by DNA-protein interaction. This method utilizes an expression vector containing a DNA sequence which serves a dual purpose: (a) encoding proteins of interest fused to the Tus protein for in vitro synthesis of the protein and (b) encoding the Ter sequence, which captures the fusion protein through the high affinity interaction with the Tus protein.

Applications: (1) Simultaneous analysis of interactions of many proteins with other proteins, antibodies, nucleic acids, lipids, drugs, etc, in a single experiment; (2) Efficient discovery of novel drugs and drug targets.

Development Status: The technology is in early stages of development.

Inventors: Deb K. Chatterjee, Kalavathy Sitaraman, James L. Hartley, David J. Munroe, Cassio Baptista (NCI).

Patent Status: U.S. Patent Application No. 11/252,735 filed 19 Oct 2005 (HHS Reference No. E–244–2005/0-US–01).

Licensing Status: Available for non-exclusive and exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301–435–4507; *thalhamc@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Protein

Expression Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize in vitro assembly of protein microarrays. Please contact Betty Tong at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Dated: July 24, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–12132 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

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.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: September 8, 2006.

Closed: 9 am. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 2 p.m. to 4 p.m.

Agenda: Presentations of new research initiatives, and other council related business.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Rooms C & D, Rockville, MD 20852.

Contact Person: Martin H. Goldrosen, PhD, Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–2014.

The public comments session is scheduled from 3:30–4p.m. but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on August 29, 2006. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (September 18, 2006) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970, or via e-mail at *naccames@mail.nih.gov.* In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment 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.

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6548 Filed 7–26–06; 8:45 am]

BILLING CODE 4167–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Behavioral Cardiology Program Project Grant.

Date: August 15, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Holly Patton, Scientific Review Administrator, Review Branch/Division of Extramural Affairs, Nation Heart, Lung, and Blood Institute, Two Rockledge Center, 6701 Rockledge Drive Room 7188, Bethesda, MD 20892. (301) 435–0280. *pattonh@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6544 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordancd with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Carbohydrate Feeding Study.

Date: August 30, 2006.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, National Heart, Lung, and Blood Institute/NIH, Clinical Studies & Training Studies Rev. Grp., Division of Extramural Affairs/Section Chief, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892. 301/435–0288. *haggertp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6546 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee; Group A.

Date: September 7–8, 2006.

Time: September 7, 2006, 6 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: September 8, 2006, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Scientific Review Branch, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

Name of Committee: Center for Inherited Disease Research Access Committee; Group B.

Date: September 8, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6558 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 8, 2006.

Closed: 8:30 a.m. to 11:05 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: 11:05 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180. 301–496–8693. *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6547 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Research for Inhalation Toxicology of Environment Chemicals.

Date: September 21, 2006.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institute of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6549 Filed 7–27–06; 8:45 am]

BILLING CODE 4167–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, The Norway Mother & Child Cohort Study (MoBa): Continued Specimen Collection, & Tools to Enhance Use & Collaboration.

Date: August 31, 2006.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709.

Contact Person: Michelle Victalino, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–3035, *victoalinom@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: July 24, 2006

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6550 Filed 7–27–06; 8:45 am]

BILLING CODE 4167–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Signaling Pathways in Stages of Mammary Tumorigenesis.

Date: September 7, 2006.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Rm C, Research Triangle Park, NC 27709.

Contact Person: Janice B Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6551 Filed 7–27–06; 8:45 am]

BILLING CODE 4167–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Structural Genomics Knowledgebase.

Date: August 11, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 2AS–10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6552 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Literacy in Spanish Speaking Children.

Date: July 31, 2006.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.864, Population Research; 93.865, Reseach for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6553 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 20, 2006.

Closed: September 20, 2006, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: September 21, 2006, 9 a.m. to 3 p.m.

Agenda: Program Reports and Presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Karen P. Peterson, PhD, Executive Secretary NIAAA Council, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when possible.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6554 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Hyper-Reinnervation to Improve Myelectric Prosthesis Control in Shoulder Disarticulation

Date: August 8, 2006.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6555 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Course Development in the Neurobiology of Diseases.

Date: August 8, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Yong Yao, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *yyao@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6556 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Trauma and Burn Program.

Date: August 14, 2006.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Office of Scientific Review, 45 Center Dr., Room 3AN18, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6557 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Cell Therapy for the Degenerating Intertebral Discs.

Date: August 8, 2006.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 21, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6560 Filed 7–27–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselor, Lister Hill National Center for Biomedical Communications.

Date: September 14–15, 2006.

Open: September 14, 2006, 9 a.m. to 11:30 a.m.

Agenda: Review of research and development programs and the preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 14, 2006, 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 15, 2006, 9 a.m. to 11:15 a.m.

Agenda: Review of research and development programs and the preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S709, Bethesda, MD 20892. 301–435–3137. *ksteely@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6545 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vectored HIV/AIDS Vaccines.

Date: July 31, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892. (301) 435–1165. *walkermc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health and the Community.

Date: July 31, 2006.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892. (301) 451–8011. *guadagma@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6543 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Studies of Channels and Transporters.

Date: July 28, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–594–1245, *geoffreys@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; SMEP/MOSS H10 Deferred.

Date: August 7, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuronal Precursors, Stem Cells and Myelin.

Date: August 8, 2006.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

[FR Doc. 06–6559 Filed 7–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1654–DR]

Delaware; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Delaware (FEMA–1654–DR), dated July 5, 2006, and related determinations.

DATES: *Effective Date:* July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 14, 2006.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12083 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1652–DR]

Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland (FEMA–1652–DR), dated July 2, 2006, and related determinations.

DATED: *Effective Date:* July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 12, 2006.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management

Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12086 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1650–DR]

New York; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1650–DR), dated July 1, 2006, and related determinations.

DATES: *Effective Date:* July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 10, 2006.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12090 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1649–DR]

Pennsylvania; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1649–DR), dated June 30, 2006, and related determinations.

DATES: *Effective Date:* July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 2006:

Adams, Armstrong, Indiana, Perry, Sullivan, and Tioga Counties for Public Assistance.

Berks, Carbon, Chester, Franklin, Lackawanna, Lebanon, Monroe, Montour, Schuylkill, and Wayne Counties for Public Assistance (already designated for Individual Assistance).

Bradford, Bucks, Columbia, Luzerne, Northampton, Northumberland, Susquehanna, and Wyoming Counties for Public Assistance [Categories C G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12091 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1649–DR]

Pennsylvania; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–1649–DR), dated June 30, 2006, and related determinations.

DATES: *Effective Date:* July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 10, 2006.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12093 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1649–DR]

Pennsylvania; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania

(FEMA–1649–DR), dated June 30, 2006, and related determinations.

DATES: *Effective Date:* July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 2006: Carbon County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12095 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1655–DR]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1655–DR), dated July 13, 2006, and related determinations.

DATES: *Effective Date:* July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Gracia Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael E. Bolch as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12082 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1655–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1655–DR), dated July 13, 2006, and related determinations.

DATES: *Effective Date:* July 13, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 13, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from severe storms, tornadoes, and flooding during the period of June 23 to July 6, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Michael E. Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Alleghany, Arlington, Bath, Dickenson, Fairfax, Highland, King George, and Rockbridge Counties and the independent City of Alexandria for Public Assistance.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–12084 Filed 7–27–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–24]

Notice of Proposed Information Collection: Comment Request; Single Family Application for Insurance Benefits

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 26, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Lillian_Deitzer@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Laurie Maggiano, Acting Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Application for Insurance Benefits.

OMB Control Number, if applicable: 2502–0429.

Description of the need for the information and proposed use: Mortgages are required to provide information in order to claim their insurance benefits on defaulted single family mortgages. This information collection is used to provide HUD the information needed to process and pay claims on defaulted FHA-insured home mortgage loans. Lenders must also request HUD to subordinate HUD-held mortgages on property that qualifies for the State of Mississippi grant program for homeowners who suffered flood damage from Hurricane Katrina to a primary residence that was not located in a FEMA designated special flood hazard area as of August 29, 2005.

Agency form numbers, if applicable: HUD–27011, Parts A, B, C, D, & E.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to process the information collection is 176,275; the number of respondents is 275 generating approximately 235,025 annual responses; the frequency of response varies from one to 5,000 depending upon the mortgagee's portfolio; and the estimated time needed to prepare the response varies from 45 minutes to one hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 21, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 06–6515 Filed 7–27–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

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

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 20, 2006.

Mark R. Johnston,

Acting Deputy Assistant, Secretary for Special Needs.

[FR Doc. 06–6440 Filed 7–27–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: We must receive written data or comments on these applications at the address given below, by August 28, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875

Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. This notice is provided under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Bernard R. Kuhajda, University of Alabama, Tuscaloosa, Alabama, TE129505–0.

The applicant requests authorization to take (capture, identify, release) the Cahaba shiner (*Notropis cahabae*) and the goldline darter (*Percina aurolineata*) while conducting population surveys and while determining the negative impacts a polluted tributary, Shades Creek, may have on the fish community and the species in the Cahaba River. The activities would occur in the Cahaba River (Mobile Basin) near the Bibb and Shelby County Line, Alabama.

Applicant: HMB Professional Engineers, Inc., Frankfort, Kentucky, TE129703–0.

The applicant requests authorization to take (capture, identify, relocate nest, release) the following species: Southern acornshell (*Epioblasma othcaloogensis*), gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Cumberland bean pearlymussel (*Villosa trabalis*), purple bean (*Villosa perpurpurea*), green blossom pearlymussel (*Epioblasma torulosa gubernaculum*), turgid blossom pearlymussel (*Epioblasma turgidula*), yellow blossom pearlymussel (*Epioblasma florentina florentina*), catspaw (=purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*), slender chub (*Erimystax cahni*), spotfin chub (*Erimonax monachus*), Cumberlandian combshell (*Epioblasma brevidens*), upland combshell (*Epioblasma metastriata*), Nashville crayfish (*Orconectes shoupi*), blackside dace (*Phoxinus cumberlandensis*), amber darter (*Percina antesella*), bluemask darter (*Etheostoma sp.*), boulder darter (*Etheostoma wapiti*), duskytail darter (*Etheostoma percnurum*), slackwater darter (*Etheostoma boschungi*), snail darter (*Percina tanasi*), bald eagle (*Haliaeetus leucocephalus*), Appalachian elktoe (*Alasmidonta raveneliana*), Cumberland elktoe (*Alasmidonta atropurpurea*), fanshell (*Cyprogenia stegaria*), triangular kidneyshell (*Ptychobranchus greenii*), Alabama lampmussel (*Lampsilis virescens*), pale lilliput pearlymussel (*Toxolasma cylindrellus*), Conasauga logperch (*Percina jenkinsi*), pygmy madtom (*Noturus stanauli*), smoky madtom (*Noturus baileyi*), yellowfin madtom (*Noturus flavipinnis*), winged mapleleaf (*Quadrula fragosa*), royal marstonia snail (*Pyrgulopsis ogmorhaphe*), Coosa moccasinshell (*Medionidus parvulus*), Appalachian pearlymussel monkeyface (*Quadrula sparsa*), Cumberland pearlymussel (*Quadrula intermedia*), pink pearlymussel mucket (*Lampsilis abrupta*), oyster mussel (*Epioblasma capsaeformis*), birdwing pearlymussel (*Conradilla caelata*), cracking pearlymussel (*Hemistena lata*), dromedary pearlymussel (*Dromus dromas*), littlewing pearlymussel (*Pegias fabula*), Cumberland pigtoe (*Pleurobema gibberum*), finerayed pigtoe (*Fusconaia cuneolus*), rough pigtoe (*Pleurobema plenum*), shiny pigtoe (*Fusconaia cor*), southern pigtoe (*Pleurobema georgianum*), orangefoot pearlymussel pimpleback (*Plethobasus cooperianus*), rough rabbitsfoot (*Quadrula cylindrica strigillata*), tan riffleshell (*Epioblasma florentina walkeri* (E. walkeri)), ring pink (*Obovaria retusa*), Anthony's riversnail (*Athearnia anthonyi*), blue shiner (*Cyprinella caerulea*), painted snake coiled forest snail (*Anguispira picta*), spruce-fir moss spider (*Microhexura montivage*), Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*), pallid sturgeon (*Scaphirhynchus albus*), and white pearlymussel wartyback (*Plethobasus cicatricosus*) while conducting presence/absence surveys. The proposed activities would occur throughout the State of Tennessee.

Applicant: Iowa State University, Brent J. Danielson, Ames, Iowa, TE130175–0.

The applicant requests authorization to take (capture, band, release) the Alabama beach mouse (*Peromyscus polionotus ammobates*) and Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) while conducting presence/absence surveys and population estimates. The proposed activities would occur in Baldwin County, Alabama, from the extreme west end of Morgan peninsula to the eastern edge of Baldwin County and the Alabama State line.

Applicant: Nadia Spencer, Key Largo, Florida, TE130177–0.

The applicant requests authorization to take (capture, relocate, release) the Key Largo woodrat (*Neotoma floridana smallii*), Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*), and the Stock Island tree snail (*Orthalicus reses reses*) while conducting presence/absence surveys and relocation activities. The proposed activities would occur in Key Largo and the Florida Keys, Monroe County, Florida.

Applicant: James A. Carpenter, Nashville, Tennessee, TE130941–0.

The applicant requests authorization to take (capture, examine, release) the Nashville crayfish (*Orconectes shoupi*) while conducting presence/absence surveys. The proposed activities would occur in the Mill Creek watershed, Davidson and Williamson Counties, Tennessee.

Dated: July 12, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. 06–6540 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of 19 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 5-year reviews of the duskytail darter (*Etheostoma percnurum*), snail darter (*Percina tanasi*), smoky madtom (*Noturus baileyi*), yellowfin madtom (*Noturus flavipinnus*), Carolina heelsplitter (*Lasmigona decorata*), birdwing pearlymussel (*Conradilla caelata*), cracking pearlymussel (*Hemistena lata*), dromedary pearlymussel (*Dromus dromus*), little wing pearlymussel (*Pegias fabula*), fine-rayed pigtoe (*Fusconaia cuneolus*), shiny pigtoe (*Fusconaia cor*), ring pink (*Obovaria retusa*), royal marstonia (snail) (*Pyrgulopsis ogmorhaphe*), Braun's rockcress (*Arabis perstellata*), golden sedge (*Carex lutea*), mountain golden heather (*Hudsonia montana*), Canby's dropwort (*Oxypolis canbyi*), Ruth's golden aster (*Pityopsis ruthii*), and American hart's-tongue fern (*Asplenium scolopendrium* var. *americanum*) under section 4(c)(2) of the Endangered Species Act of 1973, as amended (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before September 26, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Information submitted on the duskytail darter, snail darter, smoky madtom, yellowfin madtom, birdwing pearlymussel, cracking pearlymussel, dromedary pearlymussel, royal marstonia snail, and Ruth's golden aster should be sent to the Field Supervisor, Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501. Information submitted on the Carolina heelsplitter, fine-rayed pigtoe, shiny pigtoe, mountain golden heather, and American hart's-tongue fern should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Information submitted on Canby's dropwort should be sent to the Field Supervisor, Charleston Field Office, U.S. Fish and Wildlife Service, 176 Croghan Spur Road, Suite 200, Charleston, South Carolina 29407. Information submitted on the little wing, ring pink, and Braun's rockcress should be sent to the Field Supervisor, Frankfort Field Office, U.S. Fish and Wildlife Service, 3761 Georgetown Road, Frankfort, Kentucky 40601. Information submitted on the golden sedge should be sent to the Field Supervisor, Raleigh Field Office, U.S. Fish and Wildlife Service, 551–F Pylon Drive, P.O. Box 33726, Raleigh, North Carolina 27636–3726. Information received in response to this notice of review will be available for public inspection by appointment, during normal business hours, at the same addresses.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the Cookeville, Tennessee, address above for the duskytail darter, snail darter, smoky madtom, and yellowfin madtom (telephone, 931/528–6481, ext. 211); Geoff Call at the Cookeville, Tennessee, address above for the royal marstonia snail and Ruth's golden aster (telephone 931/528–6481, ext. 213); Jim Widlak at the Cookeville, Tennessee, address above for the birdwing pearlymussel, cracking pearlymussel, and dromedary pearlymussel (telephone 931/528–6481, ext. 202); Bob Butler at the above Asheville, North Carolina, address for the Carolina heelsplitter, shiny pigtoe, and fine-rayed pigtoe (telephone, 828/258–3939, ext. 235), Carolyn Wells at the above Asheville, North Carolina, address for the mountain golden heather (telephone 828/258–3939, ext. 231); Robert Currie at the above Asheville, North Carolina, address for the American hart's-tongue fern (telephone, 828/258–3939, ext. 224); Ed Eudaly at the above Charleston, South Carolina, address for the Canby's dropwort (telephone 843/727–4707, ext. 220); Mike Floyd at the above Frankfort, Kentucky, address for the Braun's rockcress (telephone 502/695–0468, ext. 226); Leroy Koch at the above Frankfort, Kentucky, address for the little wing and ring pink (telephone 502/695–0468, ext. 222); and Dale Suiter at the above Raleigh, North Carolina, address for the golden sedge (telephone 910/695–3323, ext. 18).

SUPPLEMENTARY INFORMATION: Under the Act (16 U.S.C. 1533 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process.

The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the following species that are currently federally listed as endangered: duskytail darter, smoky madtom, Carolina heelsplitter, birdwing pearlymussel, cracking pearlymussel, dromedary pearlymussel, little wing pearlymussel, fine-rayed pigtoe, shiny pigtoe, ring pink, royal snail, Braun's rockcress, golden sedge, Canby's dropwort, and Ruth's golden aster. This notice also announces our active review of the following species that are currently federally listed as threatened: snail darter, yellowfin madtom, mountain golden heather, and American hart's-tongue fern.

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants) and is also available on our internet site at *http://endangered.fws.gov/wildlife.html#Species*. Amendments to the List through final rules are published in the **Federal Register**.

What information is considered in the review?

A 5-year review will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What could happen as a result of this review?

If we find that there is new information concerning any of these 19 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Public Solicitation of New Information

We request any new information concerning the status of any of these 19 species. See ''What information is considered in the review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. We will not consider anonymous comments, however. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 12, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–12108 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Environmental Impact Statement/ Environmental Impact Report on the Bair Island Restoration and Management Plan, Don Edwards San Francisco Bay National Wildlife Refuge and the Bair Island State Ecological Reserve, San Mateo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public of the availability of the Final Environmental Impact Statement/ Environmental Impact Report (Final EIS/EIR) for the Bair Island Restoration and Management Plan. The Record of Decision will be signed no sooner than 30 days after this notice.

The Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG) plan to restore to tidal action 1,400 acres of former salt ponds on Bair Island, a unit of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) and the Bair Island State Ecological Reserve in South San Francisco Bay. The restoration would involve breaching existing former commercial salt pond levees, adding flow restricters to Corkscrew Slough, and adding wildlife-oriented public use facilities. It could also include rerouting Smith Slough to its former slough bed and raising the bottom elevation of Inner Bair Island with dredge and/or fill material or adding water control structures to Inner Bair Island.

DATES: The Environmental Protection Agency (EPA) notice officially starts the 30-day waiting period for these documents. It is the goal of the Service to have our notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for the Final EIS/EIR. The 30-day waiting period will end on August 28, 2006. Written comments should be received on or before this date.

ADDRESSES: The Final EIS/EIR can be viewed on the South Bay Salt Pond Restoration Project Web site at *http://www.southbayrestoration.org/Bair-EIR-EIS.html*. Copies of the Final EIS/EIR are also available for review at the following government offices and libraries:

Government Offices—Don Edwards San Francisco Bay National Wildlife Refuge at the headquarters, #1 Marshlands Road, Fremont, California 94536, (510) 792–0222; Don Edwards San Francisco Bay NWR Environmental Education Center, 1751 Grand Boulevard, Alviso, California 95002, (408) 262–5513; California Department of Fish and Game, 7329 Silverado Trail, Napa, CA 94558, (707) 944–5500.

Libraries—Redwood City Library 1044 Middlefield Road, Redwood City, California 94063, (650) 780–1077; San Carlos Library 610 Elm Street, San Carlos, California 94070, (650) 591–0341.

FOR FURTHER INFORMATION CONTACT: Clyde Morris, Refuge Manager, Don Edwards San Francisco Bay NWR, P.O. Box 524, Newark, California 94560, (510) 792–0222.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the National Environmental Policy Act (NEPA), the Service prepared a Final EIS evaluating the impacts of restoring and managing up to 1,400 acres of former salt ponds to tidal wetland in San Francisco Bay.

The Bair Island Complex is divided into three distinct areas separated by slough channels: Inner, Middle, and Outer Bair. Inner Bair Island is connected to the mainland with access from Whipple Avenue and U.S. Highway 101. Inner Bair Island is separated from Middle Bair by Smith Slough, which in turn is separated from Outer Bair by Corkscrew Slough.

Historically, Bair Island was part of a large complex of tidal marshes and mud flats within the drainage of San Francisco Bay, Redwood Creek, and Steinberger Slough. Bair Island was diked in the late 1800's and early 1900's for agricultural purposes. It was converted to commercial salt ponds in 1946 and remained in production until 1965. The lands were then drained and sold to a series of real estate development companies. A local referendum in the City of Redwood City halted development plans for Bair Island. The CDFG and the Refuge both acquired portions of Bair Island over time. The Peninsula Open Space Trust purchased the majority of the remaining portions of Bair Island in 1999, and their interests were acquired by these agencies. Among several other landowners still remaining on Bair Island, the San Carlos Airport retains a portion of Inner Bair Island as a flight safety zone. In addition, two easements exist on Bair Island, for the Pacific Gas and Electric transmission towers and lines that run throughout the site and for the South Bayside System Authority (SBSA) force main that runs underneath most of the southern part of the levee on Inner Bair Island. Pedestrians and bicyclists currently use the top of the Inner Bair Island levee as a 3-mile loop trail with a ½-mile trail cutting across Inner Bair Island during the dry season. Portions of Middle and Outer Bair Island are used for waterfowl hunting, but there is little fishing occurring. Redwood Creek and to a lesser extent, Smith, Corkscrew and Steinberger Sloughs, are popular recreational boating areas.

The goal of the proposed Bair Island Restoration and Management Plan is to evaluate options to restore Bair Island to a tidal salt marsh to provide habitat for endangered species and other native wildlife, as well as to enhance the public's appreciation and awareness of the unique resources at Bair Island. Once restored, the site will assist with the preservation and recovery of both the California clapper rail and the salt marsh harvest mouse. These two species were listed by the Service as endangered on October 13, 1970.

The restoration of Bair Island would take place in phases. The first phase would be breaching of Outer Bair Island at one location on Steinberger Slough near its entrance to San Francisco Bay. The second phase would be restoration of Inner and Middle Bair Island. The third phase, which could take place during or after the first two phases, would be the construction of wildlife-oriented public use facilities.

On March 27, 2000, the Service published a Notice of Intent to prepare an EIS in the **Federal Register** (59 FR 16217). Scoping activities included a public scoping meeting on April 27, 2000. Comments received in response to this notice were incorporated into the Draft EIS/EIR.

On August 27, 2004, the Service published a Notice of Availability of the Draft EIS/EIR in the **Federal Register** (69 FR 52730). A public meeting to accept comments on the draft document was held on September 22, 2004. In the Draft EIS/EIR, we proposed to restore 1,400 acres of former commercial salt pond to tidal wetlands on Outer, Middle and Inner Bair Island. Wildlife-oriented public use improvements were also proposed. Project impacts were also described in the Draft EIS/EIR.

Development of the Final EIS

The Draft EIS/EIR was jointly developed with CDFG, which owns a portion of the lands to be restored on Bair Island. All comments received by either the Service or the CDFG are included and considered in the Final EIS/EIR. A total of 31 comment letters were received from organizations or individuals. The Final EIS/EIR incorporates all changes or additions to the draft into one complete document.

The Analysis provided in the Final EIS/EIR is intended to accomplish the following: Inform the public of the proposed action; address public comments received on the Draft EIS/EIR; disclose the direct, indirect, and cumulative environmental effects of the proposed actions; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Alternatives Analyzed

The Final EIS/EIR considers five alternatives: A. No-Action Alternative, Alternative 1: Tidal Marsh Restoration with Moderate Public Access Alternative (Proposed Action), Alternative 2: Tidal Marsh Restoration with Restricted Public Access Alternative, Alternative 3: Tidal and Managed Marsh Restoration with Moderate Public Access Alternative, and Alternative 4: Tidal and Managed Marsh with Restricted Public Access Alternative.

Under the No-Action alternative, the Refuge would discontinue ongoing levee maintenance and would not repair any levee breaks. The Refuge would work with the San Carlos Airport and the SBSA to protect their infrastructure on Inner Bair Island. The existing levees on Middle and Outer Bair Island would eventually breach, causing unmanaged tidal inundation of the ponds. This would result in several impacts to existing infrastructure. There would be an increase in the sedimentation rate of the Redwood Creek Shipping Channel, resulting in the need for more frequent dredging by the Port of Redwood City. At least in the short term, there would be an increase in the velocity rate of the tidal waters at the junction of Smith Slough and Redwood Creek, making use of the Pete's Harbor Marina more difficult. Ponding of water on Inner Bair Island would increase the bird strike issue for the San Carlos Airport. Approximately 1,400 acres of tidal salt marsh would eventually be restored, but the No-Action Alternative would delay restoration of the ponds to salt marsh by 20–100 years and, at least in the short term, result in poorer quality endangered species habitat being developed compared to the four action alternatives.

In the short term (approximately 5 years), the No-Action alternative would provide limited public use consistent with protection of wildlife habitat and public safety. In the long term (approximately 5 to 10 years), as the Inner Bair Island levee became unsafe, public use of the 3-mile trail would be eliminated and the area would be closed to public access. No additional public use infrastructure such as wildlife viewing platforms and interpretive signage would be installed, and the Bair Island parking lot would be closed.

In Alternative 1, the proposed action, the Tidal Marsh Restoration with Moderate Public Access Alternative, full tidal salt marsh restoration would occur on Outer, Middle and Inner Bair Island. The levees on Middle and Outer Bair Island would be breached. Dredge and/or fill material would be used to raise the elevation of Inner Bair Island to prevent increasing the bird strike issue for San Carlos Airport. Following dredge or fill material placement, the Inner Bair Island levee would be breached, restoring the historic meander

of Smith Slough to prevent unacceptable tidal velocities at Pete's Harbor Marina. A flow restricter would be installed in Corkscrew Slough to prevent increased sedimentation of the Redwood Creek Shipping Channel. Approximately 1,400 acres of tidal salt marsh would be restored more quickly than would occur under the No-Action Alternative for the endangered California clapper rail, salt marsh harvest mouse, and other native wildlife.

A wildlife viewing platform with portage for small boats would be constructed at the flow restricter in Corkscrew Slough. A 5-mile-per-hour speed limit and no-wake zone would be implemented in Smith and Corkscrew Slough to protect harbor seals and other sensitive wildlife. In addition to waterfowl hunting, Refuge guided trips would continue to be the only public access allowed on Outer and Middle Bair Island. On Inner Bair Island, 1.8 miles of trails on the levee, which would end at two wildlife platforms adjacent to Smith Slough, would replace the 3-mile loop trail. A predator-resistant pedestrian bridge would be built from the existing parking lot to Inner Bair Island. The parking lot would be enlarged to accommodate school buses, a restroom and an information kiosk. The Whipple Avenue entrance would be closed to public access but maintained for emergency vehicle access. Pets (dogs only) would be allowed on the Inner Bair Island trails on a 6-foot leash. Future dog access to Bair Island will be determined during a test period of compliance with Refuge regulations designed to protect wildlife.

As a result of comments made on the Draft EIS/EIR, Alternative 1 in the Final EIS/EIR differs from Alternative 1 in the Draft EIS/EIR in the following ways: (1) The public access trail on Inner Bair Island would be shortened from 2.7 miles to 1.8 miles; (2) a predator-resistent pedestrian bridge would be added to directly connect the existing Bair Island Parking Lot to Inner Bair Island; (3) a 3-foot high berm or one strand fence would be added, to be placed between the public access area and the restored habitat; and (4) the existing parking lot would be enlarged to accommodate school buses, a restroom, and an information kiosk.

Alternative 2, the Tidal Marsh Restoration with Restricted Public Access Alternative, would be the same as the Preferred Alternative (Alternative 1), except for the following: (1) No pets would be allowed on Inner Bair Island; (2) there would be a seasonal closure to boating in Corkscrew Slough to protect harbor seals; (3) no pedestrian bridge would be built from the Refuge parking lot and the parking lot would not be enlarged to accommodate school buses and a restroom; (4) an existing unimproved trail on the mainland from the Refuge parking lot to the Whipple Avenue trailhead would be improved, and Whipple Avenue would continue to be used as the primary public access route to Inner Bair Island; and (5) the 1.8-mile Inner Bair Island Trail would not extend east of Whipple Avenue, but would extend further along Smith Slough on the west side of Whipple Avenue, ending in one wildlife viewing platform along Smith Slough. Approximately 1,400 acres of tidal salt marsh would be restored more quickly than would occur under the No-Action Alternative for the endangered California clapper rail, endangered salt marsh harvest mouse, and other native wildlife.

Alternative 3, the Tidal and Managed Marsh Restoration with Moderate Public Access Alternative, would be the same as Alternative 2 except for the following: (1) Inner Bair Island would not be restored to tidal salt marsh; (2) Pets (dogs only) would be allowed on the Inner Bair Island trails on a 6-foot leash for a test period to determine compliance with Refuge regulations designed to protect wildlife; and (3) there would not be a seasonal closure of Corkscrew Slough to protect harbor seals. Using water control structures, managed salt marsh would be created on Inner Bair Island, a flow restricter would be built in Smith Slough to prevent an unacceptable increase in tidal velocity at Pete's Harbor Marina, and the slough would not be restored to its historic meander. Approximately 1,100 acres of tidal salt marsh would be restored on Outer and Middle Bair Island more quickly than would occur under the No-Action Alternative for the endangered California clapper rail, endangered salt marsh harvest mouse, and other native wildlife. Three hundred acres of managed salt marsh would be created on Inner Bair Island for the endangered salt marsh harvest mouse but no habitat would be created for the endangered California clapper rail.

Alternative 4, the Tidal and Managed Marsh Restoration with Restricted Public Access Alternative, would be a mixture of Alternative's 2 and 3. The restoration of 1,100 acres of tidal salt marsh and 300 acres of managed salt marsh on Inner Bair Island would be the same as in Alternative 3. The public access would be the same as in Alternative 2.

This notice is provided pursuant to regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: July 19, 2006.

Alexandra Pitts,

Acting Manager, California/Nevada Operations Office.

[FR Doc. E6–12016 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems to the Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act, the Bureau of Indian Affairs (BIA) is submitting the information collection titled: Electrical Service Application, 25 CFR 175, OMB Control Number 1076–0021, and Water Request, 25 CFR 171, OMB Central Number 1076–0141, for reinstatement, review, and approval. These collections expired during the Paperwork Reduction Act renewal process.

DATES: Submit comments on or before August 28, 2006.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile at (202) 395–6566 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov.*

Please send a copy of the comments to John Anevski, Bureau of Indian Affairs, Branch of Irrigation, Power, and Safety of Dams, Mail Stop 4655–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from John Anevski at (202) 208–5480, or by facsimile at (202) 219–0006.

SUPPLEMENTARY INFORMATION: Comments on these two information collections were requested in a **Federal Register** notice published February 28, 2006 (71 FR 10054). No comments were received.

Request for Comments

The Bureau of Indian Affairs requests you to send your comments on this collection to the two locations listed in the **ADDRESSES** section. The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond.

OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days; therefore, comments submitted within 30 days are more assured of receiving maximum consideration. Please note that comments, names, addresses of commentators are available for public review during normal business hours. If you wish us to withhold any information you submit, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

Water Request

Type of review: Reinstatement with a change of a previously approved collection.

Title: Water Request, 25 CFR 171.

Summary: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.7 of 25 CFR part 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery. The information to be collected includes: Name; water delivery location; time and date of requested water delivery; duration of water delivery; rate of water flow; number of acres irrigated; crop statistics; and other operational information identified in the local administrative manuals. Collection of this information was previously authorized under an approval by OMB (OMB Control Number 1076–0141). All information is collected at least annually from each water user with a response required each time irrigation water is provided. Annual reporting and record keeping burden for this collection of information is estimated to average 8 minutes per request. There is a range of 1 to 10 requests from each irrigation water user each season with an average of 4 responses per respondent.

Frequency of Collection: On occasion.

Description of Respondents: BIA Irrigation Project Water Users.

Total Respondents: 6539.

Total Annual Responses: 26,945.

Total Annual Burden Hours: 13,756 hours.

Electrical Service Application

Type of review: Reinstatement of a previously approved collection.

Title: Electric Service Application, 25 CFR 175.

Summary: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements. Section 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirement. Power consumers must apply for electric service. The information to be collected includes: name; electric service location; and other operational information identified in the local administrative manuals. Collection of this information was authorized under an approval by OMB (OMB Control Number 1076–0021). All information is collected from each electric power consumer. Annual reporting and recordkeeping burden for this collection of information is estimated to average 30 minutes for each response for 3,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 1,500 hours.

Frequency of Collection: On Occasion.

Description of Respondents: BIA Electric Power Consumers.

Total Respondents: 3,000.

Total Annual Responses: 3,000.

Total Annual Burden Hours: 1,500 hours.

Dated: July 20, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–12074 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–17905]

Notice of Availability of the Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Southern California Edison Devers-Palo Verde No. 2 Transmission Line Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321–4347), and 40 CFR parts 1500–1508, the Bureau of Land Management (BLM), together with the California Public Utilities Commission (CPUC), hereby gives notice that the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Southern California Edison Company (SCE) Devers-Palo Verde No. 2 Transmission Line Project is available for public review and comment. The BLM is the lead Federal agency for the preparation of this EIS in compliance with the requirements of NEPA. The CPUC is the lead State of California agency for the preparation of this EIR in compliance with the requirements of the California Environmental Quality Act (CEQA). This notice serves as an invitation for the public and other cooperating agencies to provide comments on the scope and content of the Draft EIS/EIR.

DATES: To assure that they will be considered, BLM must receive comments on the Draft EIS/EIR within 60 days following the date of publication of a Notice of Availability of this document, in the **Federal Register,** by the Environmental Protection Agency (EPA). The EPA published its Notice of Availability on May 19, 2006, at 71 FR 29148, with a stated end of the comment period to be July 5, 2006. The BLM is extending this comment period until the close of business on August 11, 2006.

ADDRESSES: If you wish to comment, you may submit your comments by any of several methods. You may mail comments to: Gail Acheson, Field Manager; Bureau of Land Management, Palm Springs-South Coast Field Office, P.O. Box 581260, North Palm Springs, CA 92258. You may also comment via the Internet to *gchill@ca.blm.gov.* Please include in the subject line: ''Draft EIS/EIR, DPV2 Transmission Line Project'' and your name and return address in

your Internet message. If you do not receive a confirmation that we have received your Internet message, contact Greg Hill at (760) 251–4840. You may also hand-deliver comments to: Bureau of Land Management, Palm Springs-South Coast Field Office, 690 W. Garnet Avenue, North Palm Springs, CA 92258. Oral comments were accepted at the three public meetings held in Tonopah, Arizona; Beaumont, California; and Palm Desert, California, in June 2006. Notices published in the local media were provided at least 15 days prior to the scheduled public meetings. Individual respondents may request confidentiality. If you wish to withhold your name and/or street address from public review or 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. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Greg Hill at (760) 251–4840 or e-mail: *gchill@ca.blm.gov*. A copy of the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Southern California Edison Proposed Devers-Palo Verde No. 2 Transmission Line Project is available for review via the Internet at *http://www.blm.gov/ca/palmsprings.* Electronic (on CD–ROM) or paper copies may also be obtained by contacting Greg Hill at the aforementioned addresses and phone number.

SUPPLEMENTARY INFORMATION: Southern California Edison (SCE) is proposing to construct a new 230-mile long, 500-kilovolt (kV) electrical transmission line between SCE's Devers Substation located near Palm Springs, California, and the Harquahala Generating Station switchyard, located near the Palo Verde Nuclear Generating Station west of Phoenix, Arizona. For the most part, this portion of the project would parallel SCE's existing Devers-Palo Verde No. 1 500 kV transmission line. In addition, SCE is proposing to upgrade 48.2 miles of existing 230 kV transmission lines between the Devers Substation west to the San Bernardino and Vista Substations, located in the San Bernardino, California, vicinity. Together, the proposed 500 kV line and the 230 kV transmission facility upgrades are known as DPV2. Construction of DPV2 would add 1,200 megawatts (MW) of transmission import capacity from the southwestern United States to California, which would reduce energy costs throughout California and enhance the reliability of California's energy supply through increased transmission infrastructure.

The BLM identified a list of issues that are addressed in this analysis, including the impacts of the proposed project on visual resources, agricultural lands, air quality, plant and animal species including special status species, cultural resources, and watersheds. Other issues identified by the BLM are impacts to the public in the form of noise, traffic, accidental release of hazardous materials, and impacts to urban, residential, and recreational areas. The CPUC and BLM, pursuant to CEQA and NEPA, released the EIS/EIR on May 4, 2006. Joint CPUC and BLM public workshops were held in Tonopah, Arizona; Beaumont, California; and Palm Desert, California, on June 6, 7, and 8, 2006, respectively. Meeting notices were published in Arizona and California newspapers in early May 2006 and were mailed to an extensive public interest list.

Gail Acheson,

Field Manager.

[FR Doc. E6–12112 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC64777]

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 of oil and gas lease COC64777 from Vessels Coal Gas Inc for lands in Delta County, Colorado. 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, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

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 $163 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 Section 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 COC64777 effective June 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: July 21, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–12087 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC68483]

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 of oil and gas lease COC68483 from Western Energy Resources Inc. for lands in Gunnison County, Colorado. 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, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

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 $163 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 Section 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 COC68483 effective February 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: July 21, 2006

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–12088 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC68455]

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 of oil and gas lease COC68455 from Western Energy Resources Inc. for lands in Gunnison County, Colorado. 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, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

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 $163 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 Section 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 COC68455 effective February 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: July 21, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–12089 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–06–9820–BJ–WY02]

Notice of Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of surveys of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the United States Department of Agriculture Forest Service, Nebraska National Forest and are necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the Sixth Guide Meridian West (east boundary), through Township 31 North, between Ranges 48 and 49 West, portions of the north and west boundaries, a portion of the subdivisional lines, the subdivision of certain sections, and the metes and bounds survey of Camp Norwesca, Township 31 North, Range 49 West, Sixth Principal Meridian, Nebraska, was accepted June 2, 2006.

Copies of the preceding described plats and field notes are available to the public.

Dated: July 24, 2006.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E6–12135 Filed 7–27–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations and Environmental Assessment for the Dunn-Murdock Well #1 Redrill by Kindee Oil and Gas Texas, LLC, Padre Island National Seashore, TX

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Plan of Operations and Environmental Assessment for a 30-day Public Review at Padre Island National Seashore.

SUMMARY: Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, of a Plan of Operations submitted by Kindee Oil and Gas Texas, LLC, for the Dunn-Murdock #1 Well Redrill in Padre Island National Seashore, Kenedy County, Texas. Additionally, the NPS has prepared an Environmental Assessment for this proposal.

DATES: The above documents are available for public review and comment through August 28, 2006.

ADDRESSES: The Plan of Operations and Environmental Assessment are available for public review and comment in the Office of the Superintendent, Colin Campbell, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. The documents are also available at the Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/.*

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Echols, Chief, Division of Resources Management, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300, Telephone: 361–949–8173, ext. 223, e-mail at *Darrell_Echols@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment on the environmental assessment, you may mail comments to the name and address above, hand-deliver them to the street address provided above, or post comments online at *http://parkplanning.nps.gov/.* This environmental assessment will be on public review for 30 days. Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 19, 2006.

Hal J. Grovert,

Acting Director, Intermountain Region.

[FR Doc. 06–6538 Filed 7–27–06; 8:45 am]

BILLING CODE 4312–CD–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–047]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 3, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–344, 391–A, 392–A and C, 393–A, 394–A, 396, and 399–A (Second Review) (Certain Bearings from China, France, Germany, Italy, Japan, Singapore, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 25, 2006.)
5. Inv. Nos. 731–TA–540 and 541 (Second Review) (Certain Welded Stainless Steel Pipe from Korea and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 16, 2006.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 26, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–6586 Filed 7–26–06; 1:58 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on September 26, 2005, Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021–4500, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to import small quantities of the listed controlled substance for sale to research facilities.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 28, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: July 20, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–12101 Filed 7–27–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

The Medicine Shoppe; Revocation of Registration

On April 8, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and further ordered the immediate suspension of DEA Certificate of Registration, BT5626885, issued to The Medicine Shoppe (Respondent) of Slidell, Louisiana. The Show Cause Order proposed to revoke Respondent's pharmacy registration and to deny any pending applications for renewal or modification of its registration on the ground that Respondent's continued registration would be inconsistent with the public interest. See 21 U.S.C. 823(f) & 824(a). The Show Cause Order also immediately suspended Respondent's registration based on my preliminary finding that Respondent's continued registration constitutes ''an imminent danger to public health and safety because of the substantial likelihood that [Respondent would] continue to divert controlled substances to drug abusers.'' Show Cause Order at 11; see also 21 U.S.C. 824(d). The Order further notified Respondent of its right to a hearing. See Show Cause Order at 12.

The Show Cause Order specifically alleged that Respondent was purchasing enormous amounts of hydrocodone products, a Schedule III controlled substance, and that its purchases greatly exceeded the quantities of the same drug that were bought by other retail pharmacies in the same area. For example, the Show Cause Order alleged that from December 31, 2003, through February 2, 2005, Respondent purchased 1,624,000 dosage units of Hydrocodone 10/650. Id. at 8. The Order alleged that the next largest pharmacy purchaser bought 79,100 units in the same time period. Id. The Order also alleged that during the year 2004, Respondent was the fifth largest purchaser of hydrocodone products in the State of Louisiana. Id. at 3.

The Show Cause Order named a number of local pain management physicians and alleged that they routinely prescribed a three drug

combination of hydrocodone, either alprazolam or diazepam (both Schedule IV controlled substances), and carisoprodol, a non-controlled substance which metabolizes into meprobamate (a Schedule IV controlled substance), which is often used by drug abusers in conjunction with narcotics. Id. at 7. The Order alleged that these physicians were ''routinely prescrib[ing] 90 dosage units of hydrocodone, 90 dosage units of carisoprodol and 30 dosage unites of alprazolam at each patient visit,'' and that ''[t]hese prescriptions are generally not valid'' because the physicians wrote them without regard to the patient's medical history and diagnosis, and without conducting an adequate physical exam. Id. The Order further alleged that many of these prescriptions were filled by Respondent and that these prescriptions were renewed at regular intervals. Id.

The Show Cause Order alleged that Dr. Suzette Cullins was routinely writing large numbers of combination prescriptions for 90 hydrocodone, 30 alprazolam, and 90 carisoprodol. See id. at 9. The Show Cause Order further alleged that on various dates chosen at random, Respondent had filled large amounts of new combination prescriptions that had been written by this physician. See id. at 10. The lowest number of new combination prescriptions written by this physician and filled by Respondent in a day was sixty-five; Respondent frequently filled more than 100 new combination prescriptions written by this physician in a day. See id.

The Show Cause Order thus alleged that ''[t]he sheer volume of combination prescriptions issued by Dr. Cullins should have caused [Respondent's] pharmacists to realize that the prescriptions were not written in the course of professional practice and were therefore not valid.'' Id. at 11. The Order further alleged that ''[t]he majority of the prescriptions filled by'' Respondent were combination prescriptions, that ''[p]atients receive[d] the same prescriptions regardless of their sex, age, weight, height, or health,'' and that ''[b]ased upon the sheer volume of duplicate prescriptions from the large volume of customers written by the same group of doctors,'' Respondent either knew or had reason to know that these prescriptions were not valid. Id. The Order thus alleged that Respondent and its pharmacists were ''diverting massive amounts of controlled substances'' in violation of 21 U.S.C. 841(a)(1) and 21 C.F.R. 1306.04. Id.

On May 5, 2005, Respondent requested a hearing; the case was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner. On May 25, 2005, the Government sought to stay the proceeding and moved for summary disposition. The basis for the motion was that on April 28, 2005, Respondent had entered into a consent agreement with the Louisiana Board of Pharmacy. Pursuant to the agreement, Respondent surrendered its Louisiana Controlled Dangerous Substances License. The Government thus contended that because Respondent no longer had authority under state law to engage in the distribution of controlled substances, see 21 U.S.C. 824(a)(3), it was no longer entitled to hold a federal registration. The Government further contended that Respondent's request for a hearing should be dismissed.

On June 9, 2005, Respondent filed a response. Respondent advised that it did not oppose the Government's motion. Respondent further acknowledged that it had voluntarily surrendered its state license and was thus not eligible to hold a DEA registration.

On June 29, 2005, the ALJ granted the Government's motion for summary disposition. The ALJ observed that, under longstanding agency precedent, ''a registrant may not hold a DEA registration if it is without appropriate authority under the laws of the state in which it does business.'' ALJ Dec. at 2 (citing, inter alia, Rx Network of South Florida, LLC, 69 FR 62093–01 (2004); Wingfield Drugs, Inc., 52 FR 27070 (1987)). The ALJ further noted that Respondent had admitted that it was no longer licensed in Louisiana and thus was not entitled to hold a DEA registration. Id. Because there were no material facts in dispute, the ALJ granted the Government's motion and recommended that I revoke Respondent's registration and deny any pending applications for renewal or modification of its registration. See id. at 2–3.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt in its entirety the ALJ's opinion and recommended decision. Because the facts are straightforward and not in dispute, I conclude that there is no need to elaborate on them. As the ALJ found, Respondent is no longer authorized to distribute controlled substances under State law. Therefore, under our precedents, Respondent is not entitled to maintain its DEA registration. See, *e.g.*, Rx Network of South Florida, 69 FR at 62095.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that DEA Certificate of Registration, No. BT5626885, issued to The Medicine Shoppe, be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective August 28, 2006.

Dated: July 20, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–12100 Filed 7–27–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Helping America's Youth Community Resource Inventory (OMB Number 1121–NEW).

The U.S. Department of Justice (DOJ) has submitted the following information collection request on behalf of the Executive Office of the President to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until September 26, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Phelan Wyrick, (202) 353–9254, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including

whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Overview of This Information

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Helping America's Youth Community Resource Inventory.

3. *Agency form number, if any, and the applicable component of the government sponsoring the collection:* U.S. Department of Justice on behalf of the Executive Office of the President.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals and organizations involved in building partnerships to help youth.

Other: None.

Abstract: This is an online database provided as a service to communities that wish to identify local youth-serving programs and resources. Participation is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will take 80 hours each to enter data.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 40,000 total annual burden hours associated with this collection.

If additional information is required, contact Ms. Lynn Bryant, Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 25, 2006.

Lynn Bryant,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 06–6567 Filed 7–27–06; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Company; Yankee Nuclear Power Station; Partial Exemption

1.0 Background

Yankee Atomic Electric Company (YAEC, the licensee) is the licensee and holder of Facility Operating License No. DPR–3 for the Yankee Nuclear Power Station (YNPS), a permanently shutdown decommissioning nuclear plant. Although permanently shutdown, this facility is still subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC).

YNPS is a deactivated pressurized-water nuclear reactor located in northwestern Massachusetts in Franklin County, near the southern Vermont border. The YNPS plant was constructed between 1958 and 1960 and operated commercially at 185 megawatts electric (after a 1963 upgrade) until 1992. In 1992, YAEC determined that closing of the plant would be in the best economic interest of its customers. In December 1993, NRC amended the YNPS operating license to retain a ''possession-only'' status. YAEC began dismantling and decommissioning activities at that time. Transfer of the spent fuel from the Spent Fuel Pit (SFP) to the Independent Spent Fuel Storage Installation (ISFSI) was completed in June 2003. With the exception of the greater than class C waste stored at the ISFSI, the reactor and all associated systems and components, including those associated with storage of spent fuel in the SFP, have been removed from the facility and disposed of offsite. In addition, the structures housing these systems and components have been demolished. Physical work associated with the decommissioning of YNPS is scheduled to be completed in 2006.

By letter dated February 15, 2006, as supplemented on March 23, 2006, YAEC filed a request for NRC approval of a partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A; 10 CFR part 50, Appendix B; and 10 CFR 50.59(d)(3).

2.0 Request/Action

YAEC is requesting the following exemption, for records pertaining to systems, structures, or components (SSCs) and/or activities associated with the nuclear power generating unit, Spent Fuel Pit, and associated support systems, from the retention requirements of: (1) 10 CFR part 50 Appendix A Criterion 1 which requires certain records be retained ''throughout the life of the unit''; (2) 10 CFR part 50 Appendix B Criterion XVII which requires certain records be retained consistent with regulatory requirements for a duration established by the licensee; (3) 10 CFR 50.59(d)(3) which requires certain records be maintained until ''termination of a license issued pursuant to'' part 50; and (4) 10 CFR 50.71(c) which requires records retention for the period specified in the regulations or until license termination.

3.0 Discussion

Most of these records are for SSCs that have been removed from Yankee and disposed of off-site. Disposal of these records will not adversely impact the ability to meet other NRC regulatory requirements for the retention of records [*e.g.*, 10 CFR 50.54(a), (p), (q), and (bb); 10 CFR 50.59(d); 10 CFR 50.75(g); etc.]. These regulatory requirements ensure that records from operation and decommissioning activities are maintained for safe decommissioning, spent nuclear fuel storage, completion and verification of final site survey, and license termination.

Specific Exemption Is Authorized by Law

10 CFR 50.71(d)(2) allows for the granting of specific exemptions to the record retention requirements specified in the regulations.

NRC regulation 10 CFR 50.71(d)(2) states, in part:

> * * * the retention period specified in the regulations in this part for such records shall apply unless the Commission, pursuant to § 50.12 of this part, has granted a specific exemption from the record retention requirements specified in the regulations in this part.

Based on 10 CFR 50.71(d)(2), if the specific exemption requirements of 10 CFR 50.12 are satisfied, the exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A; 10 CFR part 50, Appendix B, and 10 CFR 50.59(d)(3) is authorized by law.

Specific Exemption Will Not Present an Undue Risk to the Public Health and Safety

With all the spent nuclear fuel transferred to the Yankee ISFSI, there is insufficient radioactive material remaining on the Yankee 10 CFR part 50 licensed site to pose any significant potential risk to the public health and safety under any credible event scenario. This provides additional assurance that the partial exemption for

the specified hard copy records will not present any reasonable possibility of undue risk to the public health and safety.

The partial exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A; 10 CFR part 50, Appendix B; and 10 CFR 50.59(d)(3), for the hard copy records described above is administrative in nature and will have no impact on any remaining decommissioning activities or on radiological effluents. The exemption will merely advance the schedule for destruction of the specified hard copy records. Considering the content of these records, the elimination of these records on an advanced timetable will have no reasonable possibility of presenting any undue risk to the public health and safety.

Specific Exemption Consistent With the Common Defense and Security

The partial exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A; 10 CFR part 50, Appendix B; and 10 CFR 50.59(d)(3), for the types of hard copy records described above is consistent with the common defense and security as defined in the Atomic Energy Act (42 U.S.C. 2014, Definitions) and in 10 CFR 50.2 ''Definitions.''

The partial exemption requested does not impact remaining decommissioning activities and does not involve information or activities that could potentially impact the common defense and security of the United States.

Rather, the exemption requested is administrative in nature and would merely advance the current schedule for destruction of the specified hard copy records. Considering the content of these records, the elimination of these records on an advanced timetable has no reasonable possibility of having any impact on national defense or security. Therefore, the partial exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A; 10 CFR part 50, Appendix B; and 10 CFR 50.59(d)(3), for the types of hard copy records described above is consistent with the common defense and security.

Special Circumstances

NRC regulation 10 CFR 50.12(a)(2) states, in part:

> (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

Given the status of Yankee decommissioning, special circumstances exist which will allow the NRC to consider granting the partial exemption requested. Consistent with 10 CFR 50.12(a)(2)(ii), applying the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A; 10 CFR part 50, Appendix B; and 10 CFR 50.59(d)(3) to the continued storage of the hard copy records described previously is not necessary to achieve the underlying purpose of the rules.

The NRC's Statements of Consideration for final rulemaking, effective July 26, 1988 (53 FR 19240 dated May 27, 1988) ''Retention Periods for Records,'' provides the underlying purpose of the regulatory recordkeeping requirements. In response to several public comments leading up to this final rulemaking, the NRC supported the need for record retention requirements by stating that records:

> * * * must be retained * * * so that they will be available for examination by the Commission in any analysis following an accident, incident, or other problem involving public health and safety * * * [and] * * * for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety.

The underlying purpose of the subject recordkeeping regulations is to ensure that the NRC staff has access to information that, in the event of an accident, incident, or condition that could impact public health and safety, would assist in the recovery from such an event and could also help prevent future events or conditions that could adversely impact public health and safety.

Given the current status of Yankee decommissioning, the records that would be subject to early destruction would not provide the NRC with information that would be pertinent or useful. The types of records that would fall under the exemption would include hard copy radiographs, vendor equipment technical manuals, and recorder charts associated with operating nuclear power plant SSCs that had been classified as important to safety during power operations, but that are no longer classified as important to safety, are no longer operational, or have been removed from the Yankee site for disposal.

As indicated in the excerpts cited above under the heading ''NRC Regulatory recordkeeping Requirements to be Exempted,'' the regulations include wording that states that records of activities involving the operation, design, fabrication, erection, and testing of SSCs that are classified as quality-related and/or important to safety should be retained *''until the Commission terminates the facility license'' or ''throughout the life of the unit.''* As stated in 10 CFR part 50, Appendix A:

> A nuclear power unit means a nuclear power reactor and associated equipment necessary for electric power generation and includes those structures, systems, and components required to provide reasonable assurance the facility can be operated without undue risk to the health and safety of the public.

With the majority of the primary and secondary systems removed for disposal, the Yankee site no longer houses ''a nuclear power reactor and associated equipment necessary for electric power generation.'' Thus, with respect to the underlying intent of the recordkeeping rules cited above, Yankee is not able to generate electricity and is no longer a nuclear power unit as defined in 10 CFR part 50, Appendix A.

In addition, with all the spent nuclear fuel having been transferred to the ISFSI, there is not sufficient radioactive material inventory remaining on the 10 CFR part 50 licensed site to pose any significant potential risk to the public health and safety. Thus, there are no longer any ''structures, systems, and components required to provide reasonable assurance the facility can be operated without undue risk to the health and safety of the public.'' This provides additional assurance that, with respect to the underlying intent of the recordkeeping rules cited above, Yankee is no longer a nuclear power unit as defined in 10 CFR part 50, Appendix A.

Based on the above, it is clear that application of the subject recordkeeping requirements to the Yankee hard copy records specified above is not required to achieve the underlying purpose of the rule. Thus, special circumstances are present which the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(ii), to grant the requested exemption.

4.0 Conclusion

The staff has determined that 10 CFR 50.71(d)(2) allows the Commission to grant specific exemptions to the record retention requirements specified in regulations provided the requirements of 10 CFR 50.12 are satisfied.

The staff has determined that the requested partial exemption from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A;

10 CFR part 50, Appendix B; and 10 CFR 50.59(d)(3), will not present an undue risk to the public health and safety. The destruction of the identified hard copy records will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security.

The staff has determined that the destruction of the identified hard copy records is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States.

The staff has determined that the purpose for the recordkeeping regulations is to ensure that the NRC Staff has access to information that, in the event of any accident, incident, or condition that could impact public health and safety, would assist in the protection of public health and safety during recovery from the given accident, incident, or condition, and also could help prevent future events or conditions adversely impacting public health and safety.

Further, since most of the Yankee SSCs that were safety-related or important-to-safety have been removed from the plant and shipped for disposal, the staff agrees that the records identified in the partial exemption would not provide the NRC with useful information during an investigation of an accident or incident.

Therefore, the Commission grants YAEC the requested partial exemption to the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix A; 10 CFR part 50, Appendix B; and 10 CFR 50.59(d)(3), as described in the February 15, 2006, letter as supplemented on March 23, 2006.

Pursuant to 10 CFR part 51.31, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as documented in **Federal Register** notice Vol. 71, No. 127, dated July 3, 2006.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of July, 2006.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–12077 Filed 7–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–128, EA–06–166]

In the Matter of Texas A&M University, (Nuclear Science Center TRIGA Research Reactor); Order Modifying Amended Facility Operating License No. R–83

I.

The Texas A&M University (the licensee) is the holder of Amended Facility Operating License No. R–83 (the license). The license was issued on December 7, 1961, by the U.S. Atomic Energy Commission and subsequently renewed on March 30, 1983, by the U.S. Nuclear Regulatory Commission (the NRC or the Commission). The license includes authorization to operate the Nuclear Science Center TRIGA Research Reactor (the facility) at a power level up to 1,000 kilowatts thermal and to receive, possess, and use special nuclear material associated with the operation. The facility is on the campus of the Texas A&M University, in the city of College Station, Brazos County, Texas. The mailing address is Nuclear Science Center, Texas Engineering Experimental Station, Texas A&M University, 3575 TAMU, College Station, Texas 77843–3575.

II.

On February 25, 1986, the Commission promulgated a rule, Section 50.64 of Title 10 of the *Code of Federal Regulations* (10 CFR), limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors). This regulation requires that if Federal Government funding for conversion-related costs is available, each licensee of a research and test reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used at research and test reactors (51FR 6514).

The provisions of 10 CFR 50.64(c)(2)(iii) require the licensee to include in its conversion proposal, to the extent required to effect conversion, all necessary changes to the license, the facility, and licensee procedures.

III.

On June 13, 2006, the licensee submitted a letter as part of its conversion proposal, which indicated that changes to the Uranium-235 possession limit in its license were needed to support the proposed schedule for conversion to LEU fuel. The possession of the LEU fuel is required by the licensee at this time to prepare the fuel in bundles in order to meet the proposed timely conversion. The LEU fuel contains the Uranium-235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the requirements of 10 CFR 50.64, and has determined that the public health and safety and common defense and security require the licensee to receive and possess the LEU fuel so that the LEU fuel may be prepared to convert from HEU fuel in accordance with the schedules planned by the Department of Energy to support U.S. non-proliferation policies. Issuance of this Order will, therefore, allow the conversion to proceed in accordance with the planned schedule. The NRC staff also determined that there should be a prohibition on receiving additional HEU fuel and a reduction in the associated authorized possession limit concurrent with the effectiveness of the amendment authorizing receipt and possession, but not use, of the LEU fuel. The specific conditions needed to reduce the HEU fuel possession limit, to amend the facility license to allow possession of the LEU fuel, and to be made a part of the license in accordance with this Order are:

2.B.(2) Pursuant to the Act and 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material,'' to possess and use up to 12.0 kilograms of contained Uranium-235 at enrichment equal to or less than 70 percent in connection with operation of the reactor.

2.B.(8) Pursuant to the Act and 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material,'' to receive and possess, in addition to the amount specified under License Condition 2.B.(2), up to 15.0 kilograms of contained Uranium-235 at enrichments equal to or less than 20 percent.

The attached safety evaluation provides additional details on the NRC staff analyses resulting in the determination to order these changes.

IV.

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *it is hereby ordered that:*

Amended Facility Operating License No. R–83 is modified by amending the license to include the license conditions as stated in Section III of this Order. This Order will be effective 20 days after the date of publication of this Order in the **Federal Register**.

V.

Pursuant to the Atomic Energy Act of 1954, as amended, any person adversely affected by this Order may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Any answer or request for a hearing shall set forth the matters of fact and law on which the licensee, or other person adversely affected, relies and the reasons why the Order should not have been issued. Any answer or request for a hearing shall be filed (1) by first class mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) by courier, express mail, and expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in delivery of mail to the United States Government Offices, it is requested that answers and/or requests for hearing be transmitted to the Secretary of the Commission either by e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or by facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101 (the verification number is 301–415–1966). Copies of the request for hearing must also be sent to the Director, Office of Nuclear Reactor Regulation and to the Assistant General Counsel for Materials Litigation and Enforcement, Office of the General Counsel, with both copies addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and the NRC requests that a copy also be transmitted either by facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, he or she shall set forth in the request for a hearing with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309. If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In accordance with 10 CFR 51.10(d) this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order, as described in the safety evaluation attached, the changes would, if imposed by other than an Order, meet the definition of a categorical exclusion in accordance with 10 CR 51.22(c)(9). Thus, pursuant to either 10 CFR 51.10(d) or 51.22(c)(9), no environmental assessment nor environmental impact statement is required.

For further information see the June 13, 2006, letter from the licensee (Agencywide Documents Access and Management System (ADAMS) Accession No. ML061720033), and the NRC staff's safety evaluation attached to this Order (ADAMS Accession No. ML061810481), available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated this 21st day of July 2006.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

Attachment

Safety Evaluation by the Office of Nuclear Reactor Regulation Supporting Order on Possession Limit Changes To Allow Conversion From High-Enriched to Low-Enriched Uranium Fuel

1.0 Introduction

By letter dated June 13, 2006, the Texas A&M University (the licensee) indicated that changes to the Nuclear Science Center (NSC) TRIGA Research Reactor possession limit was needed to allow for the timely conversion from the use of high-enriched uranium (HEU) fuel to low-enriched uranium (LEU) fuel in accordance with § 50.64 of Title 10 of the *Code of Federal Regulations* (10 CFR). This regulation was promulgated to reduce the risk of theft and diversion of HEU fuel used in non-power reactors. The U.S. Nuclear Regulatory Commission (NRC) staff determined as discussed below that the following changes to the possession limit license conditions were acceptable. The change to the current License Condition 2.B.(2) removes the authority to receive HEU fuel and decreases the possession limit of contained Uranium-235 (U-235) with enrichments up to 70 percent from 17.0 to 12.0 kilograms (kgs) to allow the continued possession and use of material at the facility. The changes also involve the addition of License Condition 2.B.(8) to allow receipt and possession, but not use, of up to an additional 15 kgs of contained U-235 at enrichments equal to or less than 20 percent (LEU fuel).

2.0 Background

The license currently includes a possession limit of special nuclear material to allow for operation of the facility. This limit allows for an amount of special nuclear material so that the facility can continue to conduct its licensed research reactor activities.

In its June 13, 2006, letter, the licensee indicated that an increase to the possession limit for special nuclear material is required to allow for the timely conversion to LEU fuel. The licensee indicated that it is working with the U.S. Department of Energy (DOE), DOE contractors, and the NRC to convert the NSC TRIGA Research Reactor from HEU fuel to LEU fuel in support of non-proliferation policies. The licensee's letter stated that in order to avoid prolonged reactor shutdown and accomplish the conversion in support of non-proliferation goals, a period will exist in which the NSC TRIGA Research Reactor will need to possess a quantity of U-235 in excess of the current licensed maximum. As additional evidence, the licensee also provided a DOE letter dated April 13, 2006. In the April 13, 2006, letter, DOE indicated that the project schedule for conversion includes shipping a fresh fuel core to replace the fuel currently in the reactor. Further, DOE indicated that in order to support the timeliness of this effort as planned, the license will need an increase in the special nuclear material possession limit to accommodate the fuel inventory at the facility during the process.

3.0 Evaluation

The licensee has not requested any changes to the Technical Specifications (TSs) nor security plan. Thus, the additional material will be received and possessed under the current terms of the reactor license. The NRC staff reviewed the license, TSs, and security plan requirements for the facility and finds that the possession of the additional

LEU fuel will not require additional safety or security controls or conditions beyond those already in place. The NRC staff also finds that this increase in the fuel possession limit is within the normal possession limit for research reactors.

The increased possession limit does not allow operation with the fuel other than that already authorized by the license and TSs. This change does not authorize conversion to the new LEU fuel planned for conversion, *i.e.*, 30 weight percent (Wt%) vice the currently authorized 9 Wt%. (The authorization for conversion will be the subject of an ongoing separate evaluation). Therefore, the radioactive fission product inventory will not be increased by the increased fuel possession limit and the routine effluent or potential accident release levels will not increase beyond those already analyzed and accepted under the current license and TSs.

Further, in accordance with the existing TSs, reactor fuel will be stored in a geometrical array where the effective multiplication is less than 0.8 for all conditions of moderation. Therefore, the potential for accidental criticality is not increased with the increased fuel possession limit.

The increase in the special nuclear material possession limit does not impact the security requirements for the facility. In accordance with 10 CFR 73.2, the increase possession would be consistent with special nuclear material of moderate strategic significance (Category II). The licensee's current security plan meets or exceeds the requirements for this level of material under 10 CFR 73.67(d).

The license changes are to allow for conversion in a manner that is timely to support the non-proliferation goals of the nation and allow continued research and development in accordance with the license and regulations. They do not change the security plan requirements which are consistent the provisions of 10 CFR 73.67(d) for special nuclear material of moderate strategic significance (Category II) in accordance with 10 CFR 73.2, because the addition of the LEU fuel is within the possession limit for that category of material.

The inspection program has found that the licensee has routinely used such material safely and securely.

The licensee submitted a proposed license condition in its June 13, 2006, letter. The NRC staff noted several changes from the proposed license condition were needed to allow for possession of the current material and allow for receipt, but not use, of the new LEU fuel. Specifically, the licensee's authority to receive additional HEU fuel is removed from License Condition 2.B.(2), and the amount of material possessed under that license condition was reduced from 17.0 to 12.0 kg. Further, License Condition 2.B.(8) is added to allow for the receipt and possession, but not use, of the LEU fuel for conversion. A telephone conversation between the project manager and the Associate Director of the NSC TRIGA Research Reactor facility on July 6, 2006, confirmed that these differences were understood and could be implemented consistent with protecting the public health and safety.

Because the requested increased possession limit may be possessed safely and securely under the terms of the existing TSs and security plan, the increase in special nuclear material possession limit as specified above is acceptable to the NRC staff. Further, the NRC staff has determined that the public health and safety and the common defense and security require the licensee to receive and possess the LEU fuel so that the LEU fuel may be configured into fuel bundles to convert from HEU fuel in accordance with the schedule planned by the DOE to support U.S. non-proliferation policies.

3.0 Environmental Consideration

In accordance with 10 CFR 51.10(d), an Order is not subject to Section 102 of the National Environmental Policy Act. The NRC staff notes, however, that even if these changes were not being imposed by an Order, the changes would not require an environmental impact statement or environmental assessment. The license changes involve use of a facility component located within the restricted area as defined in 10 CFR part 20 or changes in inspection and surveillance requirements. The NRC staff has determined that the changes involve no significant increase in the amounts or types of any effluents that may be released off site and no significant increase in individual or cumulative occupational radiation exposure. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment is required.

4.0 Conclusion

The NRC staff has concluded, on the basis of the considerations discussed above, that (1) The proposal by the licensee for possession of LEU fuel is consistent with and in furtherance of the requirements of 10 CFR 50.64, (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed activities; and (3) such activities will be conducted in compliance with the Commission's regulations and will not be inimical to the common defense and security or the health and safety of the public. Accordingly, it is concluded that an enforcement order as described above should be issued pursuant to 10 CFR 50.64(c)(3).

Dated: July 21, 2006.

M. Mendonca.

Principal Contributor:

[FR Doc. E6–12105 Filed 7–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–007]

Exelon Generating Company, LLC; Notice of Availability of the Final Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has published NUREG–1815, ''Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site: Final Report.'' The site is located near the town of Clinton in DeWitt County, Illinois. The application for the ESP was submitted by letter dated September 25, 2003, pursuant to Title 10 of the Code of Federal Regulations part 52 (10 CFR Part 52). The application included a site redress plan in accordance with 10 CFR 52.17(c) and 52.25. If the site redress plan is incorporated in an approved ESP, then the applicant may carry out certain site preparation work and preliminary construction activities. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on October 24, 2003 (68 FR 61020). A notice of acceptance for docketing of the application for the ESP was published in the **Federal Register** on October 30, 2003 (68 FR 61835). A notice of intent to prepare an environmental impact statement and to conduct the scoping process was published in the **Federal Register** on November 25, 2003 (68 FR 66130). A notice of availability of the draft EIS was published in the **Federal Register** on March 10, 2005 (70 FR 12022).

The purpose of this notice is to inform the public that NUREG–1815, ''Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site: Final Report,'' Volumes 1 and 2, is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555

Rockville Pike (first floor), Rockville, Maryland, 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS), and will also be placed directly on the NRC Web site at *http://www.nrc.gov.* ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public 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 PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Vespasian Warner Public Library, located at 310 North Quincy Street, Clinton, Illinois 61727, has agreed to make the FEIS available for public inspection.

For Further Information Contact: Thomas J. Kenyon, New Reactors Environmental Projects Branch, Division of New Reactor Licensing, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Kenyon may be contacted by telephone at (301) 415–1120 or by e-mail at *http://www.ClintonEIS.gov.*

Dated at Rockville, Maryland, this 20th day of July 2006.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. E6–12075 Filed 7–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.92, entitled ''Combining Modal Responses and Spatial Components in Seismic Response Analysis,'' provides licensees and applicants with improved guidance concerning methods that the NRC staff considers acceptable for combining modal responses and spatial components in seismic response analysis of nuclear power plant (NPP) structures, systems, and components (SSCs) that are important to safety. As defined in Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Title 10, part 50, of the Code of Federal Regulations (10 CFR part 50), Criterion 2, ''Design Bases for Protection Against Natural Phenomena,'' requires, in part, that SSCs that are important to safety must be designed to withstand the effects of natural phenomena (such as earthquakes) without losing their capability to perform their respective safety functions. Such SSCs must also be designed to accommodate the effects of, and be compatible with, the environmental conditions associated with normal operation and postulated accidents. Appendix S, ''Earthquake Engineering Criteria for Nuclear Power Plants,'' to 10 CFR part 50 specifies, in part, requirements for implementing General Design Criterion 2 with respect to earthquakes.[1]

For several decades, the nuclear industry fulfilled Criterion 2 using the response spectrum method and the time history method for seismic analysis and design of NPP SSCs. Then, in 1976, the NRC issued Revision 1 of Regulatory Guide 1.92, which described then up-to-date guidance for using the response spectrum and time history methods. Since that time, research in the United States has resulted in improved methods that yield more accurate estimates of SSC seismic response, while reducing unnecessary conservatism. In view of those improvements, Revision 2 of Regulatory Guide 1.92 describes methods that the NRC staff finds acceptable for combining modal responses and spatial components in seismic response analysis.

The NRC staff initially published Revision 2 of Regulatory Guide 1.92 as DG–1108, dated August 2001. The staff subsequently considered stakeholders' feedback on DG–1108, incorporated the necessary changes, and again solicited public comment on the revised guide by publishing a **Federal Register** notice (70 FR 7777) concerning Draft Regulatory Guide DG–1127 on February 15, 2005. Following the closure of the public comment period on April 15, 2005, the staff considered all stakeholder comments in the course of preparing Revision 2 of Regulatory Guide 1.92. The staff's responses to all comments received are available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061630344.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Revision 2 of Regulatory Guide 1.92 may be directed to Dr. T.Y. Chang, at (301) 415–6450 or via e-mail to *TYC@nrc.gov*.

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies of Revision 2 of Regulatory Guide 1.92 are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML053250475.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S.

[1] Appendix S to 10 CFR part 50 applies to applicants for a design certification or combined license pursuant to 10 CFR part 52, ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants,'' or a construction permit or operating license pursuant to 10 CFR part 50 after January 10, 1997. However, the earthquake engineering criteria in Section VI of Appendix A to 10 CFR part 100 continue to apply for either an operating license applicant or an operating license holder whose construction permit was issued before January 10, 1997.

Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 10th day of July, 2006.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E6–12078 Filed 7–27–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Wednesday, September 14, 2006. Written comments are due by noon, Monday, September 18, 2006. A hearing will be held in Washington, DC, on Wednesday, September 28, 2006.

ADDRESSES:

Submissions by electronic mail: fr0622@ustr.eop.gov.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (*See* requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, (202) 395–3900, or Stephen S. Kho, Acting Chief Counsel for China Enforcement, (202) 395–3582.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (at *http://www.ustr.gov/World_Regions/North_Asia/China/Section_Index.html*).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm*, or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (*e.g.*, tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (*e.g.*, subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (*e.g.*, transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the Administration's view that China should be held accountable as a full participant in, and beneficiary of, the international trading system now that most of its WTO commitments should have been implemented (see ''U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement,'' issued by USTR in February 2006, *http://www.ustr.gov/World_Regions/North_Asia/China/2006_Top-to-Bottom_Review/Section_Index.html*), USTR requests that interested persons also specifically identify unresolved compliance issues that warrant review and evaluation by USTR's newly created China Enforcement Task Force.

Written comments must be received no later than noon, Monday, September 18, 2006.

A hearing will be held on Thursday, September 28, 2006, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Wednesday, September 14, 2006. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''China WTO'' followed by (as appropriate) ''Written Comments,'' ''Notice of Testimony,'' or ''Testimony.'' Documents should be submitted as either Adobe PDF, WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as

spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning USTR may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E6–12133 Filed 7–27–06; 8:45 am]

BILLING CODE 3110–W6–P

PEACE CORPS

Proposed Agency Information Collection Activities: Career Information Consultants Waiver Form (PC–DP–969.1.2)

AGENCY: Peace Corps.

ACTION: Notice of Reinstatement of OMB Control Number 0420–0531, with changes, of a previously approved collection for which approval has expired.

SUMMARY: The Peace Corps has submitted to the Office of Management and Budget, a request for approval of Reinstatement of OMB Control Number 0420–0531, the Career Information Consultants Waiver Form (PC–DP–969.1.2). The purpose of this information collection is to gather and update contact information for individuals who volunteer to share information about their career field, their past or current employer(s), and their career and educational paths with current and returned Peace Corps Volunteers. The purpose of this notice is to allow for public comment on whether the proosed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. This is a Request for Reinstatement of expired OMB Control Number 0420–0531. Five (5) comments were received in response to the Peace Corps' Federal Register Notice that was published January 12, 2006, Volume 71, No. 8, 60 days. These comments were evaluated.

Comments regarding the number of available options for career field(s) suggested that the original number of options was too high and made the form difficult to read. The form was revised to include a fewer number of options and the font size was increased. Comments regarding the number of entries from a single respondent suggested that respondents were listed too many times. The form was revised to limit the number of entries allowed from each respondent. Comments regarding the title of career field options suggested that there was repetition in the titles and that some titles were confusing. The form was revised to include standard occupational titles. Comments regarding the number of pages in the print publication suggested that the book was too large and difficult to manage. The directory will now only be available in electronic form.

A copy of the information collection may be obtained from Ms. Tamara Webb, Peace Corps, Office of Domestic Programs, Returned Volunteer Services, 1111 20th Street, NW., Room 2132, Washington, DC 20526. Ms. Webb can be contacted by telephone at 202–692–1435 or 800–424–8580 ext 1435.

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

Need for and Use of This Information: The Career Information Consultants Waiver Form is used to gather contact information from individuals who have volunteered to serve as career resources for current Peace Corps Volunteers and Returned Peace Corps Volunteers. The form is distributed and collected by the Peace Corps Office of Domestic Programs, Returned Volunteer Services Division. The Returned Volunteer Services Division provides transition assistance to returning and recently-returned Volunteers through the Career Information Consultants project and other career, educational, and readjustment activities. The purpose of this information collection is to gather and update contact information for the Career Information Consultants database and publication. There is no other means of obtaining the required data. The Career Information Consultants project supports the need to assist returned volunteers and enhance the agency's capability to serve this population as required by Congressional legislation.

Respondent's Obligation to Reply: Voluntary

Burden on the Public:

a. *Annual reporting burden:* 167 hours.

b. *Annual recordkeeping burden:* 0 hours.

c. *Estimated average burden per response:* 5 minutes.

d. *Frequency of response:* Once, every three years.

e. *Estimated number of likely respondents:* 2000.

f. *Estimated cost to respondents:* $0.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC on July 19, 2006.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 06–6520 Filed 7–27–06; 8:45 am]

BILLING CODE 6051–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Employee Annuity Under the Railroad Retirement Act; OMB 3220–0002.

Section 2 of the Railroad Retirement Act (RRA) provides for payments of age and service, disability, and supplemental annuities to qualified employees. An annuity cannot be paid until the employee stops working for a railroad employer. In addition, the age and service employee must relinquish any rights held to such jobs. A disabled employee does not need to relinquish employee rights until attaining Full Retirement Age, or if earlier, their spouse files for a spouse annuity. Benefits become payable after the employee meets certain other requirements, which depend on the type of annuity payable. The requirements for obtaining the annuities are prescribed in 20 CFR 216, and 220.

The RRB currently uses the electronic *AA–1cert, Application Summary and Certification* process and the following forms to collect the information needed for determining entitlement to and the amount of, an employee retirement annuity: *Form AA–1, Application for Employee Annuity Under the Railroad Retirement Act, Form AA–1d, Application for Determination of Employee Disability, and Form G–204, Verification of Workers Compensation/ Public Disability Benefit Information.*

The AA–1cert process obtains information from an applicant for either an age and service, or disability annuity by means of an interview with an RRB field-office representative. It obtains information about an applicant's marital history, work history, military service, benefits from other governmental agencies and railroad pensions. During the interview, the field-office representative enters the information obtained into an on-line information system. Upon completion of the interview, the applicant receives Form AA–1cert, Application Summary and Certification, which summarizes the information that was provided by/or verified by the applicant, for review and signature. The RRB also uses a manual version, RRB Form AA–1, in instances where the RRB representative is unable to contact the applicant in-person or by telephone, *i.e.*, the applicant lives in another country.

Form AA–1d, Application for Determination of Employee Disability, is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act for early Medicare based on a disability. Form G–204, Verification of Workers Compensation/ Public Disability Benefit Information, is used to obtain and verify information concerning worker's compensation or public disability benefits that are or will be paid by a public agency to a disabled railroad employee.

The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form No.	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden (hours)
AA–1cert (interview)	13,000	30	6,500
AA–1 manual (without assistance)	65	62	67
AA–1d (manual without assistance)	5	60	5
AA–1d (manual) (interview)	5,000	35	2,916
G–204	40	15	10
Total	18,110		9,498

The RRB proposes changes to the certification statements of Form(s) AA–1 and AA–1(cert) that are intended to provide additional specificity regarding post-application events that require an applicant to contact the RRB. Other non-burden impacting editorial and formatting changes to Form AA–1cert and Form AA–1 are also proposed.

The RRB proposes the addition of an item to Form AA–1d to ask a disability applicant if any additional medical procedures are scheduled after the filing of the form, and if so, what those procedures are, as well as minor non-burden impacting, editorial and formatting changes. The RRB proposes no changes to Form G–204.

Completion of the forms is required to obtain a benefit. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.gov.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.gov.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. E6–12073 Filed 7–27–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 31, 2006:

A closed meeting will be held on Tuesday, August 1, 2006 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii),

and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 1, 2006 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

A litigation mater; and

An adjudicatory matter.

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. 06–6570 Filed 7–25–06; 4:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 41484, July 21, 2006].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, July 27, 2006 at 2 p.m.

CHANGE IN THE MEETING: Time Change.

The closed meeting scheduled for Thursday, July 27, 2006 at 2 p.m. has been changed to Thursday, July 27, 2006 at 3 p.m.

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. 06–6571 Filed 7–25–06; 4:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Andover Apparel Group, Inc., Applied Computer Technology, Inc., Country World Casinos, Inc., Digital Transmission Systems, Inc., EWRX Internet Systems, Inc., Go Online Networks Corp., Integrated Communication Networks, Inc., Keystone Energy Services, Inc., Microbest, Inc., Midway Airlines Corp., Mobilemedia Corp., Neometrix Technology Group, Inc., Photran Corp., Scottsdale Technologies, Inc., Sienna Broadcasting Corp., Triton Network Systems, Inc., and Western Pacific Airlines, Inc.; Order of Suspension of Trading

July 26, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Andover Apparel Group, Inc. because it has not filed any periodic reports since the period ended November 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Applied Computer Technology, Inc. (n/k/a Amigula, Inc.) because it has not filed any periodic reports since the period ended June 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Country World Casinos, Inc. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Transmission Systems, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EWRX Internet Systems, Inc. (n/k/a iMusic International, Inc.) because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Go Online Networks Corp. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Communication Networks, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Keystone Energy Services, Inc. because it has not filed any periodic reports since December 3, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Microbest, Inc. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Midway Airlines Corp. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mobilemedia Corp. because it has not filed any periodic reports since the period ended September 30, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Neometrix Technology Group, Inc. because it has not filed any periodic reports since the period ended July 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Photran Corp. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Scottsdale Technologies, Inc. because it has not filed any periodic reports since December 11, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sienna Broadcasting Corp. (n/k/a Contemporary Solutions, Inc.) because it has not filed any periodic reports since September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Triton Network Systems, Inc. because it has

not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Western Pacific Airlines, Inc. because it has not filed any periodic reports since the period ended September 30, 1997.

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 companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies, including trading in the debt securities of Country World Casinos, Inc., Midway Airlines Corp., and Mobilemedia Corp., is suspended for the period from 9:30 a.m. EDT on July 26, 2006, through 11:59 p.m. EDT on August 8, 2006.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–6573 Filed 7–26–06; 11:29 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54173; File Nos. SR–DTC–2006–10, SR–FICC–2006–09, and SR–NSCC–2006–08]

Self-Regulatory Organizations; The Depository Trust Company, Fixed Income Clearing Corporation, and National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Whereby the President of Each Clearing Agency Shall Also Serve as Its Chief Executive Officer

July 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 5, 2006, The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC'') and that on June 6, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which items have been prepared primarily by DTC, FICC, and NSCC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule changes is to provide that (1) DTC's President shall serve as its Chief Executive Officer (''CEO'') and (2) FICC's President shall serve as its CEO and is to make conforming changes to NSCC's By-Laws concerning NSCC's President serving as its CEO.[2] The proposed rule changes also make conforming changes throughout so that the By-Laws of DTC, FICC, and NSCC are uniform.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC, FICC, and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC, FICC, and NSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule changes is (1) to amend DTC's By-Laws so that DTC's President shall serve as its CEO[4] and (2) to amend FICC's By-Laws so that FICC's President shall serve as its CEO[5] and is to make conforming changes to NSCC's By-Laws.[6] The proposed rule changes also make conforming changes throughout so that the By-Laws of DTC, FICC, and NSCC are uniform.

DTC, FICC, and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A(b)(3)(A) of the Act[7] and the rules and regulations thereunder applicable to DTC, FICC, and NSCC because they should better enable DTC, FICC, and NSCC to facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC, FICC, and NSCC do not believe that the proposed rule change will have any impact on or 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 relating to the proposed rule change have been solicited or received. DTC, FICC, and NSCC will notify the Commission of any written comments received by DTC, FICC, and NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(3)[9] thereunder because the proposed rule changes are concerned solely with the administration of DTC, FICC, and NSCC. At any time within sixty days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule changes 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 Numbers SR–DTC–2006–10, SR–FICC–2006–09, and SR–NSCC–2006–08 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 Numbers SR–DTC–2006–10, SR–FICC–

[1] 15 U.S.C. 78s(b)(1).

[2] NSCC's By-Laws currently provide that the President shall serve as NSCC's CEO. NSCC's proposed rule change makes conforming changes so that the language of NSCC's By-Laws is consistent with the language of the By-Laws of DTC and FICC.

[3] The Commission has modified the text of the summaries prepared by DTC, FICC, and NSCC.

[4] DTC By-Laws Article III, Section 3.3.

[5] FICC By-Laws Article III, Section 3.3.

[6] NSCC By-Laws Article III, Section 3.3.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

2006–09, and SR–NSCC–2006–08. These file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal offices of DTC, FICC, and NSCC and on DTC's Web site at *https://login.dtcc.com/dtcorg/*, and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query*, and on NSCC's Web site at *http://www.nscc.com/legal/*. 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–DTC–2006–10, SR–FICC–2006–09, and SR–NSCC–2006–08 and should be submitted on or before August 18, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–12070 Filed 7–27–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5479]

Determination on U.S. Position on Proposed European Bank for Reconstruction and Development (EBRD) Projects in Serbia and Bosnia and Herzegovina

Pursuant to section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (FOAA), and Department of State Delegation of Authority Number 289, I hereby determine that a 25.4 million euro investment package for the Balkan Accession Fund C.V. (''BAF''), a limited partnership incorporated in the Netherlands Antilles which will mobilize private sector funds to enable the BAF to make equity and equity-related investments in a wide variety of sectors, and a 12 million euro sovereign loan to Bosnia and Herzegovina for the purchase of air navigation, communication and meteorological equipment, software and training services to support the establishment of a new Air Navigation Services Provider will contribute to a stronger economy in Serbia and the Republika Srpska in Bosnia and Herzegovina, directly supporting implementation of the Dayton Accords. I therefore waive the application of Section 561 of the FOAA to the extent that provision would otherwise prevent the U.S. Executive Directors of the EBRD from voting in favor of these projects.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: July 20, 2006.

Daniel Fried,

Assistant Secretary of State for European and Eurasian Affairs, Department of State.

[FR Doc. E6–12110 Filed 7–27–06; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 5477]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Designation of Abu Sufian al-Salamabi Muhammad Ahmed 'Abd Al-Razziq, Also Known as Abousofian Salman Abdelrazik, Also Known as Jolaiba, Also Known as Abousofian Abdelrazik, Also Known as Abousofiane Abdelrazik, Also Known as Abu Sufian, Also Known as Abou El Layth, Also Known as Abou Lail, Citizenship: Canada; Canadian Passport #: BC166787; DPOB: August 6, 1962, Al-Bawgah, Sudan

Acting under the authority of Section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and Executive Order 13372 of February 16, 2005 in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that Abu Sufian al-Salamabi Muhammad Ahmed 'Abd Al-Razziq, also known Abousofian Salman Abdelrazik, also known as Jolaiba, also known as Abousofian Abdelrazik, also known as Abousofiane Abdelrazik, also known as Abu Sufian, also known as Abou El Layth, also known as Abou Lail, poses a significant risk of committing acts of terrorism that threaten the security of U.S. nationals and the national security, foreign policy, or economy of the United States.

Consistent with the determination in Section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: July 21, 2006.

R. Nicholas Burns,

Undersecretary of State, Department of State.

[FR Doc. 06–6541 Filed 7–27–06; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 5478]

Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2004; Correction

ACTION: Notice; correction.

SUMMARY: On June 15, 2006, Notice was published in the **Federal Register** (71 FR 34710) pertaining to the reporting of ''Gifts to Federal Employees from Foreign Government Sources Reported to Employing Agencies in Calendar Year 2004.'' The referenced Notice is hereby corrected to change the identity of foreign donor and government of a gift given to General Richard B. Myers, Chairman, Joint Chiefs of Staff, on October 21, 2004 from General Kim Jong il, General Secretary Korean Workers Party Hwan-CJCS ROK to General Kim Jong Hwan, Chairman, Joint Chiefs of Staff, the Republic of Korea.

FOR FURTHER INFORMATION CONTACT: For further information contact Tiffany Divis, the Office of the Chief of Protocol, U.S. Department of State, (telephone: 202/647–1161). The address is: U.S. Department of State, S/CPR, Room 1238,

[10] 17 CFR 200.30–3(a)(12).

2201 C Street, NW., Washington, DC 20520–1238.

Dated: July 18, 2006.

Henrietta H. Fore,

Under Secretary for Management, Department of State.

[FR Doc. E6–12111 Filed 7–27–06; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on State Highway 45SE in Texas

AGENCY: Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT).

ACTION: Notice of Limitation on claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, State Highway 45 Southeast (SH 45SE), south of Austin, beginning at I–35 and heading east to SH 130/US 183 in Travis and Hays Counties in the State of Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will barred unless the claim is filed on or before January 24, 2007. If the Federal law that authorizes judicial review of a claim provides a time period for less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, 300 E. 8th Street, Rm. 826, Austin, Texas 78701; telephone: (512) 536–5950; e-mail *salvador.deocampo@fhwa.dot.gov*. The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. You may also contact Ms. Dianna Noble, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701; telephone (512) 416–2734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: State Highway 45 Southeast (SH 45SE), south of Austin beginning at I–35 and heading east to SH 130/US 183; in Travis and Hays Counties in the State of Texas. The project will be an approximately seven-mile long, six-lane tollway with grade separations at all intersecting roadways and no frontage roads (i.e. a fully access-controlled facility). The proposed highway will be on new alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact statement (FEIS) for the project, approved on December 8, 2003, in the FHWA Record of Decision (ROD) issued on February 5, 2004, in the revised ROD issued on June 26, 2006, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (section 404, section 401, section 319).

8. *Executive Orders:* 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on July 17, 2006.

Salvador Deocampo,

District Engineer, Austin, Texas.

[FR Doc. 06–6525 Filed 7–27–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34904]

Dakota, Missouri Valley and Western Railroad, Inc.—Lease and Operation Exemption—Soo Line Railroad Company

Dakota, Missouri Valley and Western Railroad, Inc. (DMVW), a Class III rail carrier, has filed a verified notice of exemption under 49 CR 1150.41, *et seq.*, to extend, renew and supplement the arrangement governing its lease and operation of certain lines of railroad owned by Soo Line Railroad Company, d/b/a Canadian Pacific Railway Company (CPR) and currently operated by DMVW. These lines run between Hankinson, ND, and Moffit, ND; Bismarck, ND and Max, ND; and Flaxton, ND and Whitetail, MT. Specifically, DMVW will continue to lease and operate: (1) Between approximately milepost 205.96 in Hankinson and approximately milepost 391.38 near Moffit; (2) between approximately mileposts 391.27 and 393.33 at Moffit; (3) between approximately milepost 560.5 in Bismarck and approximately mileposts 467.61 and 467.06 on the legs of the wye in Max; (4) between approximately milepost 541.0 at Flaxton and approximately milepost 549.64 at Rival, ND; (5) between approximately milepost 582.3 at Crosby, ND, and approximately milepost 676.83 at Whitetail, (6) between approximately mileposts 581.19 and 582.35 near Crosby; and (7) between approximately mileposts 557.68 and 558.31 at Columbus, ND (collectively, the Subject Lines), a total distance of approximately 386 miles of rail line.

DMVW currently operates the Subject Lines pursuant to a lease agreement with CPR. DMVW and CPR have agreed to enter into a Renewed Lease Agreement that will extend the terms of DMVW's lease and operation of the Subject Lines through June 30, 2026,

and will amend and supplement certain other terms and conditions of the lease arrangement between DMVW and CPR.

DMVW will continue to retain the following trackage rights that it acquired by assignment from CPR in 1990: (1) CPR's trackage rights over the line of railroad owned jointly by CPR and the BNSF Railway Company (BNSF) between approximately milepost 549.64 at Rival and milepost 582.3 at Crosby, which allows DMVW to operate between the Flaxton-Rival and Crosby-Whitetail segments that it leases from CPR; (2) CPR's trackage rights over the short branch line owned jointly by CPR and BNSF that connects the Flaxton-Whitetail main line with the short CPR track at Columbus, ND; and (3) CPR's trackage rights over the line of railroad owned by BNSF between McKenzie, ND and Bismarck, which enables DMVW to connect its operations on the Bismarck-Max segment with its operations on the Moffit-Hankinson segment via the line of railroad owned by DMVW between McKenzie and Moffit.

DMVW certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

DMVW indicates that the parties intend to consummate the transaction on or soon after the date this exemption becomes effective in recognition of the fact that the date of effectiveness depends on whether a related petition for waiver is granted.[1]

If the 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. 34904, 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 Edward J. Fishman, 1601 K Street, NW., Washington, DC 20006–1600.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

By the Board, David M. Konschnik, Director, Office of Proceedings.

[1] In a decision in this proceeding served on July 24, 2006, the Board granted a request by DMVW for waiver of the 60-day advance labor notice requirement of 49 CFR 1150.42(e). The exemption became effective on the service date of that decision.

Decided: July 24, 2006.

Vernon A. Williams,

Secretary.

[FR Doc. E6–12098 Filed 7–27–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34900]

Lackawaxen-Honesdale Shippers Association, Inc.—Acquisition of Control Exemption—Stourbridge Railroad Company, Inc.

Lackawaxen-Honesdale Shippers Association, Inc. (LHSA), has filed a verified notice of exemption to acquire control of Stourbridge Railroad Company, Inc. (Stourbridge), from Mr. Richard D. Robey. Stourbridge is a Class III railroad, providing rail service on the Honesdale Branch, which extends from Lackawaxen, PA, to Honesdale, PA.[1]

The transaction was scheduled to be consummated on or after July 7, 2006, the effective date of the exemption (7 days after the exemption was filed).

As a result of this transaction, LHSA will own and control the stock of Stourbridge, which will continue to operate the Honesdale Branch.[2] LHSA states that it owns no other rail lines or railroads, and therefore, Stourbridge does not connect with any other railroad owned or operated by LHSA. LHSA also states that the acquisition of control of Stourbridge is not part of a series of anticipated transactions that would connect that railroad with any other railroad owned by LHSA. In addition, the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323–25. *See* 49 CFR 1180.2(d)(2).

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 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. 34900, 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 Richard R. Wilson, Esq., 127 Lexington Avenue, Ste. 100, Altoona, PA 16601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 19, 2006.

By the Board.

David M. Konschnik,

Director, Office of Proceedings.

[FR Doc. E6–11954 Filed 7–27–06; 8:45 am]

BILLING CODE 4915–01–P

[1] Stourbridge obtained operating authority for this rail line in *Stourbridge Railroad Company, Inc.—Operation Exemption—in Wayne and Pike Counties, PA*, Finance Docket No. 31508 (ICC served Jan. 25, 1990).

[2] LHSA obtained authority to acquire, and the common carrier obligation to serve, the Honesdale Branch from the Pennsylvania Department of Transportation in *Lackawaxen-Honesdale Shippers Association, Inc.—Acquisition Exemption—Pennsylvania Department of Transportation*, STB Finance Docket No. 34891 (STB served July 13, 2006).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 24, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 28, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0193.

Type of Review: Extension.

Title: Tax on Lump Sum Distributions (From Qualified Plans of Participants Born Before January 2, 1936).

Form: 4972.

Description: IRC Section 402(e) allows taxpayers to compute a separate tax on a lump sum distribution from a qualified retirement plan. Form 4972 is used to correctly figure that tax. The

data is used to verify the correctness of the separate tax. Form 4972 is also used to make the special 20% capital gain election attributable to pre-1974 participation from the lump-sum distribution.

Respondents: Business or other for-profit, individuals and households.

Estimated Total Burden Hours: 95,520 hours.

OMB Number: 1545–0144.

Type of Review: Revision.

Title: Undistributed Capital Gains Tax Return.

Form: 2438.

Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under IRC section 852(b)3(D). IRS uses this information to determine the correct tax.

Respondents: Businesses, individuals and households.

Estimated Total Burden Hours: 879 hours.

OMB Number: 1545–1837.

Type of Review: Extension.

Title: Revenue Procedure 2003–36, Industry Issue Program.

Description: Revenue Procedure 2003–36 describes the procedures for business taxpayers, industry associations, and other representing business taxpayers to submit issues for resolution under the IRS's Industry Issues Resolution Program.

Respondents: Business or other for-profit institutions.

Estimated Total Burden Hours: 2,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–12076 Filed 7–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Notice of Rate for Use in Federal Debt Collection and Discount and Rebate Evaluation

AGENCY: Financial Management Service, Fiscal Service, Treasury.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982, as amended, (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts owed to the Government. Treasury's Cash Management Requirements (1 TFM 6–8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, 5 CFR 1315.8 of the Prompt Payment rule on ''Rebates'' requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate is 4.00 percent for the remainder of the calendar year.

DATES: The rate will be in effect for the period beginning on July 1, 2006, and ending on December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Agency Enterprise Solutions Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: 202–874–6650).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227. The rate is computed each year by averaging Treasury Tax and Loan (TT&L) investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective each January 1. The rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 percentage points, which is the case for the quarter ending June 30, 2006. Therefore, the rate in effect for the period July 1, 2006 through December 31, 2006 reflects the average investment rates for the 12-month period that ended June 30, 2006.

Dated: July 18, 2006.

Gary Grippo,

Assistant Commissioner, Federal Finance.

[FR Doc. 06–6518 Filed 7–27–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0377]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to repurchase a default loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or September 26, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *mailto:irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0377'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Claim for Repurchase of Loan, VA Form 26–8084.

OMB Control Number: 2900–0377.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of delinquent vendee accounts guaranteed by VA

complete VA Form 26–8084 to request VA to repurchase a loan that has been in default for three months and the amount of the delinquency equals or exceeds the sum of two monthly installments. VA notifies the obligor(s) in writing of the loan repurchased, and that the vendee account will be serviced and maintained by VA.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 240 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 480.

Dated: July 5, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–12080 Filed 7–27–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
July 28, 2006

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0138; FRL–8202–4]

RIN 2060–AM77

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments; notice of final action on reconsideration.

SUMMARY: EPA is promulgating amendments to the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline) (OLD NESHAP), which EPA promulgated on February 3, 2004. After promulgation of the final OLD NESHAP, the Administrator received petitions for administrative reconsideration of the promulgated rule, and several petitions for judicial review of the final rule were filed in the United States Court of Appeals for the District of Columbia Circuit. On November 14, 2005, pursuant to a settlement agreement between some of the parties to the litigation, EPA published a notice of proposed amendments to address some of the concerns raised in the petitions and requested comments on the proposed amendments. In this action, EPA is promulgating those amendments, adding additional vapor balancing options, and making technical corrections to the final rule.

DATES: The final rule amendments are effective on July 28, 2006. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of July 28, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0138. All documents in the docket are listed either on the *www.regulations.gov* Web site or in the legacy docket, A–98–13. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, 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: Ms. Brenda Shine, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number: (919) 541–3608; fax number: (919) 541–0246; e-mail address: *shine.brenda@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of regulated entities
Industry	325211 325192 325188 32411 49311 49319 48611 42269 42271	Operations at major sources that transfer organic liquids into or out of the plant site, including: Liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations.
Federal Government		Federal agency facilities that operate any of the types of entities listed under the ''industry'' category in this table.

* North American Industry Classification System/Considered to be the primary industrial codes for the plant sites with OLD operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart EEEE. If you have any questions regarding the applicability of this action to a particular entity, consult the individual described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments to the OLD NESHAP is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 26, 2006. Only those objections that were raised with reasonably specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity

during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us 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 Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Organization of this document: The information presented in this preamble is organized as follows:

I. What Is the Statutory Authority for the Final Rule?

Section 112 of the CAA requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. OLD was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit at least 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

II. Background

On February 3, 2004 (69 FR 5063), EPA promulgated the OLD NESHAP (40 CFR part 63, subpart EEEE) pursuant to section 112 of the CAA. In response to several petitions for administrative reconsideration of the OLD NESHAP and several petitions for judicial review filed with the United States Court of Appeals for the District of Columbia Circuit and pursuant to a settlement agreement between some of the parties to the litigation, EPA proposed amendments (November 14, 2005, 70 FR 69210) to subpart EEEE. EPA received comments from four entities. The final notice presents EPA's responses to those comments and promulgates amendments to subpart EEEE in response to the petitions and public comments.

As noted in the November 14, 2005, **Federal Register** notice, EPA will be taking separate action to address an administrative petition for reconsideration and a petition for judicial review concerning wastewater sources that were not addressed in the settlement agreement that gave rise to the November 14, 2005, proposal.

III. What Revisions Were Made as a Result of Comments Received on the Proposed Amendments?

Based on consideration of the comments received on the proposed amendments, EPA is revising the OLD rule provisions addressing vapor balancing for transfer racks by providing an additional, equivalent control option that allows routing of displaced HAP vapors to a storage tank with a common header. In addition, EPA is adding an option to allow vapor balancing back to the transport vehicle for storage tanks when they are being filled with organic liquids. EPA is withdrawing the proposed amendment that would have allowed vapor balancing transfer rack emissions to a process unit because this option is already available through other language. EPA is making additional changes, which are either technical corrections or clarifications.

IV. What Are the Responses to Significant Comments?

EPA received four public comment letters on the proposed amendments. Most of the comments from three of the commenters were supportive of the proposed amendments, and EPA thanks the commenters for that support. The following summarizes the comments that sought changes to the proposed amendments and EPA's response to those comments.

A. Compliance Date Extension for All Storage Tanks

Comment: One commenter noted that 40 CFR 63.2342(b)(2) allows owners and operators of storage tanks with floating roofs up to 10 years or after the next degassing and cleaning activities to comply with the regulations for such storage tanks. The commenter requested that this compliance provision be extended to all storage tanks, because, in their opinion, the emissions produced by emptying and degassing a tank in order to perform the required alterations would exceed the cumulative reduction in emissions occurring in the years following alteration of the tank.

Response: EPA notes that this comment does not pertain to the proposed amendments to subpart EEEE in the November 14, 2005, **Federal Register** notice. Nevertheless, EPA is responding to this request because it is important to clarify this issue. This provision (40 CFR 63.2342(b)(2)) is only applicable to storage tanks with floating roofs and is not applicable to other types of storage tanks (i.e., fixed roof storage tanks). The compliance date provisions for floating roof tanks are consistent with similar rules such as the Hazardous Organic NESHAP (HON). The rationale for allowing extended compliance time for floating roof tanks (up to 10 years) that must upgrade fittings to comply with this rule was that the incremental reductions associated with upgrading controls generally would not exceed the emissions generated as a result of emptying and degassing. However, this is not the case for fixed roof tanks that are essentially uncontrolled. Further, the commenter did not provide substantive information regarding emission potentials and offsetting cleaning and degassing emission potentials for fixed roof tanks. Thus, the technical basis for the compliance date provision is only applicable to storage tanks with floating roofs and not to storage tanks with fixed roofs. Therefore, EPA is not changing this provision as requested by the commenter.

B. Vapor Balancing

Comment: Two commenters requested that 40 CFR 63.2346(b)(3)(i) and (ii) be revised to allow organic HAP vapors

displaced during loading to be vented to another storage tank connected by common header in addition to the tank from which the organic HAP vapor originated or to a process unit, as currently allowed. The commenters stated that this would afford the same flexibility afforded in the HON and the Miscellaneous Organic NESHAP.

Response: EPA agrees that the alternative proposed by the commenters is both appropriate and applicable to the OLD source category. The option provides owners and operators flexibility in meeting the requirements of 40 CFR part 63, subpart EEEE, without sacrificing the level of emission reductions being achieved. Further, making this change would provide consistency between similar emission sources being controlled under similar rules. Therefore, EPA has revised the rule to incorporate this option for vapor balancing for transfer racks.

In addition, other rules (e.g., see 40 CFR 63.119(g) of the HON) allow an owner or operator to route emissions from the filing of storage tanks back to the transport vehicle from which the organic liquid originates. EPA has determined that, like vapor balancing through a common header, the inclusion of this vapor balancing option for storage tanks when they are being filled provides both consistency between the OLD rule and other similar subparts and flexibility to owners and operators without sacrificing emission reduction. Further, because some of the transport vehicles to which vapors are returned are refilled offsite, EPA has included requirements for such offsite facilities. Therefore, EPA has added this provision, along with the necessary requirements for initial and continuous compliance and for keeping records.

Finally, EPA is withdrawing the proposed amendment that would have allowed vapor balancing transfer rack emissions back to a process unit. In the final rule, transfer racks may be routed back to a process (see 40 CFR 63.2346(b)(2)). As part of the proposed amendments (see 40 CFR 63.2346(b)(3)(i) and 40 CFR 63.2346(b)(3)(ii)), vapor balancing these emissions back to a process unit was proposed. Upon further consideration, both options essentially describe one single practice, and therefore, EPA recognizes that it is not necessary for the final rule to contain both options; that 40 CFR 63.2346(b)(2) of the final rule is sufficient. Therefore, EPA is withdrawing the proposed vapor balancing of transfer racks back to a process unit. No changes have been made concerning the use of vapor balancing transfer rack emissions back to the storage tank from which the liquid originated.

We also would like to address the provisions of 40 CFR 63.2378(d), which allow emissions bypasses of fuel gas systems or the process for up to 240 hours per year. These provisions allow bypassing that is necessary for valid safety or operational reasons but are only applicable if emissions are routinely physically vented to fuel gas systems or the process. This means that the owner or operator can not use the language of 40 CFR 63.2378(d) to exempt a transfer rack that is used for less than 240 hours per year from control requirements.

C. Recordkeeping and Reporting for Emissions Sources That Do Not Require Control

Comment: One commenter requested that the recordkeeping requirements proposed in 40 CFR 63.2343(a) for tanks under 5,000 gallons capacity and for transfer racks that only unload organic liquids be eliminated in their entirety. The commenter stated that such recordkeeping and reporting requirements for these sources impose unnecessary administrative requirements on facilities. The commenter fails to see the benefit in keeping records for tanks that physically cannot change in size or for unloading racks that only unload certain materials.

Response: Addressing storage tanks first, EPA points out that owners and operators of facilities subject to 40 CFR part 63, subpart EEEE will have to make a determination as to which storage tanks are storing organic liquids subject to subpart EEEE and which are not. If a storage tank is storing an organic liquid subject to subpart EEEE, the tank is subject to subpart EEEE. For storage tanks subject to subpart EEEE, the owner or operator would then identify the capacity of each tank in order to identify those that are less than 5,000 gallons in capacity and which do not require control. Proposed 40 CFR 63.2343(a) only applies to those tanks that are storing an organic liquid subject to subpart EEEE and with capacities of less than 5,000 gallons. This applicability is stated clearly in proposed 40 CFR 63.2343(a) (emphasis added):

> (a) For each storage tank *subject to this subpart having a capacity of less than 18.9 cubic meters (5,000 gallons)* and for each transfer rack subject to this subpart that only unloads organic liquids (i.e., no organic liquids are loaded at any of the transfer racks), you must keep documentation that verifies that each storage tank and transfer rack identified in paragraph (a) of this section is not required to be controlled.

Proposed 40 CFR 63.2343(a) requires only that the owner or operator keep a record of the size determination; that is, by virtue of having a capacity of less than 5,000 gallons, the storage tank is not required to be controlled. The proposed paragraph does not apply to: (1) Storage tanks storing a liquid that is not an organic liquid and (2) storage tanks storing an organic liquid that is not subject to 40 CFR part 63, subpart EEEE.

As correctly pointed out by the commenter, storage tanks do not change in size. Therefore, there would be no further effort required on the part of the owner or operator to document that the storage tank is not subject to control; that is, the original determination is sufficient.

Proposed 40 CFR 63.2343(a) also required that the documentation by kept up-to-date:

> The documentation must be kept up-to-date (i.e., all such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled) and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

EPA points out that in explaining what is meant by ''up-to-date,'' the phrase ''all such emission sources at a facility'' is used. Within the context of the entire paragraph, this phrase unambiguously refers back to those storage tanks for which the documentation under 40 CFR 63.2343(a)(1) is being requested; that is, storage tanks subject to 40 CFR part 63, subpart EEEE, which are storage tanks storing organic liquids subject to subpart EEEE. EPA does not believe it necessary to revise the regulatory text to further clarify the phrase ''all such emission sources at a facility.'' This phrase does not apply to either storage tanks storing liquids that are not organic liquids or to storage tanks storing organic liquids that are not subject to subpart EEEE. To better identify the type of documentation that is acceptable, EPA has revised 40 CFR 63.2343(a) to allow the use of piping and instrumentation diagrams (P&ID) to identify tanks (and transfer racks) subject to 40 CFR 63.2343(a).

EPA reemphasizes that proposed 40 CFR 63.2343(a) only applies to storage tanks storing an organic liquid subject to 40 CFR part 63, subpart EEEE. If a facility has storage tanks of less than 5,000 gallon capacity, but those storage tanks do not store organic liquids (as defined in subpart EEEE), then there are no recordkeeping requirements for those tanks under 40 CFR 63.2343(a)(1) or

under any other part of subpart EEEE. Furthermore, there are no recordkeeping requirements under subpart EEEE for storage tanks of any size that either do not store and organic liquid or for storage tanks storing organic liquids that are not subject to subpart EEEE.

EPA further points out that 40 CFR 63.10(b)(3) of subpart A (the General Provisions) does not impose any recordkeeping requirements under the OLD maximum achievable control technology (MACT) for storage tanks that are not storing organic liquids and, therefore, not part of the OLD source category. The determination of applicability of 40 CFR 63.10(b)(3) applies to stationary sources that are part of the source category, but that are not subject to the relevant standard, in this case 40 CFR part 63, subpart EEEE, based on either the source's potential to emit or a specific exclusion in the subpart. In the case of the commenter, their OLD operation is located at a major source of HAP and there are no exclusions in subpart EEEE applicable to it; therefore, their OLD operation is an affected source subject to subpart EEEE. Once this determination is made, there is no applicability of 40 CFR 63.10(b)(3) to the OLD affected source.

For other storage tanks located at their plant site that do not store organic liquids and, therefore, are not part of the OLD affected source, 40 CFR 63.10(b)(3) imposes no recordkeeping requirements, for the purposes of the OLD rule, on those storage tanks or the source to which they belong.

EPA clarified this in the preamble to the March 23, 2001, proposed amendments to the General Provisions at 66 FR 16330. We state

> The current General Provisions include a requirement at 63.10(b)(3) for a source both to determine applicability and to keep a record of their determination if the source determines that it is not an affected source for a relevant standard. [A]n unintended interpretation of the General Provisions could be to require owners and operators of any source, including facilities not in the source category being regulated, to perform applicability determinations each time any NESHAP are promulgated. It was not our intent that the General Provisions require owners and operators to make a determination that they are not subject to every NESHAP that is issued.

For transfer racks, a situation similar to storage tanks exists. Only transfer racks loading or unloading organic liquids that are subject to 40 CFR part 63, subpart EEEE are affected; loading racks that load or unload only non-organic liquids (or organic liquids not subject to subpart EEEE) are not affected. For those racks that only unload organic liquids subject to subpart EEEE, owners and operators must make the initial determination that the rack only unloads such organic liquids, and then must keep a record of that determination. As long as such racks do not begin to load organic liquids subject to subpart EEEE, no further effort, beyond keeping the record readily available and up-to-date, is required on the part of the owner or operator to document that the transfer rack only unloads organic liquids subject to subpart EEEE.

Finally, EPA believes that maintaining these basic determinations in the form of a record, both for storage tanks with capacities of less than 5,000 gallons and for transfer racks that only unload organic liquids, will facilitate the time and effort an inspector would expend during an inspection of a facility and the time and effort the source would expend recreating these determinations each time they were asked.

For these reasons, EPA has not revised the proposed rule language associated with these storage tanks and transfer racks, except for the allowance of P&ID to identify such storage tanks and transfer racks.

Comment: One commenter requested that the recordkeeping and reporting requirements proposed in 40 CFR 63.2343 for storage tanks with capacities equal to or greater than 5,000 gallons that do not require control be eliminated. The commenter stated that such requirements impose an administrative burden with no environmental benefit. The commenter suggested that the more appropriate way to address these tanks is to require the owner or operator of such tanks to notify the State permitting authority at the point in time when such tanks trigger control requirements under Table 2 of 40 CFR part 63, subpart EEEE. The commenter recommended that EPA apply the same approach used in the Engine Testing MACT (40 CFR 63.9290). In the Engine Testing MACT, a source that is exclusively used for testing internal combustion engines of less than 25 horsepower is required only to submit an initial notification, meeting the requirements in the General Provisions. The initial notification for these sources also must state that the source has no additional requirements, including a brief explanation of the basis of the exclusion. No other reporting, recordkeeping, or notification requirements, including submission of startup, shutdown, and malfunction plans and compliance demonstrations, apply to sources that do not have to comply with emission limitations. According to the commenter, EPA should apply this same approach to sources that are not subject to controls under subpart EEEE.

Response: As noted in the previous response, the requirements in proposed 40 CFR 63.2343(b) only apply to storage tanks storing organic liquids subject to 40 CFR part 63, subpart EEEE. Further, an owner or operator would have to make an initial determination as to whether these larger storage tanks contain organic liquids with vapor pressures that trigger the control requirements. As long as the liquid in the tank did not change, no further action is required on the part of the owner or operator, beyond keeping the record readily available and up-to-date. If the owner or operator changes the liquids stored in such tanks, however, the owner or operator is required to make a determination as to whether or not the vapor pressure of the new liquid being stored is sufficient to require control and maintain a record of that determination, even if control is still not required.

EPA continues to believe that keeping a record of such information is important to allow an inspector to determine compliance with the OLD rule. Therefore, EPA has not revised this requirement in the final rule.

D. Technical Corrections and Clarifying Changes

EPA is making the following technical corrections and clarifications to the final rule:

1. The cross-reference to 40 CFR 63.2382(b) found in 40 CFR 63.2370(c) is incorrect. The correct cross-reference is 40 CFR 63.2382(d).

2. Item 1.b in Table 5 to 40 CFR part 63, subpart EEEE references the emission limit of ''at least 95 weight percent.'' This limit is applicable to storage tanks only. The applicable limit for transfer racks (both low throughput and high throughput racks) is ''at least 98 weight percent.'' EPA has revised the final rule to reflect accordingly.

3. In table 12 to 40 CFR part 63, subpart EEEE, 40 CFR 63.6(h)(1) through (7) are indicated as being not applicable to subpart EEEE, while 40 CFR 63.6(h)(8) and CFR 63.6(h)(9) are indicated as being applicable. 40 CFR 63.6(h) applies to opacity and visible emission standards. Upon closer examination of this apparent inconsistency, EPA has determined that all of 40 CFR 63.6(h) is not applicable, except to the extent that Method 22 observations are required as part of a flare compliance assessment. Therefore, EPA has revised the applicability of 40 CFR 63.6(h) to read as follows:

''No; except only as it applies to flares for which Method 22 observations are required as part of a flare compliance assessment.''

4. We are deleting methyl ethyl ketone (MEK) from Table 1 because MEK has been delisted by the Agency as a HAP.

5. We are correcting the cross-reference in 40 CFR 63.2346(a) for storage tanks meeting the tank capacity and liquid vapor pressure criteria for control in Table 2, item 6. The final rule referenced compliance with paragraph (a)(1) when it should have referenced compliance with either paragraphs (a)(1) or (a)(2).

6. We are revising the phrasing in 40 CFR 63.2354(a)(3) to clarify that performance evaluations for continuous monitoring systems (CMS) are only currently required for continuous emission monitoring systems. The requirements of 40 CFR 63.8 only apply if there are promulgated performance specifications for CMS, including continuous parameter monitoring systems. Currently, there are no performance specifications for the continuous parameter monitoring systems that are identified in 40 CFR part 63, subpart SS, which this subpart references. However, performance specifications for parameter monitoring systems are expected to be proposed in the future. When developing these performance specifications, the Agency will consider their application to OLD and other similar rules. For consistency, we have also clarified the applicability of CMS provisions contained in the General Provisions, 40 CFR 63.8(c)(6)–(8), (d), and (f).

7. We have added a new paragraph, 40 CFR 63.2396(e)(2), to clarify the relationship between the recordkeeping and reporting requirements of this subpart and the recordkeeping and reporting requirements for equipment leak components associated with unloading racks under other subparts. The new paragraph clarifies that such equipment leak components must be in compliance with this subpart EEEE. However, if the recordkeeping and reporting requirements of the other 40 CFR part 63 subpart are equivalent to those required by this subpart EEEE, the owner or operator may elect to continue to comply with the recordkeeping and reporting requirements under which they are currently being controlled and be considered in compliance with this subpart EEEE. This new paragraph parallels the similar relationship in the final rule provided for monitoring, recordkeeping, and reporting for control devices.

8. We have revised the definition of ''annual average true vapor pressure'' to clarify that the vapor pressure is to be based on organic HAP that are listed in Table 1 to this subpart EEEE.

9. We have corrected an incorrect cross-reference in the second column of Item 8 in Table 3 of this subpart EEEE. The incorrect cross-reference, 40 CFR 63.2366(c), does not exist. The correct cross-reference is 40 CFR 63.2366(b).

10. We corrected the last column of item 1.b in Table 5 and the third column of items 1 and 2 of Table 6 of this subpart EEEE by adding the phrase ''for nonflare combustion devices'' to the option of 20 parts per million by volume exhaust concentration. This phrase was inadvertently omitted and makes these items consistent with item 1.a.i.(5)(A)(ii) in Table 5 of this subpart EEEE.

11. We are making the description in item 2 in Table 11 of this subpart EEEE consistent with the General Provisions' language that requires an immediate notification when an exceedance of an applicable emission standard occurs during a startup, shutdown, or malfunction episode. The language in the rule as promulgated did not reference the exceedance of an applicable emission standard for determining when an immediate notification was required.

12. We are correcting in Table 12 of this subpart EEEE how 40 CFR 63.9(j) applies to this subpart EEEE. The types of changes that 40 CFR 63.9(j) requires to be reported are covered in subpart EEEE in 40 CFR 63.2386(c) and (d). In these paragraphs, these changes would be submitted with the next compliance report. Thus, the requirement to submit these changes within 15 days after the change is not applicable to this subpart EEEE. The change in Table 12 reflects this.

13. We are revising § 63.2350(c) to be consistent with 40 CFR 63.6(e)(3), which requires the development of a startup, shutdown, and malfunction plan. The revised language, therefore, drops the phrase ''and implement.'' An owner or operator is still required, under 40 CFR 63.6(e)(1), to minimize emissions during a period of startup, shutdown, or malfunction; thus there is no change in the stringency of the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

(3) Materially alter the budgetary impact of entitlement, 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 notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. 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

This action does not impose any new information collection burden. The final rule required owners and operators to list sources not subject to control in the first and subsequent compliance reports and to keep appropriate documentation. The final rule applied these requirements across-the-board for all emission sources not requiring control and, in general, was not specific as to what recordkeeping is required. Under the final rule amendments, we clarify how these provisions would apply to those emission sources for which control would never be required and to those emission sources for which control could be required, but is not currently required. In addition, we identify the specific circumstances under which listing in subsequent compliance reports would be required for sources for which control is not required rather than requiring all previously identified sources to be re-listed. Further, we narrow the applicability of certain sections of the General Provisions for sources for which control is not required because the proposed amendments make such application of those sections in the General Provisions unnecessary. Thus, in sum, the final rule amendments are

not adding new information collection burden. However, OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 63, subpart EEEE under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0539, EPA Information Collection Request (ICR) number 1963.02. A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

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

The final rule amendments will not impose any new requirements on small entities, and will reduce some of the burden established under the promulgated rule. The final rule amendments will relieve regulatory burden by, for example, exempting all emission sources in the affected source not requiring control under the OLD NESHAP from notification, recordkeeping, and reporting requirements, except as otherwise specified for all affected small entities; excluding from the affected source storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used in special operations and to conduct maintenance activities; and allowing owners or operators of existing sources to request a compliance extension of up to 1 year if the additional time is necessary for the installation of controls. We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The final rule amendments do not have federalism implications. They will not have new substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. They correct typographical errors, clarify provisions, or eliminate unnecessary recordkeeping and reporting requirements for emission sources for which there are no control requirements. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule amendments do not have tribal implications as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rule amendments.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

The final rule amendments are not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 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 rule amendments involve a technical standard. EPA has decided to use ASTM D6420–99 (reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, as an alternative to Method 18. This method allows the use of ASTM D6420–99 (Reapproved 2004) as an alternative to Method 18 to determine compliance with the organic HAP or total organic compounds emission limit under certain circumstances.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on July 28, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 18, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out 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.*

■ 2. Section 63.14 is amended by revising paragraph (b)(28) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(28) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for §§ 63.2354(b)(3)(i), 63.2354(b)(3)(ii), 63.2354(b)(3)(ii)(A), and 63.2354(b)(3)(ii)(B).

* * * * *

Subpart EEEE—[Amended]

■ 3. Section 63.2338 is amended by:

■ a. Revising paragraphs (b)(3) and (b)(4);

■ b. Adding a new paragraph (b)(5);

■ c. Revising paragraph (c)(1);

■ d. Removing paragraph (c)(2) and redesignating paragraphs (c)(3) and (c)(4) as (c)(2) and (c)(3), respectively; and

■ e. Revising newly designated paragraphs (c)(2) and (c)(3) to read as follows:

§ 63.2338 What parts of my plant does this subpart cover?

* * * * *

(b) * * *

(3) All equipment leak components in organic liquids service that are associated with:

(i) Storage tanks storing organic liquids;

(ii) Transfer racks loading or unloading organic liquids;

(iii) Pipelines that transfer organic liquids directly between two storage tanks that are subject to this subpart;

(iv) Pipelines that transfer organic liquids directly between a storage tank subject to this subpart and a transfer rack subject to this subpart; and

(v) Pipelines that transfer organic liquids directly between two transfer racks that are subject to this subpart.

(4) All transport vehicles while they are loading or unloading organic liquids at transfer racks subject to this subpart.

(5) All containers while they are loading or unloading organic liquids at transfer racks subject to this subpart.

(c) * * *

(1) Storage tanks, transfer racks, transport vehicles, containers, and equipment leak components that are part of an affected source under another 40 CFR part 63 national emission standards for hazardous air pollutants (NESHAP).

(2) Non-permanent storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used in special situation distribution loading and unloading operations (such as maintenance or upset liquids management).

(3) Storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used to conduct maintenance activities, such as stormwater management, liquid removal from tanks for inspections and maintenance, or changeovers to a different liquid stored in a storage tank.

* * * * *

■ 4. Section 63.2342 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding paragraph (a)(3);

■ c. Revising paragraph (b)(1);

■ d. Adding paragraph (b)(3); and

■ e. Revising paragraph (d) to read as follows:

§ 63.2342 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the schedule identified in paragraph (a)(1), (a)(2), or (a)(3) of this section, as applicable.

* * * * *

(3) If, after startup of a new affected source, the total actual annual facility-level organic liquid loading volume at that source exceeds the criteria for control in Table 2 to this subpart, items 9 and 10, the owner or operator must comply with the transfer rack requirements specified in § 63.2346(b) immediately; that is, be in compliance the first day of the period following the end of the 3-year period triggering the control criteria.

(b)(1) If you have an existing affected source, you must comply with the emission limitations, operating limits, and work practice standards for existing affected sources no later than February 5, 2007, except as provided in paragraphs (b)(2) and (3) of this section.

* * * * *

(3)(i) If an addition or change other than reconstruction as defined in § 63.2 is made to an existing affected facility that causes the total actual annual facility-level organic liquid loading volume to exceed the criteria for control in Table 2 to this subpart, items 7 and 8, the owner or operator must comply with the transfer rack requirements specified in § 63.2346(b) immediately; that is, be in compliance the first day of the period following the end of the 3-year period triggering the control criteria.

(ii) If the owner or operator believes that compliance with the transfer rack emission limits cannot be achieved immediately, as specified in paragraph (b)(3)(i) of this section, the owner or operator may submit a request for a compliance extension, as specified in paragraphs (b)(3)(ii)(A) through (I) of this section. Subject to paragraph (b)(3)(ii)(B) of this section, until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph (b)(3)(ii), the owner or operator of the transfer rack subject to the requirements of this section shall comply with all applicable requirements of this subpart. Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(A) *Submittal.* The owner or operator shall submit a request for a compliance extension to the Administrator (or a State, when the State has an approved 40 CFR part 70 permit program and the source is required to obtain a 40 CFR part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) seeking an extension allowing the source up to 1 additional year to comply with the transfer rack standard, if such additional period is necessary for the installation of controls. The owner or operator of the affected source who has requested an extension of compliance under this paragraph (b)(3)(ii)(A) and who is otherwise required to obtain a title V permit shall apply for such permit, or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph (b)(3)(ii)(A) will be incorporated into the affected source's title V permit according to the provisions of 40 CFR part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) *When to submit.* (*1*) Any request submitted under paragraph (b)(3)(ii)(A) of this section must be submitted in writing to the appropriate authority no later than 120 days prior to the affected source's compliance date (as specified in paragraph (b)(3)(i) of this section), except as provided for in paragraph (b)(3)(ii)(B)(*2*) of this section. Nonfrivolous requests submitted under this paragraph (b)(3)(ii)(B)(*1*) will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the date of denial.

(*2*) An owner or operator may submit a compliance extension request after the date specified in paragraph (b)(3)(ii)(B)(*1*) of this section provided the need for the compliance extension arose after that date, and before the otherwise applicable compliance date and the need arose due to circumstances beyond reasonable control of the owner or operator. This request must include, in addition to the information required in paragraph (b)(3)(ii)(C) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problems. Nonfrivolous requests submitted under this paragraph (b)(3)(ii)(B)(*2*) will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the original compliance date.

(C) *Information required.* The request for a compliance extension under paragraph (b)(3)(ii)(A) of this section shall include the following information:

(*1*) The name and address of the owner or operator and the address of the existing source if it differs from the address of the owner or operator;

(*2*) The name, address, and telephone number of a contact person for further information;

(*3*) An identification of the organic liquid distribution operation and of the

specific equipment for which additional compliance time is required;

(*4*) A description of the controls to be installed to comply with the standard;

(*5*) Justification for the length of time being requested; and

(*6*) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*i*) The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated;

(*ii*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*iii*) The date by which final compliance is to be achieved.

(D) *Approval of request for extension of compliance.* Based on the information provided in any request made under paragraph (b)(3)(ii)(C) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with the transfer rack emission standard, as specified in paragraph (b)(3)(ii) of this section. The extension will be in writing and will—

(*1*) Identify each affected source covered by the extension;

(*2*) Specify the termination date of the extension;

(*3*) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(*4*) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests);

(*5*) Specify the contents of the progress reports to be submitted and the dates by which such reports are to be submitted, if required pursuant to paragraph (b)(3)(ii)(E) of this section.

(*6*) Under paragraph (b)(3)(ii) of this section, specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period.

(E) *Progress reports.* The owner or operator of an existing source that has been granted an extension of compliance under paragraph (b)(3)(ii)(D) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached.

(F) *Notification of approval or intention to deny.*

(*1*) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (b)(3)(ii) of this section. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application; that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. Failure by the Administrator to act within 30 calendar days to approve or disapprove a request submitted under paragraph (b)(3)(ii) of this section does not constitute automatic approval of the request.

(*2*) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(*3*) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with:

(*i*) Notice of the information and findings on which the intended denial is based; and

(*ii*) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(*4*) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(G) *Termination of extension of compliance.* The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (b)(3)(ii)(D)(*3*) or paragraph (b)(3)(ii)(D)(*4*) of this section is not met. Upon a determination to terminate, the Administrator will notify, in writing, the owner or operator of the Administrator's determination to terminate, together with:

(*1*) Notice of the reason for termination; and

(*2*) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the determination to terminate, additional information or arguments to the Administrator before further action on the termination.

(*3*) A final determination to terminate an extension of compliance will be in writing and will set forth the specific grounds on which the termination is based. The final determination will be made within 30 calendar days after presentation of additional information or arguments, or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(H) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the CAA.

(I) *Limitation on use of compliance extension.* The owner or operator may request an extension of compliance under the provisions specified in paragraph (b)(3)(ii) of this section only once for each facility.

* * * * *

(d) You must meet the notification requirements in §§ 63.2343 and 63.2382(a), as applicable, according to the schedules in § 63.2382(a) and (b)(1) through (3) and in subpart A of this part. Some of these notifications must be submitted before the compliance dates for the emission limitations, operating limits, and work practice standards in this subpart.

■ 5. Section 63.2343 is added to subpart EEEE to read as follows:

§ 63.2343 What are my requirements for emission sources not requiring control?

This section establishes the notification, recordkeeping, and reporting requirements for emission sources identified in § 63.2338 that do not require control under this subpart (i.e., under paragraphs (a) through (e) of § 63.2346). Such emission sources are not subject to any other notification, recordkeeping, or reporting sections in this subpart, including § 63.2350(c), except as indicated in paragraphs (a) through (d) of this section.

(a) For each storage tank subject to this subpart having a capacity of less

than 18.9 cubic meters (5,000 gallons) and for each transfer rack subject to this subpart that only unloads organic liquids (i.e., no organic liquids are loaded at any of the transfer racks), you must keep documentation that verifies that each storage tank and transfer rack identified in paragraph (a) of this section is not required to be controlled. The documentation must be kept up-to-date (i.e., all such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled) and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location. The documentation may consist of identification of the tanks and transfer racks identified in paragraph (a) of this section on a plant site plan or process and instrumentation diagram (P&ID).

(b) For each storage tank subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that is not subject to control based on the criteria specified in Table 2 to this subpart, items 1 through 6, you must comply with the requirements specified in paragraphs (b)(1) through (3) of this section.

(1)(i) You must submit the information in § 63.2386(c)(1), (2), (3), and (10)(i) in either the Notification of Compliance Status, according to the schedule specified in Table 12 to this subpart, or in your first Compliance report, according to the schedule specified in § 63.2386(b), whichever occurs first.

(ii)(A) If you submit your first Compliance report before your Notification of Compliance Status, the Notification of Compliance Status must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report. If none of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report, you do not need to report the information specified in § 63.2386(c)(10)(i) when you submit your Notification of Compliance Status.

(B) If you submit your Notification of Compliance Status before your first Compliance report, your first Compliance report must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes specified in paragraph (d) of this section have occurred since the filing of the Notification of Compliance Status.

(iii) If you are already submitting a Notification of Compliance Status or a first Compliance report under § 63.2386(c), you do not need to submit a separate Notification of Compliance Status or first Compliance report for each storage tank that meets the conditions identified in paragraph (b) of this section (i.e., a single Notification of Compliance Status or first Compliance report should be submitted).

(2)(i) You must submit a subsequent Compliance report according to the schedule in § 63.2386(b) whenever any of the events in paragraph (d) of this section occur, as applicable.

(ii) Your subsequent Compliance reports must contain the information in § 63.2386(c)(1), (2), (3) and, as applicable, in § 63.2386(d)(3) and (4). If you are already submitting a subsequent Compliance report under § 63.2386(d), you do not need to submit a separate subsequent Compliance report for each storage tank that meets the conditions identified in paragraph (b) of this section (i.e., a single subsequent Compliance report should be submitted).

(3) For each storage tank that meets the conditions identified in paragraph (b) of this section, you must keep documentation, including a record of the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid, that verifies the storage tank is not required to be controlled under this subpart. The documentation must be kept up-to-date and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

(c) For each transfer rack subject to this subpart that loads organic liquids but is not subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with the requirements specified in paragraphs (c)(1) through (3) of this section.

(1)(i) You must submit the information in § 63.2386(c)(1), (2), (3), and (10)(i) in either the Notification of Compliance Status, according to the schedule specified in Table 12 to this subpart, or a first Compliance report, according to the schedule specified in § 63.2386(b), whichever occurs first.

(ii)(A) If you submit your first Compliance report before your Notification of Compliance Status, the Notification of Compliance Status must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report. If none of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report, you do not need to report the information specified in § 63.2386(c)(10)(i) when you submit your Notification of Compliance Status.

(B) If you submit your Notification of Compliance Status before your first Compliance report, your first Compliance report must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes specified in paragraph (d) of this section have occurred since the filing of the Notification of Compliance Status.

(iii) If you are already submitting a Notification of Compliance Status or a first Compliance report under § 63.2386(c), you do not need to submit a separate Notification of Compliance Status or first Compliance report for each transfer rack that meets the conditions identified in paragraph (b) of this section (i.e., a single Notification of Compliance Status or first Compliance report should be submitted).

(2)(i) You must submit a subsequent Compliance report according to the schedule in § 63.2386(b) whenever any of the events in paragraph (d) of this section occur, as applicable.

(ii) Your subsequent Compliance reports must contain the information in § 63.2386(c)(1), (2), (3) and, as applicable, in § 63.2386(d)(3) and (4). If you are already submitting a subsequent Compliance report under § 63.2386(d), you do not need to submit a separate subsequent Compliance report for each transfer rack that meets the conditions identified in paragraph (c) of this section (i.e., a single subsequent Compliance report should be submitted).

(3) For each transfer rack that meets the conditions identified in paragraph (c) of this section, you must keep documentation, including the records specified in § 63.2390(d), that verifies the transfer rack is not required to be controlled under this subpart. The documentation must be kept up-to-date and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

(d) If one or more of the events identified in paragraphs (d)(1) through (4) of this section occur since the filing of the Notification of Compliance Status or the last Compliance report, you must submit a subsequent Compliance report as specified in paragraphs (b)(3) and (c)(3) of this section.

(1) Any storage tank or transfer rack became subject to control under this subpart EEEE; or

(2) Any storage tank equal to or greater than 18.9 cubic meters (5,000

gallons) became part of the affected source but is not subject to any of the emission limitations, operating limits, or work practice standards of this subpart; or

(3) Any transfer rack (except those racks at which only unloading of organic liquids occurs) became part of the affected source; or

(4) Any of the information required in § 63.2386(c)(1), § 63.2386(c)(2), or § 63.2386(c)(3) has changed.

■ 6. Section 63.2346 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (a)(2);
■ c. Adding a new paragraph (a)(4);
■ d. Revising paragraph (b) introductory text;
■ e. Revising paragraph (b)(2);
■ f. Revising paragraph (b)(3);
■ g. Revising paragraph (d) introductory text;
■ h. Revising paragraph (e); and
■ i. Removing and reserving paragraph (h) to read as follows:

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

(a) *Storage tanks.* For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, items 1 through 5, you must comply with paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section. For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, item 6, you must comply with paragraph (a)(1), (a)(2), or (a)(4) of this section.

* * * * *

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS.

* * * * *

(4) Use a vapor balancing system that complies with the requirements specified in paragraphs (a)(4)(i) through (vii) of this section and with the recordkeeping requirements specified in § 63.2390(e).

(i) The vapor balancing system must be designed and operated to route organic HAP vapors displaced from loading of the storage tank to the transport vehicle from which the storage tank is filled.

(ii) Transport vehicles must have a current certification in accordance with the United States Department of Transportation (U.S. DOT) pressure test requirements of 49 CFR part 180 for cargo tanks and 49 CFR 173.31 for tank cars.

(iii) Organic liquids must only be unloaded from cargo tanks or tank cars when vapor collection systems are connected to the storage tank's vapor collection system.

(iv) No pressure relief device on the storage tank, or on the cargo tank or tank car, shall open during loading or as a result of diurnal temperature changes (breathing losses).

(v) Pressure relief devices must be set to no less than 2.5 pounds per square inch guage (psig) at all times to prevent breathing losses. Pressure relief devices may be set at values less than 2.5 psig if the owner or operator provides rationale in the notification of compliance status report explaining why the alternative value is sufficient to prevent breathing losses at all times. The owner or operator shall comply with paragraphs (a)(4)(iv)(A) through (C) of this section for each pressure relief valve.

(A) The pressure relief valve shall be monitored quarterly using the method described in § 63.180(b).

(B) An instrument reading of 500 parts per million by volume (ppmv) or greater defines a leak.

(C) When a leak is detected, it shall be repaired as soon as practicable, but no later than 5 days after it is detected, and the owner or operator shall comply with the recordkeeping requirements of § 63.181(d)(1) through (4).

(vi) Cargo tanks and tank cars that deliver organic liquids to a storage tank must be reloaded or cleaned at a facility that utilizes the control techniques specified in paragraph (a)(4)(vi)(A) or (a)(4)(vi)(B) of this section.

(A) The cargo tank or tank car must be connected to a closed-vent system with a control device that reduces inlet emissions of total organic HAP by 95 percent by weight or greater or to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air.

(B) A vapor balancing system designed and operated to collect organic HAP vapor displaced from the cargo tank or tank car during reloading must be used to route the collected vapor to the storage tank from which the liquid being transferred originated or to another storage tank connected to a common header.

(vii) The owner or operator of the facility where the cargo tank or tank car is reloaded or cleaned must comply with paragraphs (a)(4)(vii)(A) through (D) of this section.

(A) Submit to the owner or operator of the storage tank and to the Administrator a written certification that the reloading or cleaning facility will meet the requirements of paragraph (a)(4)(vii)(A) through (C) of this section. The certifying entity may revoke the written certification by sending a written statement to the owner or operator of the storage tank giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the requirements of this paragraph (a)(4)(vii) of this section.

(B) If complying with paragraph (a)(4)(vi)(A) of this section, comply with the requirements for a closed vent system and control device as specified in this subpart EEEE. The notification requirements in § 63.2382 and the reporting requirements in § 63.2386 do not apply to the owner or operator of the offsite cleaning or reloading facility.

(C) If complying with paragraph (a)(4)(vi)(B) of this section, keep the records specified in § 63.2390(e)(3) or equivalent recordkeeping approved by the Administrator.

(D) After the compliance dates specified in § 63.2342, at an offsite reloading or cleaning facility subject to § 63.2346(a)(4), compliance with the monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 that has monitoring, recordkeeping, and reporting provisions constitutes compliance with the monitoring, recordkeeping and reporting provisions of § 63.2346(a)(4)(vii)(B) or § 63.2346(a)(4)(vii)(C). You must identify in your notification of compliance status report required by § 63.2382(d) the subpart of this part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

(b) *Transfer racks.* For each transfer rack that is part of the collection of transfer racks that meets the total actual annual facility-level organic liquid loading volume criterion for control in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (b)(1), (b)(2), or (b)(3) of this section for each arm in the transfer rack loading an organic liquid whose organic HAP content meets the organic HAP criterion for control in Table 2 to this subpart, items 7 through 10. For existing affected sources, you must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) of this section during the loading of organic liquids into transport vehicles. For new affected sources, you must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) and (ii) of this section during the loading of organic liquids into transport vehicles and containers. If the total actual annual facility-level organic liquid loading volume at any affected source is equal to or greater than the loading volume criteria for control in

Table 2 to this subpart, but at a later date is less than the loading volume criteria for control, compliance with paragraph (b)(1), (b)(2), or (b)(3) of this section is no longer required. For new sources and reconstructed sources, as defined in § 63.2338(d) and (e), if at a later date, the total actual annual facility-level organic liquid loading volume again becomes equal to or greater than the loading volume criteria for control in Table 2 to this subpart, the owner or operator must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) and (ii) of this section immediately, as specified in § 63.2342(a)(3). For existing sources, as defined in § 63.2338(f), if at a later date, the total actual annual facility-level organic liquid loading volume again becomes equal to or greater than the loading volume criteria for control in Table 2 to this subpart, the owner or operator must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) of this section immediately, as specified in § 63.2342(b)(3)(i), unless an alternative compliance schedule has been approved under § 63.2342(b)(3)(ii) and subject to the use limitation specified in § 63.2342(b)(3)(ii)(I).

* * * * *

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS.

(3)(i) Use a vapor balancing system that routes organic HAP vapors displaced from the loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.

(ii) Use a vapor balancing system that routes the organic HAP vapors displaced from the loading of organic liquids into containers directly (e.g., no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.

* * * * *

(d) *Transport vehicles.* For each transport vehicle equipped with vapor collection equipment that is loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (d)(1) of this section. For each transport vehicle without vapor collection equipment that is loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (d)(2) of this section.

* * * * *

(e) *Operating limits.* For each high throughput transfer rack, you must meet each operating limit in Table 3 to this subpart for each control device used to comply with the provisions of this subpart whenever emissions from the loading of organic liquids are routed to the control device. For each storage tank and low throughput transfer rack, you must comply with the requirements for monitored parameters as specified in subpart SS of this part for storage vessels and, during the loading of organic liquids, for low throughput transfer racks, respectively. Alternatively, you may comply with the operating limits in Table 3 to this subpart.

* * * * *

■ 7. Section 63.2350 is amended by revising paragraph (c) to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

* * * * *

(c) Except for emission sources not required to be controlled as specified in § 63.2343, you must develop a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

■ 8. Section 63.2354 is amended by revising paragraphs (a)(3) and (b)(3) to read as follows:

§ 63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?

(a)(1) * * *

(3) For each performance evaluation of a continuous emission monitoring system (CEMS) you conduct, you must follow the requirements in § 63.8(e).

(b)(1) * * *

(3)(i) In addition to EPA Method 25 or 25A of 40 CFR part 60, appendix A, to determine compliance with the organic HAP or TOC emission limit, you may use EPA Method 18 of 40 CFR part 60, appendix A, as specified in paragraph (b)(3)(i) of this section. As an alternative to EPA Method 18, you may use ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14), under the conditions specified in paragraph (b)(3)(ii) of this section.

(A) If you use EPA Method 18 to measure compliance with the percentage efficiency limit, you must first determine which organic HAP are present in the inlet gas stream (i.e., uncontrolled emissions) using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, you must analyze samples collected as specified in EPA Method 18, simultaneously at the inlet and outlet of the control device. Quantify the emissions for the same organic HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(B) If you use EPA Method 18 of 40 CFR part 60, appendix A, to measure compliance with the emission concentration limit, you must first determine which organic HAP are present in the inlet gas stream using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, analyze samples collected as specified in EPA Method 18 at the outlet of the control device. Quantify the control device outlet emission concentration for the same organic HAP identified as present in the inlet or uncontrolled gas stream.

(ii) You may use ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14), as an alternative to EPA Method 18 if the target concentration is between 150 parts per billion by volume and 100 ppmv and either of the conditions specified in paragraph (b)(2)(ii)(A) or (B) of this section exists. For target compounds not listed in Section 1.1 of ASTM D6420–99 (Reapproved 2004) and not amenable to detection by mass spectrometry, you may not use ASTM D6420–99 (Reapproved 2004).

(A) The target compounds are those listed in Section 1.1 of ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14),; or

(B) For target compounds not listed in Section 1.1 of ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference, see § 63.14), but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in ASTM D6420–99 (Reapproved 2004), Section 10.5.3, must be followed, met, documented, and submitted with the data report, even if there is no moisture

condenser used or the compound is not considered water-soluble.

* * * * *

■ 9. Section 63.2362 is amended by revising paragraph (b)(1) to read as follows:

§ 63.2362 When must I conduct subsequent performance tests?

* * * * *

(b)(1) For each transport vehicle that you own that is equipped with vapor collection equipment and that is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must perform the vapor tightness testing required in Table 5 to this subpart, item 2, on that transport vehicle at least once per year.

* * * * *

■ 10. Section 63.2370 is amended by revising paragraph (c) to read as follows:

§ 63.2370 How do I demonstrate initial compliance with the emission limitations, operating limits, and work practice standards?

* * * * *

(c) You must submit the results of the initial compliance determination in the Notification of Compliance Status according to the requirements in § 63.2382(d).

■ 11. Section 63.2382 is amended by revising paragraphs (d)(2)(iv), (v), (vi), (vii), and (viii) to read as follows:

§ 63.2382 What notifications must I submit and when and what information should be submitted?

* * * * *

(d) * * *

(2) * * *

(iv) Descriptions of worst-case operating and/or testing conditions for the control device(s).

(v) Identification of emission sources subject to overlapping requirements described in § 63.2396 and the authority under which you will comply.

(vi) The applicable information specified in § 63.1039(a)(1) through (3) for all pumps and valves subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 4.

(vii) If you are complying with the vapor balancing work practice standard for transfer racks according to Table 4 to this subpart, item 3.a, include a statement to that effect and a statement that the pressure vent settings on the affected storage tanks are greater than or equal to 2.5 psig.

(viii) The information specified in § 63.2386(c)(10)(i), unless the information has already been submitted with the first Compliance report. If the information specified in § 63.2386(c)(10)(i) has already been submitted with the first Compliance report, the information specified in § 63.2386(d)(3) and (4), as applicable, shall be submitted instead.

■ 12. Section 63.2386 is amended by:

■ a. Revising paragraph (b)(3);

■ b. Revising paragraph (c)(4);

■ c. Revising paragraphs (c)(9) and (c)(10);

■ d. Revising paragraph (d) introductory text;

■ e. Removing paragraph (d)(3); and

■ f. Adding new paragraphs (d)(3) and (d)(4) to read as follows:

§ 63.2386 What reports must I submit and when and what information is to be submitted in each?

* * * * *

(b) * * *

(3) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) and (2) of this section.

(c) * * *

(4) Any changes to the information listed in § 63.2382(d)(2) that have occurred since the submittal of the Notification of Compliance Status.

* * * * *

(9) A listing of all transport vehicles into which organic liquids were loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, during the previous 6 months for which vapor tightness documentation as required in § 63.2390(c) was not on file at the facility.

(10)(i) A listing of all transfer racks (except those racks at which only unloading of organic liquids occurs) and of tanks greater than or equal to 18.9 cubic meters (5,000 gallons) that are part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart.

(ii) If the information specified in paragraph (c)(10)(i) of this section has already been submitted with the Notification of Compliance Status, the information specified in paragraphs (d)(3) and (4) of this section, as applicable, shall be submitted instead.

(d) *Subsequent Compliance reports.* Subsequent Compliance reports must contain the information in paragraphs (c)(1) through (9) of this section and, where applicable, the information in paragraphs (d)(1) through (4) of this section.

* * * * *

(3)(i) A listing of any storage tank that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 1 through 6, since the filing of the last Compliance report.

(ii) A listing of any transfer rack that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 7 through 10, since the filing of the last Compliance report.

(4)(i) A listing of tanks greater than or equal to 18.9 cubic meters (5,000 gallons) that became part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart, since the last Compliance report.

(ii) A listing of all transfer racks (except those racks at which only the unloading of organic liquids occurs) that became part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart, since the last Compliance report.

* * * * *

■ 13. Section 63.2390 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Revising paragraph (c) introductory text;

■ c. Redesignating paragraph (c)(3) as paragraph (d);

■ d. Adding a new paragraph (c)(3);

■ e. Revising newly designated paragraph (d); and

■ f. Adding a new paragraph (e) to read as follows:

§ 63.2390 What records must I keep?

(a) For each emission source identified in § 63.2338 that does not require control under this subpart, you must keep all records identified in § 63.2343.

(b) For each emission source identified in § 63.2338 that does require control under this subpart:

(1) You must keep all records identified in subpart SS of this part and in Table 12 to this subpart that are applicable, including records related to notifications and reports, SSM, performance tests, CMS, and performance evaluation plans; and

(2) You must keep the records required to show continuous compliance, as required in subpart SS of this part and in Tables 8 through 10 to this subpart, with each emission limitation, operating limit, and work practice standard that applies to you.

(c) For each transport vehicle into which organic liquids are loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must keep the applicable records in paragraphs (c)(1) and (2) of this section or alternatively the verification records in paragraph (c)(3) of this section.

* * * * *

(3) In lieu of keeping the records specified in paragraph (c)(1) or (2) of this section, as applicable, the owner or operator shall record that the verification of U.S. DOT tank certification or Method 27 of appendix A to 40 CFR part 60 testing, required in Table 5 to this subpart, item 2, has been performed. Various methods for the record of verification can be used, such as: A check-off on a log sheet, a list of U.S. DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on site that do not have the appropriate documentation.

(d) You must keep records of the total actual annual facility-level organic liquid loading volume as defined in § 63.2406 through transfer racks to document the applicability, or lack thereof, of the emission limitations in Table 2 to this subpart, items 7 through 10.

(e) An owner or operator who elects to comply with § 63.2346(a)(4) shall keep the records specified in paragraphs (e)(1) through (3) of this section.

(1) A record of the U.S. DOT certification required by § 63.2346(a)(4)(ii).

(2) A record of the pressure relief vent setting specified in § 63.2348(a)(4)(v).

(3) If complying with § 63.2348(a)(4)(vi)(B), keep the records specified in paragraphs (e)(3)(i) and (ii) of this section.

(i) A record of the equipment to be used and the procedures to be followed when reloading the cargo tank or tank car and displacing vapors to the storage tank from which the liquid originates.

(ii) A record of each time the vapor balancing system is used to comply with § 63.2348(a)(4)(vi)(B).

■ 14. Section 63.2394 is amended by revising paragraph (a) to read as follows:

§ 63.2394 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form at a separate location.

* * * * *

■ 15. Section 63.2396 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with other regulations for storage tanks.*

(1) After the compliance dates specified in § 63.2342, you are in compliance with the provisions of this subpart for any storage tank that is assigned to the OLD affected source and that is both controlled with a floating roof and is in compliance with the provisions of either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, except that records shall be kept for 5 years rather than 2 years for storage tanks that are assigned to the OLD affected source.

(2) After the compliance dates specified in § 63.2342, you are in compliance with the provisions of this subpart for any storage tank with a fixed roof that is assigned to the OLD affected source and that is both controlled with a closed vent system and control device and is in compliance with either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, except that you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart.

(3) As an alternative to paragraphs (a)(1) and (2) of this section, if a storage tank assigned to the OLD affected source is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to comply only with the requirements of this subpart for storage tanks meeting the applicability criteria for control in Table 2 to this subpart.

(b) *Compliance with other regulations for transfer racks.* After the compliance dates specified in § 63.2342, if you have a transfer rack that is subject to 40 CFR part 61, subpart BB, and that transfer rack is in OLD operation, you must meet all of the requirements of this subpart for that transfer rack when the transfer rack is in OLD operation during the loading of organic liquids.

* * * * *

(e) *Overlap with other regulations for monitoring, recordkeeping, and reporting.*

(1) *Control devices.* After the compliance dates specified in § 63.2342, if any control device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements of another 40 CFR part 63 subpart, the owner or operator must be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart EEEE. If complying with the monitoring, recordkeeping, and reporting requirements of the other subpart satisfies the monitoring, recordkeeping, and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the monitoring, recordkeeping, and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(b).

(2) *Equipment leak components.* After the compliance dates specified in § 63.2342, if you are applying the applicable recordkeeping and reporting requirements of another 40 CFR part 63 subpart to the valves, pumps, and sampling connection systems associated with a transfer rack subject to this subpart that only unloads organic liquids directly to or via pipeline to a non-tank process unit component or to a storage tank subject to the other 40 CFR part 63 subpart, the owner or operator must be in compliance with the recordkeeping and reporting requirements of this subpart EEEE. If complying with the recordkeeping and reporting requirements of the other subpart satisfies the recordkeeping and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the recordkeeping and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the recordkeeping and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(b).

■ 16. Section 63.2402 is amended by revising paragraphs (b)(2), (b)(3), and (b)(4) to read as follows:

§ 63.2402 Who implements and enforces this subpart?

* * * * *

(b) * * *

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

■ 17. Section 63.2406 is amended by:

■ a. Revising the introductory text;

■ b. Revising the definitions of ''Annual average true vapor pressure,'' ''Shutdown,'' ''Startup,'' paragraph (3) in the definition of ''Storage tank,'' ''Transfer rack,'' ''Vapor balancing system,'' and ''Vapor collection system;'' and

■ c. Adding in alphabetical order definitions for ''Bottoms receiver,'' ''High throughput transfer rack,'' ''Low throughput transfer rack,'' ''Surge control vessel,'' and ''Total actual annual facility-level organic liquid loading volume'' to read as follows:

§ 63.2406 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, 40 CFR part 63, subparts H, PP, SS, TT, UU, and WW, and in this section. If the same term is defined in another subpart and in this section, it will have the meaning given in this section for purposes of this subpart. Notwithstanding the introductory language in § 63.921, the terms ''container'' and ''safety device'' shall have the meaning found in this subpart and not in § 63.921.

* * * * *

Annual average true vapor pressure means the equilibrium partial pressure exerted by the total Table 1 organic HAP in the stored or transferred organic liquid. For the purpose of determining if a liquid meets the definition of an organic liquid, the vapor pressure is determined using standard conditions of 77 degrees F and 29.92 inches of mercury. For the purpose of determining whether an organic liquid meets the applicability criteria in Table 2, items 1 through 6, to this subpart, use the actual annual average temperature as defined in this subpart. The vapor pressure value in either of these cases is determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss from External Floating-Roof Tanks (incorporated by reference, see § 63.14);

(2) Using standard reference texts;

(3) By the American Society for Testing and Materials Method D2879–83, 96 (incorporated by reference, see § 63.14); or

(4) Using any other method that the EPA approves.

* * * * *

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further processing downstream.

* * * * *

High throughput transfer rack means those transfer racks that transfer into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) a total of 11.8 million liters per year or greater of organic liquids.

* * * * *

Low throughput transfer rack means those transfer racks that transfer into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) less than 11.8 million liters per year of organic liquids.

* * * * *

Shutdown means the cessation of operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), including equipment required or used to comply with this subpart, or the emptying and degassing of a storage tank. Shutdown as defined here includes, but is not limited to, events that result from periodic maintenance, replacement of equipment, or repair.

Startup means the setting in operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), for any purpose. Startup also includes the placing in operation of any individual piece of equipment required or used to comply with this subpart including, but not limited to, control devices and monitors.

Storage tank * * *

(3) Bottoms receivers;

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within chemical manufacturing processes when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

* * * * *

Total actual annual facility-level organic liquid loading volume means the total facility-level actual volume of organic liquid loaded for transport within or out of the facility through transfer racks that are part of the affected source into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) based on a 3-year rolling average, calculated annually.

(1) For existing affected sources, each 3-year rolling average is based on actual facility-level loading volume during each calendar year (January 1 through December 31) in the 3-year period. For calendar year 2004 only (the first year of the initial 3-year rolling average), if an owner or operator of an affected source does not have actual loading volume data for the time period from January 1, 2004, through February 2, 2004 (the time period prior to the effective date of the OLD NESHAP), the owner or operator shall compute a facility-level loading volume for this time period as follows: At the end of the 2004 calendar year, the owner or operator shall calculate a daily average facility-level loading volume (based on the actual loading volume for February 3, 2004, through December 31, 2004) and use that daily average to estimate the facility-level loading volume for the period of time from January 1, 2004, through February 2, 2004. The owner or operator shall then sum the estimated facility-level loading volume from January 1, 2004, through February 2, 2004, and the actual facility-level loading volume from February 3, 2004, through December 31, 2004, to calculate the annual facility-level loading volume for calendar year 2004.

(2)(i) For new affected sources, the 3-year rolling average is calculated as an average of three 12-month periods. An owner or operator must select as the beginning calculation date with which to start the calculations as either the initial startup date of the new affected source or the first day of the calendar month following the month in which startup occurs. Once selected, the date with which the calculations begin cannot be changed.

(ii) The initial 3-year rolling average is based on the projected maximum facility-level annual loading volume for each of the 3 years following the selected beginning calculation date. The second 3-year rolling average is based on actual facility-level loading volume for the first year of operation plus a new projected maximum facility-level annual loading volume for second and third years following the selected beginning calculation date. The third 3-year rolling average is based on actual facility-level loading volume for the first 2 years of operation plus a new projected maximum annual facility-level loading volume for the third year following the beginning calculation date. Subsequent 3-year rolling averages are based on actual facility-level loading volume for each year in the 3-year rolling average.

* * * * *

Transfer rack means a single system used to load organic liquids into, or unload organic liquids out of, transport vehicles or containers. It includes all loading and unloading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment and operations that are physically separate (i.e., do not share

common piping, valves, and other equipment) are considered to be separate transfer racks.

* * * * *

Vapor balancing system means: (1) A piping system that collects organic HAP vapors displaced from transport vehicles or containers during loading and routes the collected vapors to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header. For containers, the piping system must route the displaced vapors directly to the appropriate storage tank or to another storage tank connected to a common header in order to qualify as a vapor balancing system; or (2) a piping system that collects organic HAP vapors displaced from the loading of a storage tank and routes the collected vapors to the transport vehicle from which the storage tank is filled.

Vapor collection system means any equipment located at the source (i.e., at the OLD operation) that is not open to the atmosphere; that is composed of piping, connections, and, if necessary, flow-inducing devices; and that is used for:

(1) Containing and conveying vapors displaced during the loading of transport vehicles to a control device;

(2) Containing and directly conveying vapors displaced during the loading of containers; or

(3) Vapor balancing. This does not include any of the vapor collection equipment that is installed on the transport vehicle.

* * * * *

■ 18. Table 1 to subpart EEEE of part 63 is amended by removing the entry for methyl ethyl ketone (2-Butanone) (MEK).

■ 19. Table 2 to subpart EEEE of part 63 is amended by revising entries 1, 6, 7, 8, 9, and 10 to read as follows:

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS

* * * * * * *

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, items 1.a, 1.b, or 1.c for tanks storing liquids described in that table.
	b. The stored organic liquid is crude oil	i. See the requirement in item 1.a.i or 1.a.ii of this table.
* *	* * *	* *
6. A storage tank at an existing, reconstructed, or new affected source meeting the capacity criteria specified in Table 2 of this subpart, items 1 through 5.	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, item 2.a, for tanks storing the liquids described in that table.
7. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons and less than 10 million gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 98 percent by weight and is being loaded into a transport vehicle.	i. For all such loading arms at the rack, reduce emissions of total organic HAP (or, upon approval, TOC) from the loading of organic liquids either by venting the emissions that occur during loading through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS, achieving at least 98 weight-percent HAP reduction, OR, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3 percent oxygen for combustion devices using supplemental combustion air; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3 of Table 4 to this subpart.

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS—Continued

If you own or operate . . .	And if . . .	Then you must . . .
8. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is ≥10 million gallons..	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is less than 800,000 gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 25 percent by weight and is being loaded into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.
10. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.

■ 20. Table 3 to subpart EEEE of part 63 is amended by revising entries 3, 5, 6, and 8 to read as follows:

TABLE 3 TO SUBPART EEEE OF PART 63.—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND

TABLE 3 TO SUBPART EEEE OF PART 63.—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Achieve a pressure reduction during each adsorption bed regeneration cycle greater than or equal to the pressure reduction established during the design evaluation or performance test that demonstrated compliance with the emission limit. a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
* * * * * * *	
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(b), and monitor the control device in accordance with that plan.

■ 21. Table 4 to subpart EEEE to part 63 is revised to read as follows:

TABLE 4 TO SUBPART EEEE OF PART 63.—WORK PRACTICE STANDARDS

[As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .]

For each . . .	You must . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), if you elect to meet 40 CFR part 63, subpart WW (control level 2) requirements as an alternative to the emission limit in Table 2 to this subpart, items 1 through 5; OR b. Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process; OR c. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.
2. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, item 6.	a. Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process; OR b. Comply with the requirements of § 63.2346(a)(4) for vapor balancing emissions to the transport vehicle from which the storage tank is filled.
3. Transfer rack subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. If the option of a vapor balancing system is selected, install and, during the loading of organic liquids, operate a system that meets the requirements in Table 7 to this subpart, item 3.b.i and item 3.b.ii, as applicable; OR b. Comply with the requirements of § 63.984 during the loading of organic liquids, for routing emissions to a fuel gas system or back to a process.
4. Pump, valve, and sampling connection that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Comply with the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H.
5. Transport vehicles equipped with vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles, and comply with the provisions in 40 CFR 60.502(f), (g), (h), and (i), except substitute the term transport vehicle at each occurrence of tank truck or gasoline tank truck in those paragraphs.

TABLE 4 TO SUBPART EEEE OF PART 63.—WORK PRACTICE STANDARDS—Continued

[As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .]

For each . . .	You must . . .
6. Transport vehicles equipped without vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR 180 (cargo tanks) or 49 CFR 173.31 (tank cars).

■ 22. Table 5 to subpart EEEE of part 63 is revised to read as follows:

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS

[As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:]

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 10.	a. A performance test to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) EPA Method 1 or 1A in appendix A of 40 CFR part 60, as appropriate.	(A) Sampling port locations and the required number of traverse points.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) The outlet sampling site must be located at each control device prior to any releases to the atmosphere.
			(2) EPA Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A of 40 CFR part 60, as appropriate.	(A) Stack gas velocity and volumetric flow rate.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(3) EPA Method 3 or 3B in appendix A of 40 CFR part 60, as appropriate.	(A) Concentration of CO_2 and O_2 and dry molecular weight of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(4) EPA Method 4 in appendix A of 40 CFR part 60.	(A) Moisture content of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS—Continued

[As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:]

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
			(5) EPA Method 18, 25, or 25A in appendix A of 40 CFR part 60, as appropriate, or EPA Method 316 in appendix A of 40 CFR part 63 for measuring formaldehyde.	(A) Total organic HAP (or, upon approval, TOC), or formaldehyde emissions.	(i) The organic HAP used for the calibration gas for EPA Method 25A must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which total organic HAP (or, upon approval, TOC) emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
		b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device..	§ 63.985(b)(1)(i).	.....	During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent for storage tanks or 98 weight-percent for transfer racks, or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
2. Each transport vehicle that you own that is equipped with vapor collection equipment and is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	A performance test to determine the vapor tightness of the tank and then repair as needed until it passes the test..	.....	EPA Method 27 in appendix A of 40 CFR part 60.	Vapor tightness	The pressure change in the tank must be no more than 250 pascals (1 inch of water) in 5 minutes after it is pressurized to 4,500 pascals (18 inches of water).

■ 23. The text of the table in Table 6 to subpart EEEE of part 63 is revised to read as follows:

TABLE 6 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

* * * * * * *

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 95 weight-percent, or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 95 weight-percent or as an option for nonflare combustion devices to an exhaust concentration ≤20 ppmv.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	Reduce total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids by at least 98 weight-percent, or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 98 weight-percent or as an option for nonflare combustion devices to an exhaust concentration of ≤20 ppmv.

■ 24. Table 7 to subpart EEEE of part 63 is revised to read as follows:

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perofrm seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. You meet the requirements in §63.984(b) and submit the statement of connection required by §63.984(c).
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. You meet the requirements in §3.2346(a)(4).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. You visually inspect each internal floating roof before the initial filling of the storage tank, and perform seal gap inspections of the priamry and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
	c. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. See item 1.c.i of this table.
3. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Load organic liquids only into transport vehicles having current vapor tightness certification as described in Table 4 to this subpart, item 5 and item 6.	i. You comply with the provisions specified in Table 4 to this subpart, item 5 or item 6, as applicable.

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header. ii. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into containers directly (e.g., no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to another storage tank connected to a common header.
	c. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
4. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service ≥300 hours per year at an existing, reconstructed, or new affected source.	a. Carry out a leak detection and repair program or equivalent control according to one of the subparts listed in Table 4 to this subpart, item 4.a.	i. You specify which one of the control programs listed in Table 4 to this subpart you have selected, OR ii. Provide written specifications for your equivalent control approach.

■ 25. Table 8 to subpart EEEE of part 63 is revised to read as follows:

TABLE 8 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

[As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table:]

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 95 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Reduce total organic HAP (or, upon approval, TOC) emissions during the loading of organic liquids from the closed vent system and control device by 98 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378 during the loading of organic liquids; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit during the loading of organic liquids.

■ 26. Table 9 to subpart EEEE of part 63 is amended by revising entries 2, 3, 4, 5, 6, and 7 to read as follows:

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

* * * * * * *

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
* *	* * *	* *
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Replacing the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the absorber exhaust and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring the scrubbing liquid temperature and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the difference between the specific gravities greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the exit of the condenser less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration at the condenser exit and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

* * * * * * *

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the daily average organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test; AND Achieve greater than or equal to the pressure reduction during the adsorption bed regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Maintaining the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Achieving greater than or equal to the pressure reduction during the regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iv. Keeping the applicable records required in § 63.998.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Replace the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND. Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Replacing the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Maintain a pilot flame in the flare at all times that vapors may be vented to the flare (§ 63.11(b)(5)); AND	i. Continuously operating a device that detects the presence of the pilot flame; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain a flare flame at all times that vapors are being vented to the flare (§ 63.11(b)(5)); AND	i. Maintaining a flare flame at all times that vapors are being vented to the flare; AND ii. Keeping the applicable records required in § 63.998.
	c. Operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)); AND EITHER	i. Operating the flare with no visible emissions exceeding the amount allowed; AND ii. Keeping the applicable records required in § 63.998.
	d.1. Operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(7) and (8) and with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii); OR	i. Operating the flare within the applicable exit velocity limits; AND ii. Operating the flare with the gas heating value greater than the applicable minimum value; AND iii. Keeping the applicable records required in § 63.998.
	d.2. Adhere to the requirements in § 63.11(b)(6)(i).	i. Operating the flare within the applicable limits in 63.11(b)(6)(i); AND ii. Keeping the applicable records required in § 63.998.

■ 27. Table 10 to subpart EEEE of part 63 is amended by revising entries 1, 2, 4, 5, and 6 to read as follows:

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
1. Internal floating roof (IFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity, and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR once per year (§ 63.1063(d)(2)); AND ii. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(1), (d)(1), and (e)); AND iii. Keeping the tank records required in § 63.1065.
2. External floating roof (EFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each EFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(2), (d), and (e)); AND ii. Performing seal gap measurements on the secondary seal of each EFR at least once every year, and on the primary seal of each EFR at least every 5 years (§ 63.1063(c)(2), (d), and (e)); AND iii. Keeping the tank records required in § 63.1065.
4. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

* * * * * * *

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards.
	c. Route emissions to a fuel gas system or back to a process.	i. Continuing to meet the requirements specified in § 63.984(b).
5. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service at least 300 hours per year.	a. Comply with the requirements of 40 CFR part 63, subpart TT, UU, or H.	i. Carrying out a leak detection and repair program in accordance with the subpart selected from the list in item 5.a of this table.
6. Storage tank at an existing, reconstructed, or new affected source meeting any of the tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Route emissions to a fuel gas system or back to the process.	i. Continuing to meet the requirements specified in § 63.984(b).
	b. Install and, during the filling of the storage tank with organic liquids, operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards.

■ 28. Table 11 to subpart EEEE of part 63 is revised to read as follows:

TABLE 11 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.2386(a) and (b), you must submit compliance reports and SSM reports according to the following table:]

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report or Periodic Report	a. The information specified in § 63.2386(c), (d), (e). If you had a SSM during the reporting period and you took actions consistent with your SSM plan, the report must also include the information in § 63.10(d)(5)(i); AND	Semiannually, and it must be postmarked by January 31 or July 31, in accordance with § 63.2386(b).
	b. The information required by 40 CFR part 63, subpart TT, UU, or H, as applicable, for pumps, valves, and sampling connections; AND	See the submission requirement in item 1.a of this table.
	c. The information required by § 63.999(c); AND	See the submission requirement in item 1.a of this table.
	d. The information specified in § 63.1066(b) including: Notification of inspection, inspection results, requests for alternate devices, and requests for extensions, as applicable.	See the submission requirement in item 1.a. of this table.
2. Immediate SSM report if you had a SSM that resulted in an applicable emission standard in the relevant standard being exceeded, and you took an action that was not consistent with your SSM plan.	a. The information required in § 63.10(d)(5)(ii)	i. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)).

■ 29. Table 12 to subpart EEEE of part 63 is amended by:

■ (a) Revising entries § 63.6(e)(3), § 63.7(g), § 63.8(c)(6)–(8), § 63.8(d), § 63.8(e), § 63.8(f)(1)–(5), § 63.9(h)(1)–(6), § 63.9(j), and § 63.10(e)(3)(iv)–(v);

■ (b) By removing entries § 63.6(h)(1), § 63.6(h)(2)(i), § 63.6(h)(2)(ii), § 63.6(h)(2)(iii), § 63.6(h)(3), § 63.6(h)(4), § 63.6(h)(5)(i), (iii)–(v), § 63.6(h)(5)(ii), § 63.6(h)(6), § 63.6(h)(7)(i), § 63.6(h)(7)(ii), § 63.6(h)(7)(iii), § 63.6(h)(7)(iv), § 63.6(h)(7)(v), § 63.6(h)(8), and § 63.6(h)(9); and

■ (c) By adding entry § 63.6(h) to read as follows:

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

* * * * * * *

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*
§ 63.6(e)(3)	SSM Plan	Requirement for SSM plan; content of SSM plan; actions during SSM.	Yes; however, (1) the 2-day reporting requirement in paragraph § 63.6(e)(3)(iv) does not apply and (2) § 63.6(e)(3) does not apply to emissions sources not requiring control.
*	*	*	*
§ 63.6(h)	Opacity/Visible Emission Standards.	Requirements for compliance with opacity and visible emission standards.	No; except as it applies to flares for which Method 22 observations are required as part of a flare compliance assessment.
*	*	*	*
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status; keep data for 5 years.	Yes; however, performance test data is to be submitted with the Notification of Compliance Status according to the schedule specified in § 63.9(h)(1)–(6) below.
*	*	*	*
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements. Out-of-control periods.	Yes, but only applies for CEMS. 40 CFR part 63, subpart SS provides requirements for CPMS.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	Yes, but only applies for CEMS. 40 CFR part 63, subpart SS provides requirements for CPMS.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports.	Yes, but only applies for CEMS.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes, but 40 CFR part 63, subpart SS also provides procedures for approval of CPMS.
*	*	*	*
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/visible emissions, which are due 30 days after; when to submit to Federal vs. State authority.	Yes; however, (1) there are no opacity standards and (2) all initial Notification of Compliance Status, including all performance test data, are to be submitted at the same time, either within 240 days after the compliance date or within 60 days after the last performance test demonstrating compliance has been completed, whichever occurs first.
*	*	*	*
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	No. These changes will be reported in the first and subsequent compliance reports.
*	*	*	*
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports.	Requirement to revert to quarterly submission if there is an excess emissions or parameter monitoring exceedance (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	* * *

[FR Doc. 06–6419 Filed 7–27–06; 8:45 am]
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Federal Register

Friday,
July 28, 2006

Part III

Environmental Protection Agency

40 CFR Parts 9, 260, 261, et al.
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 260, 261, and 271

[RCRA–2004–0010; FRL–8203–1]

RIN 2050–AE52

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: A cathode ray tube (CRT) is the glass video display component of an electronic device (usually a computer or television monitor). In this rule, the Environmental Protection Agency (EPA) is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to streamline management requirements for recycling of used CRTs and glass removed from CRTs. The amendments exclude these materials from the RCRA definition of solid waste if certain conditions are met. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass. EPA proposed this rule on June 12, 2002 (67 FR 40508).

DATES: This final rule is effective on January 29, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0010. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, such as confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., 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 RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Goode, Office of Solid Waste, Mail Code 5304W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8800, electronic mail: *goode.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of this final rule are listed in the following outline:

Contents of the Final Rule

I. General Information

A. Does This Rule Apply to Me?

This rule potentially affects all persons who send used cathode ray tubes (CRTs) and CRT glass for recycling, as well as all persons who recycle these materials. The rule does not affect households or conditionally exempt small quantity generators (CESQGs). If you have any questions about the applicability of this rule, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Are the Statutory Authorities for This Final Rule?

Today's rule is promulgated under the authority of Sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 3007, 6912(a), 6921, 6922, 6924, 6926, 6927, and 6938.

C. Acronyms Used in the Rule

CES Computers and Electronics Subcommittee
CFR Code of Federal Regulations
CRT Cathode Ray Tube
CSI Common Sense Initiative
DOT Department of Transportation
FPD Flat Panel Display
HDTV High Definition Television
LCD Liquid Crystal Display
LDR Land Disposal Restrictions
OECD Organization for Economic Cooperation and Development
OSHA Occupational Safety and Health Administration
RCRA Resource Conservation and Recovery Act
TC Toxicity Characteristic
TCLP Toxicity Characteristic Leaching Procedure
TSDF Treatment, Storage, and Disposal Facility
TV Television
UWR Universal Waste Rule
WTE Waste-to-Energy

II. Summary of This Rule and Clarification of Existing Policies

On June 12, 2002, EPA published a **Federal Register** notice seeking comment on a proposed rule change that would streamline management requirements for used CRTs and processed CRT glass (see 67 FR 40508 and following pages). In the same notice, EPA proposed to add mercury-containing equipment to the Federal list of universal wastes. This part of the proposal was finalized on August 5, 2005 (70 FR 45507).

The proposed requirements for used CRTs and processed CRT glass would exclude these materials from the RCRA definition of solid waste if they were sent for recycling under certain conditions. The purpose of the proposed amendments was to encourage increased reuse, recycling, and better management of this growing wastestream, while maintaining necessary environmental protection. The conditions proposed were intended to ensure that the materials were handled as commodities rather than as wastes.

The Agency received many comments in response to its June 12, 2002 notice. Numerous commenters supported the proposed rule, while other commenters suggested changes to all or part of our proposal. After considering all comments, we are finalizing the

proposal substantially as proposed, with two significant modifications. The final rule, similarly to the proposed rule, contains an exclusion from the definition of solid waste for used CRTs and processed glass removed from CRTs (see 40 CFR 261.4(a)(23)). The conditions for meeting the exclusion are found in 40 CFR 261.39. The first change from the proposal concerns exported CRTs. The Agency is promulgating notice and consent requirements for all used CRTs (whether broken or intact) that are exported for recycling (see 40 CFR 261.40 and 261.39(a)(5)). We are also promulgating a one-time notification requirement for used CRTs exported for reuse (see 40 CFR 261.41). The second change from the proposal concerns speculative accumulation requirements, which the final rule imposes on used, intact CRTs (see 40 CFR 261.4(a)(23)(i)).

EPA believes that today's rule will encourage recycling, protect human health and the environment, and ensure that the subject materials are handled as commodities rather than as wastes. Today's rule does not limit or constrain the Agency in exercising its discretion to promulgate additional rulemaking relating to the definition of solid waste. Specifically, the Agency maintains the discretion to promulgate additional regulations that aim to encourage legitimate recycling of waste.

Following is a brief summary of today's rule, along with some clarifications of existing policies applicable to used CRTs.

A. CRTs From Households and Conditionally Exempt Small Quantity Generators (CESQGs)

Under previously existing regulations, CRTs from households are exempt from Federal hazardous waste management requirements, even when they are sent for recycling or disposal. Non-residential generators of less than 100 kilograms (about 220 lbs) of hazardous waste in a calendar month, including CRTs, are known as conditionally exempt small quantity generators (CESQGs) and are not subject to most RCRA Subtitle C management requirements. These provisions are not changed by today's rule. For a more detailed description of requirements applicable to these generators, see the discussion in the proposal at 67 FR 40511.

B. Reuse and Repair of Used CRTs

In today's rule, we are reaffirming our long-standing policy that any user sending a CRT to a collector or reseller for potential reuse is not a RCRA generator. Materials used and taken out of service by one person are not wastes if another person uses them in the same way. Many businesses take usable CRTs out of service only because they are upgrading their systems to take advantage of rapid advances in electronic technology. These organizations do not have the technical knowledge to decide whether a unit can be reused as a computer or television.

The Agency also confirms today that used CRTs undergoing repairs (such as rewiring or replacing defective parts) before resale or distribution are not being reclaimed, and are considered to be products in use rather than solid wastes. These repairs do not constitute waste management. For a fuller discussion of this issue, see the proposal at 67 FR 40511. However, under today's rule, CRTs exported abroad for reuse are subject to a one-time notification requirement, which is discussed later in this section.

C. CRTs and CRT Glass Sent for Recycling

Many CRTs that cannot be reused are sent for recycling, which consists of disassembly to recover valuable materials from the CRTs, such as lead or glass. For a complete discussion of the different types of recycling, see the proposal at 67 FR 40510. Following is a summary of how CRTs and CRT glass sent for recycling within the United States are regulated under today's rule.

Unused CRTs

Today's rule clarifies that persons who send unused CRTs for recycling are not subject to RCRA regulations. Sometimes manufacturers of off-specification CRTs send them to glass processors, glass-to-glass manufacturers, or smelters. Although these types of recycling may constitute reclamation, EPA does not regulate unused commercial chemical products that are reclaimed. For a more detailed discussion of this issue, see the proposal at 67 FR 40511.

Used, Intact CRTs

Today's rule provides that used, intact CRTs sent for recycling (e.g., glass processing, glass manufacturing, or smelting) that occurs within the United States are not solid wastes, unless they are speculatively accumulated by a CRT collector or glass processor (see 40 CFR 261.4(a)(23)(i)).

Used, Broken CRTs

Under today's rule, used, broken CRTs (those whose vacuum has been released) are not solid wastes when sent for recycling that occurs within the United States if they are packaged and labeled or if they are stored in a building (see §§ 261.4(a)(23)(iii) and 261.39(a)(1)–(3)). Like used, intact CRTs, they may not be speculatively accumulated (see § 261.39(a)(4)).

Requirements for CRT Processing

Today's rule provides that to qualify for the exclusion from the definition of solid waste, CRT glass processing as defined in 40 CFR 260.10 must take place in a building, and no activities may be performed that use temperatures high enough to volatilize lead (see 40 CFR 261.39(b)).

Processed CRT Glass

Under today's rule, processed CRT glass (glass removed from CRTs) that is sent to a CRT glass manufacturer or a lead smelter is not a solid waste, unless it is speculatively accumulated (see 40 CFR 261.39(c)). If it is sent to other types of recycling, it may be excluded from the definition of solid waste if it meets the criteria of 40 CFR 261.2(e)(ii). All processed CRT glass legitimately used in a manner constituting disposal must be packaged and labeled and must also comply with the applicable requirements of 40 CFR part 266, subpart C (see 40 CFR 261.39(a)(1)–(4) and (d)). Subpart C applies to recycled materials placed on the land.

D. Exports of Used CRTs

Under today's rule, used, intact CRTs exported for recycling are not solid wastes provided they are not speculatively accumulated and provided the exporter notifies EPA of the export and receives a subsequent written consent from the receiving country allowing the CRTs to be imported for recycling (see 40 CFR 261.40 and 261.39(a)(5)). Used, broken CRTs exported for recycling are not solid wastes provided the exporters comply with the same notification and consent requirements applicable to used, intact CRTs. They must also be packaged and labeled, and they may not be speculatively accumulated (see § 261.39(a)(5) and (a)(1)–(4)).

Today's rule also provides that used intact CRTs exported for reuse are not solid wastes if the exporter sends a one-time notification to the EPA Regional Administrator. The notification must contain a statement that the notifier plans to export used, intact CRTs for reuse, as well as contact information (see § 261.41).

E. Disposal of CRTs

Today's rule clarifies that if a person (other than a household) decides to send used or unused CRTs directly to a landfill or incinerator, that person

would be considered the generator of a solid waste. The person making the decision must determine if the CRTs exhibit a hazardous waste characteristic under 40 CFR part 261, subpart C, either testing the CRTs or using process knowledge to make this determination. If the used or unused CRTs are determined to be hazardous and if a decision is made to dispose of them, the non-residential user, reseller, or manufacturer must comply with all applicable hazardous waste generator requirements of 40 CFR part 262. If hazardous waste CRTs are shipped to a hazardous waste landfill, they must also comply with applicable land disposal restrictions (LDRs). LDRs do not apply to CRTs generated by households or CESQGs. For a more complete description of disposal requirements for CRTs, see the proposal at 47 FR 40512.

In addition, we note the possibility of conducting research and development on CRT-related disposal and recycling technologies pursuant to the treatability study exemption under 40 CFR 261.4(e) and (f). The exemption allows researchers to store and use up to 1000 kg. of non-acute hazardous waste without triggering most Subtitle C requirements. In treatability studies, a hazardous waste is subjected to a treatment process to determine whether the waste is amenable to a treatment process, what pretreatment (if any is required), optimal process conditions, treatment process efficiency, and characteristics and volumes of residues (see 40 CFR 260.10). Examples of treatability studies that could fall under this exemption include physical, chemical, biological, or thermal treatment, solidification, volume or toxicity reduction, and recycling feasibility (see 53 FR 27290, 27293, July 19, 1988).

F. Circuit Boards

In 1992, the Agency issued a memorandum to its EPA Regional Waste Management Directors stating that used whole circuit boards are considered to be scrap metal when sent for reclamation, and therefore exempt from regulation under RCRA. The Agency also addressed circuit boards in the Land Disposal Restrictions Phase IV rulemaking (see 62 FR 25998, May 12, 1997). In that rulemaking, the Agency provided an exclusion from the definition of solid waste at 40 CFR 261.4(a)(14) for shredded circuit boards being reclaimed, provided they are stored in containers sufficient to prevent a release to the environment prior to recovery and provided they are free of mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries.

Subsequently, on May 26, 1998 (63 FR 28556), the Agency clarified that the scrap metal exemption applies to whole used circuit boards that contain minor battery or mercury switch components and that are sent for continued use, reuse, or recovery. In that notice, EPA stated that it was not the Agency's intent to regulate under RCRA circuit boards containing minimal quantities of mercury and batteries that are protectively packaged to minimize dispersion of metal constituents. However, once these materials are removed from the boards, they become a newly generated waste subject to a hazardous waste determination. If they meet the criteria to be classified as a hazardous waste, they must be handled as hazardous waste; otherwise they must be managed as a solid waste.

G. Other Electronic Material

With respect to non-CRT electronic materials, the Agency uses the same line of reasoning that is outlined above for CRTs to determine that the materials are not solid wastes if they are reused or only require repair and are not sent for processing or reclamation. That is, if an original user sends electronic materials to a reseller because he lacks the specialized knowledge needed to determine whether the units can be reused as products, the original user is not a RCRA generator. The materials are not considered solid wastes until a decision is made to recycle them in other ways or dispose of them.

III. Background

Under Subtitle C of RCRA, a solid waste is a hazardous waste if it exhibits one or more of the characteristics of ignitability, corrosivity, reactivity, or toxicity in 40 CFR part 261, subpart C, or if it is a listed hazardous waste in 40 CFR part 261, subpart D. The RCRA regulations set forth requirements for hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs). Generators are required to determine whether their waste is hazardous, either by testing the waste or applying their knowledge of the waste in light of the materials or processes used (see 40 CFR 262.11). EPA regulations also contain exclusions for certain materials from the definition of solid waste or hazardous waste (40 CFR 261.4(a) and (b)). In addition, the Agency has developed streamlined rules for particular wastes, including recyclable wastes (40 CFR part 266) and universal wastes such as batteries, pesticides, mercury-containing equipment, and lamps that are widely generated by different industries (40 CFR part 273).

CRTs are vacuum tubes, made primarily of glass, which constitute the video display components of televisions, computer monitors, and other electronic devices. Other types of CRTs include medical, automotive, oscilloscope, appliance, and military and control tower CRTs. A CRT is assembled into a monitor, which includes several other parts, such as a plastic cabinet, electromagnetic shields, circuit boards, connectors, and cabling. The preamble to the proposed rule provides more detailed information on the nature of the industry (see 67 FR 40509).

Manufacturers generally employ significant quantities of lead in the glass used to make color CRTs. Televisions and color computer monitors contain an average of four pounds of lead (the exact amount depends on the size and make). Lead is a toxic metal that can cause delayed neurological development in children and other adverse health effects in adults, including increased blood pressure, nephritis, and cerebro-vascular disease. It is reasonably anticipated to be a human carcinogen. See, e.g., Iris Database Toxicity Profile No. 0277: Lead and Compounds (Inorganic), EPA 2004 [1] and 53 FR 31522, August 18, 1988. The amount of lead used by some manufacturers appears to be decreasing. However, according to recent studies performed at the University of Florida, most color CRTs leach lead in the TCLP test at concentrations above the TC regulatory level of 5 milligrams per liter (mg/l). In one study, Musson *et al.* (2000) found that 21 of 30 color CRTs tested exceeded the TC value, with an average lead level of 22.2 mg/l in TCLP leachate.[2] In a 2004 study,[3] the average concentration of lead in leach tests of color computer

[1] *http://www.epa.gov/iris/subst/0277.htm.*

[2] Characterization of Lead Leachability from Cathode Ray Tubes Using the Toxicity Characteristic Leaching Procedure, Stephen Musson et al., Department of Environmental Engineering Sciences, University of Florida, Environmental Science and Technology, Vol. 34, no. 20, 2000. The investigators in this study also believed that variability in the subsampling technique used in the study (neck, funnel and face glass were all tested separately) led to an underestimate of lead leachability. Additional testing showed that the glass frit used to seal the face to the funnel, and which has a very high total lead concentration, was undersampled. The investigators concluded that CRT subsampling that included a representative amount of the frit would have resulted in all 30 of the color CRTs exceeding the TC regulatory value of 5 mg/l in the TCLP.

[3] *www.ees.ufl.edu/homepp/townsend/Research/ElectronicLeaching/default.asp.*

monitors [4] was 47.7 mg/l. These levels are considerably above the toxicity characteristic regulatory level of 5 mg/l that is used to classify lead-containing wastes as hazardous (40 CFR 261.24(b)). This result is not surprising because CRT glass generally accounts for over 60 percent of the weight of the monitor. The 2000 Musson *et al.* study also showed that for monochrome CRTs, the average lead leachate concentration was 0.03 mg/l. These data appear to indicate that black and white monitors do not generally fail the TC. Other hazardous constituents sometimes present in CRT glass are mercury, cadmium, and arsenic. However, these constituents are found in very low concentrations that are unlikely to exceed the TC concentration limits.

From 1994 through 1998, EPA's Common Sense Initiative (CSI) explored the environmental regulation of six industry sectors and looked for ways to make environmental regulation ''cleaner, cheaper, and smarter''. The CSI Computers and Electronics Subcommittee (CES) formed a workgroup to examine regulatory barriers to pollution prevention and electronic waste recycling. The workgroup explored the problems of managing mounting volumes of outdated computer and electronics equipment.

As a result of the finding of the CES Subcommittee, the CSI Council issued a document titled *Recommendation on Cathode Ray Tube (CRT) Glass-to-Glass Recycling.* In this document, the Council recommended streamlined regulatory requirements for CRTs to encourage recycling and better management. The recommendations included streamlined requirements for packaging, labeling, and transportation; general performance standards for glass processors; and export provisions. The CSI Council also recommended an exclusion from the definition of solid waste for processed glass that is used to make new CRT glass.

Since the recommendations of the CRT Council, the recycling of CRTs and CRT glass has evolved and various stakeholders have made occasional suggestions to the Agency about how to address changing practices.

IV. Rationale for This Rule and Response to Comments

A. Used, Intact CRTs Sent for Recycling

Used, intact CRTs are CRTs remaining within the monitor whose vacuum has not been released. In its June 12, 2002 notice, the Agency proposed to exclude these materials from the definition of solid waste, unless they were disposed. These materials, when sent for recycling, would not have been subject to regulation under RCRA Subtitle C, including the speculative accumulation limits of 40 CFR 261.1(c)(8) (see also 40 CFR 261.2(c)(4)). Under the proposal, used, intact CRTs could therefore have been held for long periods of time without being considered abandoned and thereby becoming solid wastes.

EPA determined that intact CRTs are highly unlikely to release lead to the environment because the lead is contained in the plastic housing and the glass matrix (see 67 FR 40513). Because of this low likelihood of release, EPA proposed reduced requirements for used, intact CRTs by excluding them from the definition of solid waste. Unused CRTs are already considered commercial chemical products which are excluded from the definition of solid waste when recycled, even if they are reclaimed or speculatively accumulated (see 50 FR 14219, April 11, 1985). Used and unused intact CRTs are identical in appearance. Consequently, it would be difficult to distinguish between used and unused intact CRTs destined for recycling, and there appeared to be no environmental basis for such a distinction.

The Agency continues to believe that lead contained in used, intact CRTs is generally unlikely to be released to the environment. However, views expressed by commenters have led the Agency to change the proposed speculative accumulation requirements for these materials. Today's rule provides that used, intact CRTs are subject to the speculative accumulation requirements of 40 CFR 261.1(c)(8) if they are accumulated by glass processors or collectors (see 40 CFR 261.4(a)(23)(i)). Today's rule also modifies requirements applicable to used, intact CRTs that are exported. The export requirements are discussed in a separate section below. Following are the significant comments received, and our responses.

Response to Comments

Commenters were divided about imposing speculative accumulation requirements on used, intact CRTs. Some commenters supported our proposal to impose no accumulation limits on intact CRTs. These commenters claimed that intact CRTs being recycled were more commodity-like than waste-like, and that there is virtually no possibility of environmental releases from intact CRTs. One commenter said that intact CRTs are likely to be stored in containers or buildings, at least while they have resale value.

Other commenters, particularly States, wanted to subject used, intact CRTs to the speculative accumulation provisions because they were concerned about the possibility of abandonment. However, one commenter stated that this problem might be better addressed under state solid waste authorities than under federal law.

The Agency agrees with those commenters who expressed concern about potential abandonment of used, intact CRTs, particularly by glass processors and by persons who collect CRTs for recycling. Although broken CRTs and processed CRT glass are likely to pose a greater immediate risk of environmental releases, we believe that this possibility also exists for intact CRTs that are stored for long periods of time, particularly if a collector of such materials abandons them instead of sending them for recycling. Such indefinite storage, in the Agency's view, indicates that the materials are waste-like rather than commodity-like in nature.

EPA has also reconsidered its earlier statement that it is very difficult to distinguish between unused and used intact CRTs. The two types of materials are not normally stored together. Unused intact CRTs are generally returned to the manufacturer by consumers or retailers, after which they are sent directly to recyclers. Prolonged storage of unused intact CRTs by consumers, retailers, or manufacturers is unlikely.

Nor do we agree with the commenter who stated that speculative accumulation is better addressed by state solid waste authorities, rather than

[4] The data in this study were generated using a modified version of EPA's TCLP. The authors used a modified TCLP because standard TCLP particle size reduction and waste subsampling for debris-like materials can pose difficulties. In the ''Large Scale Leaching Procedure,'' the computer monitor or television was disassembled and all the parts placed in a large leaching vessel without particle size reduction. Other aspects of the standard TCLP test design (e.g., the 20:1 liquid-solid ratio) were maintained. Particle size reduction is intended to simulate the physical breakdown of wastes over time, and also facilitate achieving equilibrium in an 18-hour leaching period. Such reduction typically increases the leaching of metals in the TCLP, because it increases the surface area exposed to the leaching fluid. However, Townsend showed earlier in this same paper that when the waste contains a significant amount of iron, particle size reduction facilitates iron oxidation and the formation of binding sites on the iron. These oxidized iron binding sites adsorb metals from the leaching solution and can result in lower leaching of metals in the TCLP. However, the CRTs from computers and color televisions contained only small amounts of iron (3% and 6% of the total, respectively) and the authors concluded that the presence of the iron was not a significant factor in the overall results. The Agency agrees with these conclusions. We note that the regular, unmodified TCLP is still the legal standard for classifying materials as hazardous wastes.

federal law. Some state definitions of solid waste are based on the federal definition, and these States would find it more difficult to use their authorities to require removal of abandoned CRTs.

For these reasons, today's rule imposes the speculative accumulation requirements of 40 CFR 261.1(c)(8) on collectors of CRTs and glass processors (see 40 CFR 261.(a)(23)(i)). Speculative accumulation requirements also apply to used CRTs that are exported for recycling (see 40 CFR 261.4(a)(23)(ii) and 261.40)).

However, we are not imposing speculative accumulation requirements on persons who use computers or televisions and then send the intact CRTs to collectors and glass processors. Such persons are not likely to accumulate CRTs in circumstances that will lead to environmental releases, nor is there an economic incentive for them to store intact CRTs indefinitely. Because of the new speculative accumulation requirement, we have also added a definition of ''CRT collector'' to 40 CFR 260.10 (''a person who receives used, intact CRTs for recycling, repair, resale, or donation'').

B. Used, Broken CRTs Sent for Recycling

Labeling and Storage

Some users and collectors of CRTs separate the CRT from its housing and release the vacuum. They then send the monitor with its broken glass to a recycler (often a glass processor). This practice saves shipping costs and enables the glass processor to pay more for the broken CRTs received. At other times, the CRTs are first broken by the processor or other recycler. CRTs whose glass has been broken by releasing the vacuum are non-reusable and non-repairable and therefore could potentially be solid wastes at the time such breakage occurs.

In the proposal, EPA proposed to add a new section (40 CFR 261.39(a)) which provided that used, broken CRTs sent for recycling would not be solid wastes if they were stored in a building with a roof, floor, and walls, or if they were stored in a container (*i.e.*, a package or a vehicle) which was constructed, filled, and closed to minimize identifiable releases of CRT glass (including fine solid materials) to the environment. The containers were to be labeled or marked clearly with one of the following phrases: ''Waste cathode ray tube(s)—contains leaded glass,'' or ''Used cathode ray tube(s)—contains leaded glass.'' The containers must also be labeled ''do not mix with other glass materials.'' When transported, the broken CRTs would have had to be in a container meeting the conditions described above. Used, broken CRTs destined for recycling could not be speculatively accumulated as defined in 40 CFR 261.1(c)(8).

The Agency stated that, if these materials are properly containerized and labeled when stored or shipped prior to recycling, they resemble articles in commerce or commodities more than wastes. Breakage is a first step toward recycling the leaded glass components of the CRT. Also, materials held in conditions that safeguard against loss are more likely to be valuable commodities destined for legitimate recycling. In addition, the proposed packaging requirements would ensure that the possibility of releases to the environment from the broken CRTs is very low. For these reasons, an exclusion from the definition of solid waste was considered appropriate if the broken CRTs were handled under the conditions proposed.

The Agency has decided to promulgate the regulations applicable to storage and labeling of used, broken CRTs substantially as proposed. EPA has determined that used, broken CRTs are not solid wastes if they are sent for recycling within the United States under the conditions specified in 40 CFR 261.39(a)(1)–(4). However, the Agency has made certain modifications to the proposed conditions in response to comments received. These changes are described below. Today's rule also modifies the proposed requirements applicable to used, broken CRTs that are exported. The export requirements are discussed in a separate section below, along with requirements for imports.

Response to Comments

Several commenters suggested changes to our proposed labeling requirements for used, broken CRTs being transported or stored. Some commenters wanted requirements which they believed were more accurate or specific than the ones proposed. For example, under our proposal, processed glass going to certain types of recycling would have to be packaged and labeled identically to used, broken CRTs (see proposed 40 CFR 261.39(d), 47 FR 40525). One commenter pointed out that processed glass can no longer be considered a ''cathode ray tube.'' This commenter therefore suggested that applicable labeling requirements for processed glass be changed to ''processed cathode ray tube glass'' or ''glass removed from cathode ray tubes.'' Similarly, another commenter stated that used broken CRTs may be in such small pieces that the materials might not be recognizable as ''cathode ray tubes.'' This commenter suggested that a useful alternative requirement (which could be used in addition to our proposed language) would be to label containers of broken CRTs with the phrase ''leaded glass'' and some indication of the source of the glass—e.g., ''leaded glass from televisions.'' Another commenter pointed out that one of our proposed alternative labeling phrases (''waste cathode ray tubes—contains leaded glass'') was not necessary, since the cathode ray tubes would not be wastes if they were packaged and labeled in accordance with the regulations.

The Agency agrees that these suggestions are more accurate than our proposed regulations, and has modified the final rule accordingly. Section 261.39(a)(2) of today's rule specifies that each container in which a used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: ''used cathode ray tubes—contains leaded glass'' or ''leaded glass from televisions or computers.''

One commenter urged complete flexibility in labeling requirements. Another suggested that the Agency not specify the exact wording of labels in the regulations, but instead should require that contents be ''marked with words that identify the contents of the containers.'' This latter commenter believed that labelers would then have more discretion and would not be subject to enforcement actions for failing to use the precise words specified in the regulations.

The Agency does not agree with these comments. Requiring no specified words or phrases for labeling in the regulations does not provide sufficient legal notice to either regulators or the regulated community, and could, if anything, lead to more enforcement actions than a precisely worded requirement.

Other commenters believed that several of our proposed requirements were unnecessary. For example, some commenters objected to EPA's proposed requirement that broken CRTs be stored either in a container or a building. One commenter believed that these materials should not be classified as solid wastes if they were stored on a concrete pad or the equivalent, since this practice should be adequate for a coarse solid material which is insoluble in water. Other commenters suggested replacing our proposed requirements with a requirement that storage of CRT glass must take place in ''environmentally contained areas (water and particle containment)'' or must be ''stored in a manner that meets other environmental

regulations that control or limit release to the environment.''

EPA disagrees with these comments. In the first place, storing broken CRTs outdoors prior to processing is inconsistent with the premise that these materials are commodity-like, because they can easily be damaged if exposed to excessive wind or moisture, unless they are packaged. Language requiring storage in ''environmentally contained areas'' is too vague to provide guidance to the regulated community on the measures required to ensure appropriate handling of commodity-like materials. Similarly, a requirement that materials be ''stored in a manner that meets other environmental regulations'' would be redundant, since they are required to comply with all applicable environmental regulations in any event. Therefore, the final rule does not contain these suggested requirements.

One commenter pointed out that containers holding used, broken CRTs may also hold other portions of electronic equipment such as the plastic housing that contains the CRT. This commenter requested that the Agency clarify that these other associated materials need not be segregated from CRTs during storage. We agree with this commenter that such segregation was not our intent and the rule does not require such segregation.

Speculative Accumulation

In our June 12, 2002 notice, we proposed to require that used, broken CRTs and processed CRT glass be subject to the speculative accumulation provisions of 40 CFR 261.1(c)(8). These provisions generally specify that materials are speculatively accumulated, unless 75 percent of the materials (calculated by weight or by volume) are recycled within a calendar year. We inquired whether a longer accumulation period (such as two or more years) should be provided for CRTs to allow recycling markets to grow, especially since there appeared to be few environmental concerns with storage if these materials are properly packaged and labeled. After evaluating comments received on this issue, we have decided to finalize the speculative accumulation requirements as proposed for used, broken CRTs and processed CRT glass. The comments received, and our responses, are described below.

Response to Comments

Some commenters (principally states) supported the current speculative accumulation provisions for broken CRTs (or, in some cases, the one-year accumulation period of the universal waste rule). These commenters were concerned about the possible environmental effects of a longer accumulation time, and generally believed that the one-year time frame allowed in 40 CFR 261.1(c)(8) was enough to accumulate sufficient quantities for recovery and find outlets for recycling.

Other commenters (generally representing industry) supported extending speculative accumulation requirements for broken CRTs. Some supported extensions of two or more years, and a few wanted no limits at all. These commenters argued that longer time limits would allow persons handling used CRTs to accumulate the materials in larger numbers, which would make shipping less expensive. They also believed that extended speculative accumulation times would allow markets to develop more fully, thus encouraging recycling.

EPA agrees with those commenters who stated that markets are likely to increase for CRT glass. Although some commenters were concerned about lack of markets, these commenters did not submit quantitative data that would be sufficient, in the Agency's view, to justify treating these materials differently from other materials that are excluded from the definition of solid waste on condition that they not be speculatively accumulated. We note that markets for all of these materials frequently fluctuate. For these reasons, we believe that used broken CRTs and processed CRT glass should be subject to the usual requirements that they not be speculatively accumulated.

One commenter suggested extending the speculative accumulation period for processed glass, stating that processed glass must sometimes be stored at glass manufacturing facilities for long periods of time due to the lack of current need for glass with the particular lead content found in the stored glass. However, another commenter supported the use of variances under 40 CFR 260.30(a) to extend accumulation times when necessary for persons developing new glass technologies. We agree with this commenter. Such variances are available on a case-by-case basis if the applicant can demonstrate that sufficient amounts of the material in question can be recycled or transferred for recycling within the following year. The variances can be renewed annually by filing a new application. We note that these variances are available not only to glass processors and to persons developing new glass technologies, but also to any person storing used CRTs who needs additional storage time. Because they are site-specific and allow individual circumstances to be taken into account, the variances are more appropriate than an extension covering many different kinds of facilities.

One commenter stated that since most facilities will rarely encounter broken CRTs, it would be burdensome to try to distinguish them from intact CRTs; therefore, they should be subject to the same speculative accumulation requirements. EPA does not agree with this commenter. If CRTs are to be recycled, they must be broken at some point in order to be disassembled. Nor is it difficult to determine visually whether the vacuum tube on a CRT has been released. In any event, we note that the importance of distinguishing between broken and intact CRTs is not relevant for purposes of speculative accumulation, since under today's rule both are subject to the requirements of 40 CFR 261.1(c)(8).

Another commenter stated that the purpose of the original speculative accumulation provisions was to alleviate concerns about sham recycling and to provide a way to determine storage periods and turnover rates for materials that did not have well-defined markets. Since there are current markets for CRT glass, this commenter reasoned that the speculative accumulation provisions should not apply to these materials. We disagree with this commenter; the speculative accumulation provisions have never been limited to materials with particular types of markets. In any event, markets for most commodities usually change over time.

A few commenters suggested a period shorter than one year for accumulation of used CRTs. Two commenters said that 180 days should be sufficient to allow CRTs to be recycled, and that longer periods could encourage sham operations. These commenters who suggested shorter accumulation times, such as 180 days, did not submit data indicating that CRTs could be effectively recycled in such a short time period. Therefore, we are not adopting these suggestions.

EPA notes that a few commenters may have been confused about the relationship between the current speculative accumulation provisions and the classification of CRTs as solid wastes. The speculative accumulation provisions apply to materials that are not solid wastes at the beginning of the accumulation period; if they are not recycled in sufficient quantities within the specified period, they become solid wastes (and, if they are hazardous waste, subject to all applicable Subtitle C requirements). If used CRTs were classified as spent materials as soon as they were taken out of service, they

would instead be subject to the shorter accumulation times (90 or 180–270 days) allowed for generators of hazardous wastes pursuant to 40 CFR 262.34, rather than the one-year period allowed under 40 CFR 261.1(c)(8).

Use Constituting Disposal

In our June 12, 2002 notice, we proposed a condition prohibiting land placement of processed CRT glass, unless it met the use constituting disposal requirements of Part 266, Subpart C. We solicited comment on whether to impose the same prohibition on broken CRTs as well. We asked for information about the current uses for broken CRTs or processed CRT glass that involved use constituting disposal. We received very little data on this issue, although a few commenters mentioned the use of processed glass in road building materials. Because we have no information about this practice that would justify distinguishing it from use constituting disposal of processed CRT glass, today's rule imposes the same prohibition on both kinds of materials (see 40 CFR 261.39(a)(4) and (d)). We also note that for materials to be used in a manner constituting disposal, such recycling must be legitimate rather than a form of treatment. For guidance in determining such legitimacy, see the Memorandum entitled ''F006 Recycling'' from Sylvia K. Lowrance to Hazardous Waste Division Directors, April 26, 1989.

C. Used CRT Processing

Requirements for CRT Processors

The Agency also proposed an exclusion from the definition of solid waste for used CRTs undergoing glass processing, if certain conditions were met (see proposed 40 CFR 261.39(b)). CRT glass processing was defined in proposed 40 CFR 260.10 as the receiving of intact or broken used CRTs, intentionally breaking them, sorting or otherwise managing glass removed from CRT monitors, and cleaning coatings from the glass. CRT users and collectors sometimes break CRTs before sending them to a processor. Therefore, under the proposal, breaking used CRTs would not by itself subject a facility to the CRT glass processing conditions. In order to be classified as a CRT glass processor, the facility would have to perform all of the enumerated activities.

Under the proposal, used, broken CRTs undergoing glass processing would not have been solid wastes if they were stored in a building with a roof, floor, and walls. If they were not stored inside a building, they would have to be packaged and labeled under conditions identical to those proposed for used, broken CRTs prior to processing, including the prohibition on speculative accumulation. All glass processing activities would have to be conducted in a building with a roof, floor, and walls. In addition, no activities could be performed during glass processing that used temperatures high enough to volatilize lead from CRTs.

The CSI Council had recommended that glass processors install and maintain systems sufficient to minimize releases of glass and glass particulates via wind dispersal, runoff, and direct releases to soil. We solicited comment in the proposal on whether to require additional performance standards for glass processors. However, we did not propose the general performance standard recommended by the CSI Council, citing the Council's statement that storing broken CRTs and CRT glass in buildings or closed containers (as we proposed) were examples of ways to control wind dispersal, runoff, and direct releases to soil.

We also did not propose the CSI Council recommendation that glass processors implement a procedure for advising local communities of the nature of their activities, including the potential for resident and worker exposure to lead or chemical coatings. We stated our belief that matters of local notice and public participation are generally best decided at the state, county, or municipal level. However, we solicited comment on whether to require such procedures under federal regulations in the case of CRT recycling, and the reasons why these procedures would be needed.

EPA stated, at the time of proposal, that the conditions proposed for used, broken CRTs being processed indicate that the materials in question are more commodity-like than waste-like. Used, broken CRTs that are not managed in accordance with these requirements would not be valuable, product-like materials. The opportunity for loss or releases of the materials would indicate that they are wastes. As specifically recommended by the CSI Council, we also proposed that processors be required to conduct their activities without using temperatures high enough to volatilize lead from broken CRTs. Besides increasing the risk of releases to the environment, such practices could be a sign of waste management rather than production.

EPA has determined that used, broken CRTs being processed under these conditions resemble commodities more than wastes. For this reason, we are finalizing these conditions substantially as proposed. However, we have revised some of our proposed language in response to comments received. Significant comments, our responses, and the changes are discussed below.

Response to Comments

Several commenters believed that our proposed temperature requirement was unnecessary, noting that workers' exposure to lead was already covered by OSHA requirements at 29 CFR part 1910, and that a high temperature (or thermal processing) is not by itself an indication that waste management is occurring. Several commenters stated that lead volatilization and other lead releases would also be covered by applicable provisions of the Clean Air Act and the Clean Water Act. Other commenters supported the proposed temperature requirements, in part because they believed that use of high temperature requirements are in fact an indication of waste management. Some commenters asked EPA to specify a particular temperature, beyond which processing would be prohibited.

EPA agrees with those commenters who believed that CRT processing conducted with high temperatures may indicate waste management, because high temperatures are more likely to release lead and other contaminants into the environment, thereby leading to possible loss of materials. Such waste management could occur even if OSHA requirements apply. We are therefore retaining our prohibition on using temperatures high enough to volatilize lead, as proposed. However, we are not adding a specific temperature to the prohibition because the relevant scientific literature reveals differing temperatures for volatilization of lead, possibly depending on various conditions (see, e.g., Volatilization Studies of a Lanthanide Lead Borosilicate Glass, WSRC–MS–98–00240, R.F. Schumacher, D.S. McIntyre, D.K. Peeler, J.M. Parteizs; [5] and Effect of Heating on the Sintering Behavior and the Piezoelectric Properties of Lead Zirconate Titnate Ceramics, Jungho Ryu, Jong-Jin Choi, and Hyoun-EeKim, Journal of the American Ceramic Society, Vol. 84, No. 4, pp. 902–904, April 2001). We therefore believe that this requirement is more appropriately expressed as a performance standard than as a numeric value.

Some commenters mistakenly thought that the proposed temperature requirement would apply to ''end users'' of recycled CRT glass such as glass furnaces or smelters. One commenter

[5] *http://sti.srs.gov/fulltext/ms9800240/ms9800240.html.*

asked EPA to impose a performance standard on both CRT processors and glass manufacturers (and presumably smelters as well) that would ensure that no temperatures would be employed that released toxic metals into the work environment or the surrounding air. Another commenter suggested requiring that CRT processors be required to monitor for fugitive emissions of lead, silica, and mercury. The Agency does not agree with those commenters who suggested additional requirements for glass manufacturers and smelters, or emissions monitoring for CRT processors. EPA did not solicit comment on any of these measures and they are inappropriate for commodity-like materials. They could also be duplicative of requirements that are already applicable under OSHA, the Clean Air Act, the Clean Water Act, and RCRA.

One commenter stated that EPA's proposed requirement that CRTs undergoing processing be stored (unless packaged) in a building ''with a roof, floor, and walls'' could lead to placing CRTs in locations with inadequate containment. This commenter suggested replacing the Agency's proposed requirement with a provision calling for ''storage within a permanently constructed building consisting of at least a roof and three walls permanently affixed to an impermeable floor placed on the ground.''

We remain unconvinced that such requirements are necessary for buildings where CRTs are processed. For example, it is not clear that CRT processing would pose environmental risks (or that CRTs would be handled as wastes instead of commodities) if such processing work took place in a temporary building, since no liquids are involved in the processing. We also note that spills or releases would in any event be considered solid wastes.

One commenter disagreed with EPA's statement in our proposal that persons who break CRTs before sending them to processors should not be subject to our proposed conditions for CRT glass processing. Breaking CRTs and separating components constitute reclamation and should require a permit, according to this commenter.

EPA disagrees that breaking CRTs and separating components should require a permit. These actions may be performed by almost anyone sending a CRT to a recycler. The requirements of 40 CFR 261.39(a) concerning storage, transportation, labeling, and speculative accumulation are adequate to ensure that broken CRTs are handled as commodities; there is no need to impose other subtitle C requirements required under 40 CFR parts 264 and 265. Nor is there a need to subject persons who merely break CRTs to the provisions concerning high temperature activities. The Agency does not necessarily disagree with the commenter that breaking CRTs and separating the components constitutes reclamation. Nevertheless, when a person receives broken CRTs that are packaged and labeled in accordance with today's rule, the materials are commodity-like and the person or facility in question should not have to comply with the provisions of a hazardous waste storage permit. Moreover, EPA generally does not regulate reclamation processes themselves. States are of course free to impose more stringent requirements if they believe such requirements are justified.

Some commenters urged that EPA impose environmental management standards, emissions and ventilation standards, notification requirements, recordkeeping and tracking of wastes, employee training, and worker health and safety protections. Some of these commenters suggested that these requirements should also be applicable to persons sending CRTs for recycling, as well as processors. Some suggestions were substantially identical to certain practices required under the universal waste rule, such as employee training, container standards, notification, and tracking. Other commenters, however, suggested requirements that were much more stringent than those applicable to universal waste handlers. For example, a few commenters said that additional worker health and safety provisions were needed under our rule, and one commenter expressed concerns that the OSHA permissible exposure limits (PELs) at 29 CFR part 1910 do not apply to handlers of materials that are not solid wastes.

We have responded elsewhere in this notice to those commenters who argued that the Agency should impose the universal waste requirements of notification, tracking, and employee training on CRT processors. With respect to OSHA requirements, we disagree with the commenter who said that the worker health and safety provisions of that statute do not apply to people handling materials that are not solid wastes; the permissible exposure limits (PELs) of section 1910 of the OSHA regulations are not tied to EPA's RCRA definitions. Additional worker health and safety requirements are not necessary.

Some commenters, on the other hand, believed that several of our proposed requirements were unnecessary. For example, some commenters objected to EPA's proposed requirement that broken CRTs be stored either in a container or a building. One commenter believed that these materials should not be classified as solid wastes if they were stored on a concrete pad or the equivalent, since this practice should be adequate for a coarse solid material which is insoluble in water. We continue to believe, however, that storing broken CRTs outdoors prior to processing is inconsistent with the premise that they are commodity-like, since they can easily be damaged by excessive moisture or wind unless they are packaged. The same is true for processing CRTs outdoors, even if the processing takes place on a concrete pad. However, we note that under today's rule, intact CRTs may be stored on concrete pads or on the ground without packaging and labeling (see 40 CFR 261.4(a)(23)). In the case of intact CRTs, packaging or storage in a building is generally not necessary to minimize releases to the environment, since the CRTs are contained in their housing. However, if prolonged storage outdoors renders the CRTs unfit for recycling, they would become solid wastes, subject to full Subtitle C regulation provided they were also hazardous wastes. In addition, the exclusion in today's rule does not affect the obligation to respond to and remediate any releases of hazardous wastes that may occur.

Other commenters suggested replacing our proposed requirements with a requirement that processing and storage of CRT glass must take place in ''environmentally contained areas (water and particle containment)'' or must be ''stored in a manner that meets other environmental regulations that control or limit release to the environment.'' EPA disagrees with this suggestion because requiring processing to be conducted in ''environmentally contained areas'' is too vague to provide guidance to the regulated community on the measures required to ensure that they are handled in a commodity-like manner. Similarly, a requirement that materials be ''stored in a manner that meets other environmental regulations'' would be redundant, since they are required to meet other applicable environmental regulations in any event.

With respect to public notice requirements (which we did not propose), many commenters argued that such notice for CRT processing operations should be conducted pursuant to pre-existing state and local requirements, and should not be imposed as a function of our proposed conditional exclusion. Some commenters pointed out that local notice and public meetings are governed

by various state or local requirements concerning siting, zoning, or licensing. They believed that matters of local notice and public participation are generally best decided at the state, county, or municipal level. One commenter pointed out that additional opportunities for public involvement are also afforded under existing federal laws, such as the Emergency Planning and Community Right-to-Know Act and, in the case of potential worker exposures, the Occupational Safety and Health Act. This commenter feared that imposing additional requirements for public notice could increase costs for CRT processors, thereby undermining the goal of CRT recycling.

Other commenters, however, supported the CSI Council recommendation that glass processors be required to notify local communities of their activities. They thought that a federal public notice requirement was important for the health and well-being of communities that house CRT glass processors. They also believed that workers at these facilities should know of any health or safety risks involved with their daily activities. One commenter stated that it was not sufficient to defer to local authority to provide notice, and that such notice was a federal responsibility that must be retained.

In response to these comments, EPA continues to believe that federal public notice requirements for CRT recycling are unnecessary. In general, we have not mandated such requirements for hazardous waste recycling facilities, unless they obtain RCRA permits for storage of hazardous waste prior to recycling. Since glass processors are managing materials that are commodity-like if handled pursuant to today's conditions, it would be inappropriate to impose the same public notice requirements that are imposed on facilities that store hazardous wastes. In addition, the public may learn of these facilities through other notices or filings at the state, county, or municipal level.

Some commenters appeared to believe (incorrectly) that our proposal would have required processed glass to be packaged or stored in a building. However, we note that under the proposal (and under today's final rule) processed CRT glass sent to a CRT glass manufacturer or to a lead smelter would not have to be either packaged or stored in a building (see 40 CFR 261.39(c)). Under today's final rule, processed glass sent to other kinds of recycling need not be packaged or labeled if it is legitimately reused as an effective substitute for a commercial chemical product (this exclusion is explained further later in today's notice).

Even though we are not significantly modifying our proposed requirements for glass processors, we believe that some of our proposed language could benefit from clarification. We are therefore revising some of this language. First, we note that the proposed storage requirements for broken CRTs prior to processing (storage in a building or in a properly labeled container) would also have applied under our proposal to CRTs actually undergoing processing. This application was not our intent because CRTs cannot physically remain in a container while being processed. Therefore, we are revising proposed 40 CFR 261.39(b) to remove the reference to labeling and placement in a container. Used broken CRTs undergoing processing need only be stored in a building, and may not be speculatively accumulated.

Second, we note that one of the activities encompassed in today's definition of ''CRT processing'' at 40 CFR 260.10 (''receiving broken or intact CRTs'') generally need not (and sometimes cannot) take place in a building. We are therefore removing our proposed requirement that all CRTs be ''processed within a building.'' Instead, today's rule requires that ''all activities specified in paragraphs (2) and (3) of the definition of ''CRT processing'' in 40 CFR 260.10 must take place within a building.'' This means that only breaking or separating CRTs, or sorting or otherwise managing glass removed from CRT monitors, must be performed in a building. Actual receipt of the CRTs may occur outside.

Exclusions for Processed CRT Glass

Under the proposal, processed glass from used CRTs would be excluded from the definition of solid waste if it were sent for recycling to a CRT glass manufacturer or a lead smelter (40 CFR 261.39(c)). If it were sent to any other kind of recycling, it would be excluded if it were stored, labeled, and transported similarly to used, broken CRTs (40 CFR 261.39(d)). In neither case could the processed glass be speculatively accumulated. If it were used in a manner constituting disposal, all processed glass from used CRTs would have to comply with the storage, labeling, and transportation requirements applicable to used, broken CRTs and the applicable requirements of 40 CFR part 266, subpart C.

In the proposal, we explained that processed glass from used CRTs destined for a CRT glass manufacturer or a lead smelter meets the regulatory criteria in 40 CFR 260.31(c) for a variance from the definition of solid waste. Accordingly, the Agency decided that the resulting material is commodity-like and should be excluded from the definition of solid waste. In particular, the Agency tentatively found that processed CRT glass sent to glass manufacturers or lead smelters needs minimal further processing and has economic value and strong end markets. We also found that processed CRT glass is similar to materials that glass manufacturers and lead smelters use as feedstock, and that it is handled to minimize loss. For a more complete discussion of these criteria and the Agency's findings, see the proposal at 67 FR 40514. As noted below, no comments on these findings have caused the Agency to change them, so we are adopting them as final. We also believe that recycling CRT glass at lead smelters appears to be just as legitimate as glass-to-glass recycling, and that an exclusion for this material could turn out to be useful if the growing use of flat screens decreases the potential for glass-to-glass recycling.

The Agency solicited comment on whether processed glass destined for lead smelters should be eligible for the exclusion. Processed glass is sent to lead smelters for reclamation of lead and also for use as a flux agent (to promote fusing of metals or to prevent the formation of oxides). The Agency also solicited comment on whether to exclude processed glass from the definition of solid waste without packaging and labeling requirements if it were sent to copper smelters for use as a flux agent. In addition, we solicited comment on an identical exclusion for processed glass sent for recycling into other glass materials, such as optical beads, decorative objects, radiation shielding materials, and acoustic barriers. We requested information from commenters about whether processed CRT glass sent for these glass uses or to copper smelters was commodity-like.

After evaluating all comments received, the Agency is retaining our exclusion for processed CRT glass sent to glass-to-glass manufacturers and lead smelters as proposed. Processed glass sent to copper smelters and other glass uses is not a solid waste if it is legitimately used or reused without reclamation as an effective substitute for a commercial product, or as an ingredient in an industrial process to make a product pursuant to 40 CFR 261.2(e)(1)(i) or (ii)). Processed glass sent for any of these types of recycling may not be speculatively accumulated. If it is used in a manner constituting disposal, all processed glass from used CRTs must comply with the storage,

labeling, and transportation requirements applicable to used, broken CRTs and the applicable requirements of 40 CFR part 266, subpart C. In order to be eligible for today's exclusion, importers of processed glass from used CRTs must comply with these requirements as soon as these materials enter the United States.

The significant comments received on this issue and our response to them are described below.

Response to Comments

Commenters who addressed the issue of CRT glass sent to lead smelters generally supported our proposed exclusion from the definition of solid waste for processed glass sent to this destination (without packaging and labeling requirements). These commenters thought that CRT glass sent to lead smelters (for reclamation and use as a flux agent) is commodity-like. Because the Agency agrees with these comments, and for the reasons stated in the proposal (see 67 FR 40514), we find that processed CRT glass is commodity-like and we are finalizing the exclusion at 40 CFR 261.39(c) as proposed.

One commenter believed that the Agency should allow processed glass to be sent to glass manufacturers or lead smelters without any conditions, including those for speculative accumulation. This commenter noted that processed glass sent for these uses already fit the criteria for a ''partially reclaimed'' variance from the definition of solid waste under 40 CFR 260.31(c); hence, no conditions should be required. The Agency disagrees with this commenter. Even if the processed glass meets the criteria for the variance in question, the speculative accumulation requirement is necessary to ensure that the materials are actually recycled and not abandoned. We also note that the conditions under which such variances are granted are site-specific and vary according to circumstances. They frequently include conditions relating to storage and land disposal.

A few other commenters believed that our proposed exclusions for processed CRT glass were unnecessary, since processed glass sent to a lead smelter is used directly as an ingredient in a production process, and would therefore qualify for the use/reuse exclusion at 40 CFR 261.2(e). Alternatively, they said that if reclamation is required, the glass would be a characteristic by-product destined for reclamation, which again would not be a waste, unless speculatively accumulated (see 40 CFR 261.2(c)(3) and (4)).

Although the Agency has not specifically addressed the regulatory status of processed CRT glass sent to smelters, we note that these commenters' interpretations do not appear to be consistent with previous regulatory interpretations or with regulatory definitions (see the Response to Comment document in the rulemaking record for further discussion of the regulatory interpretations and definitions). In any event, the more specific regulatory exclusions promulgated today for CRT glass provide greater clarity to the regulated community than the more general provisions cited by the commenter.

Some commenters, on the other hand, objected to allowing CRT glass to go to smelters without additional controls. One commenter cited financial and environmental problems caused by smelters located in the commenter's state, and another believed that CRT glass should be restricted from going to smelters because it could lead to an increase in lead air emissions or lead content in the slag from these facilities.

EPA does not agree with the commenter who cited general concerns about smelters as a rationale for restricting processed CRT glass sent to these facilities. The commenter was concerned about financial and environmental problems caused by smelters in one state and did not tie these concerns to the use of processed CRT glass. EPA believes that these concerns are outside the scope of this rulemaking, and that they should be addressed, if necessary, in the context of rulemakings applicable specifically to smelters.

Many commenters supported allowing a similar exclusion for processed glass sent to copper smelters. They pointed out that such glass is used as a flux agent in a very similar manner at copper smelters, and that it seems unjustified to impose different conditions on materials destined for virtually identical uses. One commenter noted that at least one copper smelter has product specifications for recycled flux materials spelled out in its authority to operate issued by the relevant government agency. The specification includes a minimum flux value and maximum contaminant level. The commenter stated that CRT glass met these criteria.

Another commenter pointed out that virgin copper concentrate already contains approximately 1% lead. Therefore, lead is a constituent that is already present in the copper smelting process and is already being managed in process residues. According to this commenter, the use of processed CRT glass will not significantly increase the amount of lead already resulting from the copper smelting process and being managed in the slag or air pollution control sludge.

Some commenters were also concerned about the capacity of CRT glass manufacturers to absorb the large volume of CRT glass that is generated in this country. They urged the Agency to take this concern into account and encourage recycling by allowing similar exclusions for processed CRT glass sent to glass manufacturing, lead smelting, or copper smelting.

The Agency agrees with those commenters who pointed out that the degree of processing that is required for use in a copper smelter appears to be the same as that required for use in a lead smelter. The economics also may be similar for fluxes used in both kinds of smelters. Processed glass is composed mainly of silica, which is useful as a flux, although lead is not recovered when CRT glass is used as a flux at a copper smelter. Nevertheless, the Agency has been unable to confirm that CRT glass is accepted at actual copper smelters. For this reason, we cannot currently make a finding that CRT glass sent to copper smelters is commodity-like, and we are not finalizing our proposed exclusion. However, we note that if the processed CRT glass were legitimately used or reused without reclamation as an effective substitute for a commercial product (i.e., as a flux agent), it could be excluded as an effective substitute for a commercial product under 40 CFR 261.2(e)(ii) (see letter from Michael Shapiro to Christian Richter of the American Foundrymen's Society, March 8, 1995).

With respect to processed CRT glass sent for recycling into other glass uses, commenters were divided. Some believed that these uses were likely to be commodity-like; others disagreed. Commenters submitted very little data about these uses. Since the Agency has at present very little information about their status as commodities, we are not finalizing our proposed exclusion. However, similarly to the case of processed glass sent to copper smelters, if the glass is legitimately used or reused as an effective substitute for a commercial chemical product, or used as an ingredient in an industrial process to make a product (provided the materials are not being reclaimed), it could be excluded from the definition of solid waste under 40 CFR 261.2(e)(i) or (ii).

D. Exports and Imports

Under the June 12, 2002 proposal, exporters of used CRTs for reuse or

recycling would not have been required to submit any notifications prior to export. Processed glass imported into the United States would be excluded if it complied with the proposed conditions. Because the imported processed glass would not be a hazardous waste if it met the conditions of the exclusion, it would not be subject to the hazardous waste import requirements of subpart F of 40 CFR part 262. The CSI Council had recommended that entities exporting CRT and CRT glass be subject to various notice and consent provisions, depending on whether the CRT glass was coated or uncoated and on the destination of the materials (for a complete description of the CSI recommendations, see the proposal at 67 FR 40516). For example, the CSI Council recommended that CRTs and coated CRT glass should be subject to the same notice and consent provisions as exporters of hazardous waste in subparts E or H of 40 CFR part 262.

In our proposal, the Agency stated its belief that we did not have legal authority to require notification under 40 CFR part 262, subparts E and H, or the authority to require additional notifications, for CRTs or CRT glass that were not solid wastes because they were in compliance with our proposed conditions. We noted that if used CRTs were added to the universal waste program, we would have the authority to require notification at least for exported broken CRTs. We solicited comment on whether the need for export notification requirements recommended by the CSI would warrant adding used CRTs to the universal waste program, and whether these requirements would be unduly burdensome.

EPA's proposal elicited many comments and some additional data on the export of CRTs for recycling. These comments and data convinced us that exported CRTs often are not handled as valuable commodities. For this reason, we have reconsidered our earlier position about imposing notification requirements on exports. Therefore, today's rule requires exporters of CRTs for recycling to comply with the notice and consent requirements that are similar to those found in 40 CFR part 262, subparts E and H for exports of hazardous waste. The rule also requires exporters of CRTs for reuse to submit a one-time notification to EPA. In order to be eligible for today's exclusion, importers of used, broken CRTs must comply with the packaging, labeling, and speculative accumulation requirements of 40 CFR 261.39(a)(1)–(4) as soon as the materials enter the United States.

The new export requirements, significant comments received, and our responses to the comments are described in more detail below.

Response to Comments

Many commenters who addressed this question expressed concern about exporting CRTs and other electronics for recycling, especially to developing countries. These commenters argued that our proposed rule would exacerbate the effects of market dynamics, lack of existing regulatory controls, and the absence of a domestic recycling infrastructure and would increase the amount of electronic waste that is shipped abroad and managed inappropriately (see also the report entitled Exporting Harm: The High-Tech Trashing of Asia, prepared by the Basel Action Network and the Silicon Valley Toxics Coalition, February 25, 2002). One commenter further argued that our proposal would prevent the growth of a domestic electronics recycling industry by making it easier to export electronics.

To address such concerns, some commenters suggested that the Agency adopt notice and consent procedures for exported CRTs similar to those currently found at 40 CFR part 262, subparts E and H for exports of hazardous waste. Some of these commenters said that EPA should impose notification requirements on exported CRTs as an additional condition of the exclusion from the definition of solid waste. They believed that the Agency has adequate authority to impose such conditions without adding these materials to the universal waste rule.

After evaluating these comments, the Agency has decided to impose notice and consent requirements as a condition of today's exclusion from the definition of solid waste on CRTs exported for recycling. The comments, and data submitted by the commenters, have convinced us that unfettered export of CRTs for recycling could lead to environmental harm. Information in the record shows that exported electronics may not be handled as valuable commodities in foreign countries. In fact, there is documentation that they are sometimes managed so carelessly that they pose possible human health and environmental risks from such practices as open burning, land disposal, and dumping into rivers. Notice and consent requirements mean that the receiving country will be informed of the proposed export, after which the country may consent or not, based on its analysis of whether the receiving facility can properly recycle the CRTs as commodities in an environmentally sound manner. EPA has therefore decided to ensure that the importing countries are able to consent (or withhold consent) when CRTs are proposed to be recycled within their borders.

EPA believes that sections 2002, 3002, 3007, and 3017 of RCRA provide authority to impose this condition, because used CRTs sent abroad are sufficiently waste-like to justify this requirement, and because notice and consent help ensure that the CRTs are not discarded. We have therefore reconsidered our earlier position (discussed in the preamble of our proposed rule at 67 FR 40516) about imposing notice and consent requirements on CRTs exported for recycling. EPA has the authority to ensure that CRTs exported for recycling are handled in a manner consistent with commodity-like status.

EPA considered simply requiring exporters of CRTs for recycling to comply with the current notice and consent requirements in 40 CFR part 262. These requirements, however, rely on the hazardous waste manifest and other Subtitle C provisions that EPA is not imposing on used CRTs. Consequently, we are promulgating separate (although very similar) export requirements that will apply exclusively to conditionally exempt CRTs exported for recycling. In addition, the notice and consent requirements promulgated today do not apply to processed glass that is exported, since there is no information available to us indicating that this material is not handled as a commodity when exported.

Under today's rule, used CRTs exported for recycling are not solid wastes provided the exporter notifies EPA and obtains a subsequent written consent forwarded by EPA from the receiving country. The provisions that we are promulgating today in 40 CFR 261.39(a)(5)(i)–(ix) and 40 CFR 261.40 require exporters of used CRTs destined for recycling (whether broken or intact) to notify EPA of an intended export 60 days before the initial shipment is intended to be shipped off-site. The notification may cover export activities extending over a 12 month or shorter period. The notification must include contact information about the exporter and the recycler, including any alternate recycler. The notification must include a description of the manner in which the CRTs will be recycled. It must also include the frequency and rate at which CRTs will be exported, the period of time over which they will be exported, the means of transport, the estimated total quantity of CRTs, and information

about transit countries through which the CRTs will pass. Notifications must be sent to EPA's Office of Enforcement and Compliance Assurance, which will notify the receiving country and any transit countries. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward the written consent to the exporter. The exporter may proceed with shipment only after he has received a copy of the written consent from EPA. If the receiving country does not consent to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries. Exporters must keep copies of notifications and consents for a period of three years following receipt of the consent.

EPA has decided to require exporters of used, intact CRTs sent abroad for recycling to meet the same requirements as those applicable to exporters of used, broken CRTs. Although used, intact CRTs are more commodity-like than used, broken CRTs, they are more likely to be exported, and information in the record does not indicate that they are less likely to be discarded or handled as low-value materials abroad. We believe that used, intact CRTs are sufficiently waste-like when exported for recycling to be subject to a condition requiring notice and consent prior to export. Notice and consent help ensure that the CRTs are not discarded.

Some commenters urged EPA to forbid all exports of CRTs to developing countries. EPA does not agree with this suggestion because RCRA does not provide the authority to unconditionally ban exports of solid and hazardous wastes if the exporter complies with the existing regulatory requirements governing the export of these materials. We also disagree with this suggestion for practical reasons. Such a ban would prevent even the safe recycling of hazardous wastes abroad and would discourage resource recovery and reuse.

Some commenters believed that our proposed rule was inconsistent with various international agreements involving the export of hazardous waste. In particular, one commenter stated, the proposal is inconsistent with legal obligations under the treaty law of the Organization for Economic Cooperation and Development (OECD), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Stockholm Declaration. As noted above, the Agency is sympathetic to concerns about the potential risks of exporting CRTs for recycling. Therefore, to ensure that CRTs exported for recycling are handled in a manner consistent with commodity-like status, we are requiring that these materials be subject to the notice and consent requirements described in detail above. We believe that these requirements address most of this commenter's concerns. The Response to Comment document in the record to this rulemaking addresses these concerns in more detail.

Other commenters argued that notice and consent requirements, besides being unnecessary, were likely to discourage the export of CRTs for desirable recycling by making such export more burdensome. Another commenter noted that glass recyclers need to sell recovered CRT glass to developing countries, because the volume of obsolete CRT equipment will increase just as the domestic demand for CRT glass parts will be reduced because of new technology such as flat panel screens.

We disagree with those commenters who said that an export notification and consent requirement would be burdensome. The Agency estimates that these requirements will impose a burden of approximately four hours per year (on average) per respondent. We believe that this burden is not excessive especially since it helps ensure that exported CRTs are handled in ways consistent with an exclusion from the definition of solid waste. We also do not believe that these requirements will significantly affect the quantity of CRTs or CRT glass exported for recycling, since the relative amount of such materials recycled domestically and abroad depend principally on other economic factors.

One commenter suggested (in lieu of a notice and consent procedure) that EPA require exporters to keep records, such as shipping papers, that would allow tracking of CRT shipments or the amount paid by the shipper for the material. The Agency has rejected this approach because it would not give notice to the receiving country, nor would it give the country the opportunity to refuse consent to a shipment. It is therefore not sufficient to ensure that the material is treated as a commodity. The receiving country should be notified to help ensure that the CRTs will be recycled in an environmentally sound manner. Requiring an exporter to show evidence of payment would not involve the receiving country, and would thus not be a sufficient requirement.

The Agency notes that intact CRTs exported for reuse are identical in appearance to those exported for recycling. Consequently, to help ensure that the intact CRTs are actually reused abroad, we are requiring persons who export used, intact CRTs for reuse to submit a one-time notification to the Regional Administrator with contact information and a statement that the notifier plans to export used, intact CRTs for reuse. These notifications will allow regulatory authorities to contact the notifier, when appropriate, to ask for verification that the CRTs are exported for reuse instead of recycling or disposal. These persons must keep copies of normal business records demonstrating that each shipment of exported CRTs will be reused, and this documentation must be retained for three years from the date the CRTs were exported. Examples of normal business records include those that document the transfer of used equipment to the consignee for reuse, including name and address of the consignee, description of the shipment, and conformance with any product specifications, as well as the amount paid (if any) for the exported material. We believe that our right to require such basic notification is inherent in our authority to regulate discarded materials, and in our RCRA section 3007 authority to obtain information pertaining to materials that may become solid or hazardous wastes. Because a one-time notification is adequate to give the Regional Administrator notice about persons who are exporting for reuse, additional notifications are not necessary each time CRTs are exported for this purpose.

E. Universal Waste

In our June 12, 2002 notice, the Agency proposed a conditional exclusion from the definition of solid waste for used CRTs and CRT glass being recycled. However, we also solicited comment on the alternative approach of adding these materials to the universal waste rule. In particular, we requested comment on whether various universal waste requirements would be appropriate or burdensome for glass processors, or collectors who send used CRTs or CRT glass to these processors. The universal waste requirements in question were employee training, notification of universal waste management activities, and tracking of shipments sent and received. After evaluating all comments, the Agency has decided to retain the proposed conditional exclusion from the definition of solid waste for used CRTs and processed CRT glass, instead of adding these materials to the universal waste rule. Significant comments, our responses, and the rationale for the final rule are explained below.

Response to Comments

Some states and many industry commenters (such as those from the electronics industry) supported the proposed conditional exclusion and did not want EPA to add used CRTs to the universal waste rule. These commenters agreed with the Agency that used CRTs, when managed under the proposed conditions, resemble commodities more than wastes. They argued that adding CRTs to the universal waste scheme would harm the developing infrastructure for electronics recycling by imposing greater burdens and reducing flexibility. According to these commenters, classifying CRTs as hazardous waste would create a ''stigma'' that would make retailers or collectors reluctant to participate in recycling programs. One state said that adding used CRTs to the universal waste rule would make virtually any business with computers or televisions a potential hazardous waste generator, with negative implications for program implementation and enforcement.

They also believed that the universal waste requirements mentioned above were unnecessary for used CRTs because these materials pose minimal environmental risks. A few commenters feared that glass processors could be classified as ''destination facilities'' which could possibly need a RCRA storage permit, thereby frustrating CRT recycling goals. Finally, they questioned whether processed glass met the criteria for addition to the universal waste rule because it is not ''widely generated.''

On the other hand, other commenters, including several states, supported these requirements and suggested that EPA add used CRTs to the universal waste rule. These commenters generally noted that CRTs fit the regulatory criteria for universal waste at 40 CFR part 273, and cited the familiarity of stakeholders with this rule. Some of these commenters argued that keeping CRTs within the universe of hazardous waste would ensure better oversight by regulatory authorities than would a conditional exclusion from the definition of solid waste.

One commenter pointed to the significant amounts of lead contained in many CRTs, and disputed the Agency's assertion that leaded glass from CRTs resembled a commodity more than a waste. This commenter believed that the universal waste rule would ensure more responsible management of such a potentially harmful substance. In particular, this commenter urged imposing the requirements in the universal waste rule for employee training, release response, packaging, labeling, notification, and accumulation time limits. Some states were also concerned about speculative accumulation, and supported the one-year accumulation limit for universal waste. Others preferred the universal waste requirements because 40 CFR 273.17 and 273.37 require universal waste handlers to contain all releases.

According to several commenters, the streamlined requirements of the universal waste rule would also encourage recycling. One commenter believed that adding CRTs to the universal waste rule would facilitate improved voluntary management of CRTs from households or CESQGs, since the universal waste rule specifically allows wastes from these sources to be managed as universal wastes.

After considering these comments, EPA has decided to finalize the proposed conditional exclusion from the definition of solid waste for CRTs and CRT glass being recycled. We agree with the commenters who pointed out that intact or broken CRTs largely fit the regulatory criteria for universal wastes (see 40 CFR 273.81). For example, they are frequently generated in a wide variety of settings and are present in significant volumes in the municipal wastestream. Commenters are also correct that stakeholders are familiar with the universal waste scheme, although they are also quite familiar with the concept of conditional exclusions. However, we disagree with the commenter who implied that the presence of lead in CRT glass prevents this material from being commodity-like. As discussed elsewhere in this notice, there are demonstrated markets for CRTs and CRT glass, and it is generally the presence of lead that contributes to its value to glass manufacturers and smelters. An exclusion is more suitable for materials that resemble commodities more than wastes, especially if conditions are promulgated to ensure that they will be stored and handled as objects of value. In support of our decision, we note that many of the provisions of the conditional exclusion are similar to the provisions suggested by commenters, and recommended by the CSI for CRTs sent for recycling. For example, the packaging and labeling requirements for CRTs are nearly identical. In addition, we are also imposing notice and consent requirements for CRTs exported for recycling, as would be required under the universal waste rule.

Although some commenters believed that regulating CRTs sent for recycling under the universal waste program would ensure greater regulatory oversight, materials destined for the types of recycling addressed in today's rule do not need as much regulatory oversight as other waste materials because, when handled consistently with the specified conditions, they are commodity-like. Furthermore, the requirements of the universal waste rule for employee training, notification of waste management activities, and tracking of shipments are not necessary as a matter of federal law for these materials, when they are not being sent for disposal. The packaging and labeling conditions for broken CRTs that are promulgated today will ensure that the possibility of releases to the environment is very low. In addition, intact CRTs sent for recycling also pose a minimal risk of releases while being transported, since the glass is unlikely to be released unless the vacuum is broken. Lead from CRTs is therefore not readily available to the environment as long as the CRTs are intact. Similarly, we note that under today's rule, the speculative accumulation requirements of 40 CFR 261.1(c)(8) apply to used CRTs (whether broken or intact) and processed CRT glass. These requirements will be as effective in preventing extended accumulation periods as the accumulation limits of 40 CFR 273.15 and 273.35. In addition, processed CRT glass sent for many kinds of recycling is commodity-like. This material fits the criteria for the variance from the definition of solid waste for ''partially reclaimed'' materials under 40 CFR 260.30(c) and 261.31(c) (see the discussion of this issue in the preamble to our proposal at 67 FR 40514). This variance is specifically designed for commodity-like materials. We agree with the commenter who noted that processed glass does not actually fit the regulatory criteria for the universal waste rule (because it is not widely generated by different types of facilities) and that glass processors might technically be considered destination facilities under the universal waste rule (because they are recyclers).

Under the universal waste approach, CRTs destined for recycling would still be classified as hazardous wastes, although subject to reduced regulation. We agree with those commenters who argued that in the case of CRTs, this classification could discourage recycling. We are concerned that nonprofit organizations might refuse to help collect used CRTs because of this hazardous waste classification. Without their participation, CRT recycling would be greatly inhibited.

A few commenters also believed that adding CRTs to the universal waste rule

would alleviate the need for our proposed distinctions between used and unused or intact and broken CRTs. The Agency does not agree with these commenters. Adding used CRTs to the universal waste rule would not eliminate the need for these distinctions. Unused, intact computers and televisions are often returned to the manufacturer, or they may be sold or donated for use. Long-standing rules define unused materials as products rather than wastes, and products would not be subject to the universal waste rule. Similarly, even if intact and broken CRTs were added to the universal waste rule, the same universal waste requirements would not be appropriate for both categories of materials, since there is a greater possibility of releases from broken CRTs.

It is true that 40 CFR 273.17 and 273.37 require universal waste handlers to contain all releases. Under a conditional exclusion, on the other hand, if a person failed to respond to a release, EPA or the State could take action, including an enforcement action, which is a reactive rather than preventive measure. However, in the case of CRTs and CRT glass, the possibility of immediate environmental harm from a release is expected to be sufficiently low to be outweighed by the benefits from fostering increased recycling.

Some commenters urged us to adopt the universal waste approach because, unlike the conditional exclusion approach, it does not require use of the hazardous waste manifest for materials sent to disposal. Existing universal waste rules are intended to promote safer disposal of waste generated by households and small quantity generators, who are currently exempt from Subtitle C regulation. These commenters wanted this benefit for CRTs sent to disposal; one commenter stated that having similar requirements for recycling and disposal reduces complications for enforcement authorities by eliminating the need to discern the waste handler's intent. Other commenters, however, argued that used CRTs should be fully regulated when sent for disposal, and that such full regulation was necessary to protect human health and the environment.

Even though requiring no manifest for CRTs could simplify the regulations applicable to CRTs, we believe that today's conditional exclusion will foster the equally important goal of collecting CRTs, conserving resources, and minimizing negative impacts on the environment. We anticipate that it will lead to increased recycling and less disposal of CRTs, including those from households and CESQGs, because municipalities and other entities can consolidate CRTs from all sources more easily than if some CRTs were classified as hazardous wastes. In addition, as described earlier in this notice, the Agency and many states are engaged in several efforts to increase the rate of CRT and electronics recycling, including electronics from households and CESQGs. We believe that these efforts, as well as many others at the state and local level, will ultimately bring about a considerable improvement in the rate of voluntary electronics recycling.

With respect to disposal, materials sent to landfills or incinerators under the universal waste rule need not be accompanied by a hazardous waste manifest. Under our proposed conditional exclusion, the manifest would have to accompany CRTs sent for disposal. A few states said the universal waste rule was therefore less stringent (in this respect) than a conditional exclusion. These states were therefore concerned that if a state had already added CRTs to its universal waste program, it would have to amend its rules and seek authorization from EPA to remain equivalent to the federal program. This conclusion is incorrect; the Agency has concluded that adding CRTs to a state universal waste program is permissible under state authorization rules. As commenters pointed out, the universal waste rule is in other respects more stringent than today's conditional exclusion. In addition, the Agency's longstanding position is that under a state universal waste program, individual wastes and management standards are not subject to the authorization revision provisions in 40 CFR 271.21, since the state is already authorized for the universal waste regulations and the regulation of hazardous wastes (see the preamble to the universal waste rule at 60 FR 25537, May 11, 1995). Therefore, states are free to add CRTs to their universal waste programs without seeking authorization from EPA.

F. Definitions

Several commenters suggested changes to some of EPA's proposed definitions. The following is a summary of these suggested changes, with our responses.

''Cathode Ray Tube''

The Agency's proposed definition of ''cathode ray tube'' was a ''vacuum tube, composed primarily of glass, which is the video display component of a television or computer monitor.'' Some commenters said that our proposed definition did not make clear whether we intended to include such devices as scanning equipment, multichannel analyzers, medical, automotive, oscilloscope, military, aircraft, and appliance CRTs. These commenters apparently believed that these types of CRTs did not fall within the definition of a television or computer monitor. One commenter said that the use of the term ''video display'' was misleading, since that phrase is associated with television monitors. This commenter suggested that ''video or visual display component'' would be a better definition. Another commenter suggested that EPA confine the regulatory definition to color CRTs, since monochrome CRTs generally do not exhibit the toxicity characteristic for lead.

The Agency agrees with those commenters who desired a more general definition that would encompass various types of CRTs; we believe that such a definition would provide more clarity to the regulated community and would better reflect the intent of our proposal (see 67 FR 40509). We also agree with the commenter who said that ''video or visual display component'' would be a more precise definition. For these reasons, we are changing our proposed definition of ''cathode ray tube'' in 40 CFR 260.10 to read as follows: ''cathode ray tube means a vacuum tube, composed primarily of glass, which is the video or visual display component of an electronic device''. This definition would encompass all the different types of CRTs mentioned by the commenters.

The Agency does not agree with the commenter who suggested that the definition of ''cathode ray tube'' be limited to color CRTs, since we are not certain that all color CRTs exhibit the toxicity characteristic for lead, or that no monochrome CRTs exhibit this characteristic. For this reason, we are not revising our proposed definition to include a reference to color or monochrome CRTs. If CRTs do not exhibit the toxicity characteristic for lead, they are not regulated under any of the hazardous waste regulations, including the exclusion promulgated today.

''Intact'' and ''Broken'' CRTs

In our proposal, EPA had defined an ''intact'' CRT as one remaining within the monitor whose vacuum has not been released. A ''broken'' CRT, on the other hand, was defined as ''glass removed from the monitor after the vacuum has been released''. Some commenters pointed out that our proposed

definitions did not take into account two categories of CRTs: those removed from a monitor without release of the vacuum (i.e., ''bare'' CRTs) or CRTs remaining within the monitor after being inadvertently broken. One commenter believed that intact CRTs removed from the monitor were commodity-like, and should therefore be completely excluded from the definition of solid waste, especially since they presented very little potential for environmental releases. However, another commenter suggested that intact CRTs removed from the monitor should be treated the same as broken CRTs. Some commenters stated that the proposed rule did not address broken CRTs remaining within a monitor because of inadvertent breaking of the glass.

Another commenter pointed out that his company considered CRTs with released vacuum tubes to be intact because they have not been mechanically altered so as to increase the potential release of heavy metals.

After reviewing the comments, the Agency agrees that its proposed definitions did not adequately address at least one category of CRTs. With respect to intact CRTs that are removed from the monitor with the vacuum still unbroken, we understand that these materials must normally be packaged before being shipped for repair or reuse. It would therefore be unnecessary and redundant to subject these materials to the same conditions as broken CRTs sent for recycling. They resemble products more than wastes, and should not be considered solid wastes, unless disposed. In today's rule, therefore, we are clarifying the status of these materials by including them within the definition of ''intact CRT,'' and we are revising that definition to read: ''an intact CRT means a CRT whose vacuum has not been released.''

However, the Agency is not changing the definition of ''broken CRT'' to specifically address inadvertently broken CRTs, since such breakage is accidental and does not occur routinely. If some CRTs within a shipment of intact CRTs are accidentally broken, such occurrences are most appropriately addressed on a case-by-case basis by the appropriate regulatory authorities.

One commenter suggested that the definition of ''broken CRT'' should refer to glass removed from any ''housing'' or ''casing,'' rather than glass removed from a ''monitor.'' The Agency agrees that the language suggested by the commenter is more descriptive. The same commenter noted that our proposed definition assumed that CRT vacuums are released before the CRT is removed from the monitor, whereas in actuality the CRT is sometimes removed from the monitor, after which the vacuum is released. EPA agrees with the commenter that our intent was not to draw distinctions based on the timing of the vacuum release. We have therefore revised our proposed definition of ''broken CRT'' to read: ''glass removed from its housing or casing whose vacuum has been released.''

One commenter noted that EPA did not present data showing that a CRT is not reusable as a product after the vacuum has been released and the glass removed. A few commenters suggested that EPA revise its definition of ''broken CRT'' to refer to CRTs that were no longer reusable, or to specify that CRTs become wastes when they will no longer be used for the purpose for which they were manufactured. In response to these comments, we note that the Agency specifically requested comment in the preamble to our proposed rule about whether it was possible to repair and reuse a CRT after the vacuum was released. No commenters submitted information or explanations about how this phenomenon might occur. With respect to broken CRTs, a released vacuum facilitates glass breakage and makes subsequent environmental releases more likely, even if these materials have not been substantially altered mechanically. We also believe that it would be much more difficult to implement the definition if regulators or the regulated community were required to ascertain whether a computer, television, or other electronic device could be used again. Such a determination would require considerably more technical expertise than merely examining a CRT to see if the vacuum had been released. Therefore, under today's rule, a CRT will still be considered broken if the vacuum is released.

One commenter suggested that we should change the definitions of ''intact'' and ''broken'' CRTs in proposed 40 CFR 260.10 to read ''used, intact CRTs'' and ''used, broken CRTs'' (presumably to be consistent with the language in our proposed exclusions). EPA agrees and has added this language to the definitions in today's final rule.

A few commenters objected to the Agency's regulatory distinctions between ''unused'' and ''used'' or ''intact'' and ''broken'' CRTs. These commenters believed that most CRTs in all of these categories should be treated the same (presumably because the environmental risks were similar).

Although classifying all CRTs in the same regulatory category would undoubtedly lead to simplified program implementation, EPA does not believe that eliminating our proposed distinctions is desirable. Intact CRTs present very little risk of releases, unless they are accumulated for long periods of time; therefore, subjecting them to the same conditions as broken CRTs is not appropriate.

''CRT Processing''

EPA received several comments on the proposed definition of ''CRT processing.'' Specifically, the proposed regulation stated that CRT processing meant conducting all of the following activities: (1) Receiving broken or intact CRTs; (2) intentionally breaking intact CRTs, or further breaking or separating broken CRTs; (3) sorting or otherwise managing glass removed from CRT monitors; and (4) cleaning coatings off the glass removed from CRTs. Some commenters believed that it was not necessary to perform all of these activities in order to be considered a CRT processor. In particular, commenters pointed out that some CRT recyclers do not clean coatings from CRT glass, and that there is an increased market for glass with the coating still on it. These commenters recommended that the definition of ''CRT processing'' be revised to specify that performing the first three activities listed above, or cleaning coatings from glass removed from CRTs, should be sufficient to classify a person or facility as a CRT processor.

EPA agrees with these commenters. As one commenter stated, coatings do not have to be removed from CRT glass sent to a smelter. We are therefore revising our proposed definition of ''CRT processing'' to mean conducting all of the following activities: (1) Receiving broken or intact CRTs; and (2) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and (3) sorting or otherwise managing glass removed from CRT monitors. Since any CRT recycler cleaning coatings from CRT glass would necessarily be performing the first three activities, we believe it is unnecessary to refer to such cleaning in the regulations. This revised definition will be more consistent with the current activities of CRT recyclers.

''Processed CRT Glass''

In our proposal, we did not include a definition of ''processed CRT glass.'' One commenter noted that if EPA revised its definition of ''CRT processing'' to remove the reference to coating, the Agency should then promulgate a definition of ''processed CRT glass'' that would ensure that only CRT glass with the coatings removed

would be subject to the requirements of proposed 40 CFR 261.39(c) (i.e., no packaging or labeling for the processed glass). This commenter believed that only glass with the coating removed could properly be considered commodity-like. EPA disagrees with this suggestion, because we believe that whether CRT glass is coated or uncoated has little to do with whether the glass resembles a commodity. As stated above, CRT glass sent to smelters does not need to have coatings removed, and we believe that such materials are commodity-like. We believe that the destination of the glass is a more reliable indicator of its nature as a commodity than its coated or uncoated condition.

''CRT Glass Manufacturing''

Finally, one commenter pointed out that our proposed definition of ''CRT glass manufacturing facility'' could cause confusion because 40 CFR 260.10 defines a ''facility'' as ''land, etc. used for treating, storing, and disposing of hazardous waste,'' which is not true of CRT glass manufacturers. The Agency agrees with this commenter that the use of the word ''facility'' could be misinterpreted and has changed the definition in today's rule to read: ''CRT glass manufacturer means an operation or part of an operation that uses a furnace to manufacture CRT glass.''

G. Disposal

In the preamble to our proposed rule, EPA solicited comment on whether to allow CRTs sent for disposal in hazardous waste facilities (i.e., landfills or incinerators) to comply with streamlined packaging and labeling requirements similar to the ones we proposed for broken CRTs sent for recycling, rather than comply with the full Subtitle C requirements, including use of the hazardous waste manifest.

Some commenters said that disposal of CRTs should be subject to streamlined requirements similar to those applicable to broken CRTs sent for recycling. These commenters generally believed that CRTs presented very low environmental risks, even in landfills. They cited what they believed to be the benefits of simplified program implementation (presumably including facilitation of inspections and enforcement) if CRTs sent for recycling and disposal were subject to the same regulatory requirements. Other commenters supported the application of the full Subtitle C requirements to CRTs sent for disposal. These commenters believed that CRTs sent for disposal presented greater environmental risks; they also supported this approach because they believed it would encourage recycling.

After evaluating these comments, the Agency has concluded that the arguments for streamlining requirements for CRTs sent for disposal do not appear to be justified. As noted by some commenters, the volume of these materials will increase in future years because of evolving computer and television technology. We have not conducted a separate analysis of disposal issues as part of this rulemaking. In addition, we wish to encourage the environmentally sound recycling of this rapidly growing wastestream to conserve resources and raw materials, and we do not want to promulgate regulations that are inconsistent with this policy. For this reason, we are not promulgating streamlined packaging and labeling requirements for CRTs sent for disposal.

H. Enforcement

Under today's rule, CRTs and CRT glass destined for recycling and CRTs exported for reuse are excluded from RCRA Subtitle C regulation if certain conditions are met. Persons that handle CRTs and CRT glass that are subject to this exclusion will be responsible for maintaining the exclusion by ensuring that all of the conditions are met. If the CRTs are not managed as specified by these conditions, they are not excluded. The CRTs would then be considered hazardous waste (if they exhibit a hazardous waste characteristic) for Subtitle C purposes from the time they were ''generated'', i.e., from the time the decision was made to dispose of them or to release the vacuum for recycling, rather than to send them to facilities where they may be reused.

Persons taking advantage of the exclusion that fail to meet one or more of its conditions may be subject to enforcement action and the CRTs may be considered to be hazardous waste from the point of their generation. EPA could choose to bring an enforcement action under RCRA Section 3008(a) for all violations of the hazardous waste requirements occurring from the time a decision was made to dispose of the CRTs or to release the vacuum for recycling, through the time they are finally disposed of or reclaimed.

EPA believes that this approach, which treats CRTs exhibiting a hazardous waste characteristic that do not conform to the conditions of the exclusion as hazardous waste from their point of generation, provides all handlers with an incentive to handle the CRTs consistent with the conditions. It also encourages each person to take appropriate steps to ensure that CRTs are safely handled and legitimately reused or recycled by others in the management chain.

Persons managing CRTs before they become wastes are not considered generators and are not subject to RCRA requirements. For example, charitable organizations, municipalities, retailers, or manufacturers who collect intact CRTS are not generators when they send CRTs to facilities that decide whether they will be reused, recycled, or disposed.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA Sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA Section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA Section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1(i)). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Today's rule will have a different effect on authorized state programs, depending on how the state is currently regulating CRTs. In the proposal to today's rule, EPA clarified its views on how the current RCRA regulations most appropriately applied to CRTs sent for recycling (see 67 FR 40508 at 40511, June 12, 2002), and we proposed to revise the regulations to clarify any confusion and to set a clear federal floor. In the case of used CRTs going for recycling, EPA at the time encouraged states to implement approaches consistent with the proposal. Today's final rule modifies the proposal in three principal respects: (1) Speculative accumulation requirements for used, intact CRTs; (2) one-time notification requirement for used CRTs exported for reuse; and (3) notice and consent requirements for CRTs exported for recycling. These requirements are more stringent than the approach that EPA, in the proposed preamble, recommended that states adopt under the current regulations. Therefore, states that adopted the approach recommended in the proposed rule must amend their programs so that they are no less stringent than the federal approach. States currently regulating CRTs as hazardous waste, including under the universal waste rule, would not have to amend their programs, since their programs are more stringent than the federal requirements.

The limitations on speculative accumulation for intact CRTs are issued under RCRA authority, and therefore will not go into effect (in states not currently managing intact CRTs as hazardous waste) until states have adopted today's rule. The one-time notification for intact CRTs exported for reuse and notice and consent requirements for CRTs exported for recycling are implemented under HSWA authority (section 3017 of RCRA, which governs notice and consent) and therefore go into effect six months after the publication date of this rule. The Agency is adding the rule to Table 1 in 40 CFR 271.1(j), which identifies the federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA.

C. Interstate Transport

Because some states may choose to regulate CRTs or processed CRT glass under the universal waste or other hazardous waste rules, there will probably be cases when used CRTs or processed CRT glass will be transported to and from states with different regulations governing these wastes.

First, a waste which is subject to an exclusion from the definition of solid waste in the state where it is generated may be sent to a state where it is subject to the hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is excluded, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be excluded, the transporter must have a manifest, except as provided by the universal waste rules, and must move the waste in compliance with 40 CFR Part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22; 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not excluded. The receiving facility must then sign the manifest and send a copy to the initiating facility.

Second, CRTs or processed CRT glass generated in a state which regulates them as hazardous waste may be sent to a state where they are excluded. In this scenario, the material must be moved by a hazardous waste transporter, while the material is in the generator's state or any other states where it is not excluded, except as provided by the universal waste rules. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the material would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by the transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.42).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), federal agencies must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create 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; 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, the Agency has determined that today's rule is a significant regulatory action because it contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's rule.

To estimate the cost savings, incremental costs, economic impacts and benefits from this rule to affected regulated entities, we completed an economic analysis for the rulemaking. Copies of this analysis have been placed in the RCRA docket for public review (see ''Economic Analysis of Cathode Ray Tube Management, Final Rulemaking,'' March 19, 2004).

1. Methodology

To estimate the cost savings, incremental costs, economic impacts and benefits of this rule, the Agency estimated both the affected volume of cathode ray tubes (CRTs) and regulated entities. The Agency has evaluated two baseline (pre-regulatory) scenarios: (1) A scenario which models a distribution of affected monitors as if all affected entities followed standard Subtitle C regulations, and (2) a scenario which models a high percentage of CRTs being discarded untreated in municipal solid waste landfills. This latter scenario is being analyzed to evaluate the possible real-world effect of this rule on affected entities.

The Agency then modeled a post-regulatory scenario that simulates management of CRTs after the regulation promulgated today is implemented. In our economic analysis, we have calculated administrative, storage, transportation and disposal/recovery costs for both baselines and the post-regulatory scenarios and estimated the net cost savings and economic

impacts for each combination of the two baselines and the post-regulatory scenario. The first baseline and post-regulatory scenario is the pairing that we are using to meet our administrative requirements following this section.

2. Results

a. Volume

We have estimated the affected volume of CRTs (including both previously regulated and diverted volumes of monitors) under the post-regulatory scenario to be 54,000 tons. We believe that approximately 10,000 tons of CRTs would be diverted from export or hazardous waste landfill to CRT glass manufacturing under the post-regulatory alternative.

b. Cost/Economic Impact

We estimate that the rule will save CRT handlers $5.0 million per year compared to the scenario which assumed that all affected entities followed the standard Subtitle C regulations. This cost savings comes from reduced administrative, transportation and disposal/management cost.

To estimate the economic impact of the rule on CRT handlers, the Agency evaluated the cost savings or incremental costs as a percentage of firm sales. In virtually all cases, economic impacts are cost savings of less than one percent of firm sales. Under the first scenario, the average savings for a previously regulated small quantity generator is $520 per year; for a previously regulated large quantity generator, the average savings is $1,091 per year.

c. Benefits

EPA has evaluated the qualitative benefits and to a lesser extent, the quantitative benefits of the rule for CRTs. Some of the benefits resulting from today's rule include conservation of landfill capacity, increase in resource efficiency, growth of a recycling infrastructure for CRTs, and possible reduction of lead emissions to the environment from CRT recycling. EPA estimates that approximately 3,690 tons or 545,000 cubic feet of CRTs per year would be redirected away from landfills towards recycling under today's rule. In addition, as mentioned above, the use of processed CRT glass benefits the manufacturer in several ways, such as improving heat transfer and melting characteristics in the furnaces, lowering energy consumption, and maintaining or improving the quality of the final product. This rule may facilitate the growth and development of the CRT glass processing industry by reducing regulatory barriers to the establishment of new glass processing firms. Finally, this rule will encourage reuse and recycling by diverting CRTs from municipal landfills and waste-to-energy facilities.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0053.

The information requirements established for this action, and identified in the Information Collection Request (ICR) supporting today's rule, are largely self-implementing, except for the notice and consent requirements for CRTs exported for recycling. This process will ensure that: (i) Regulated entities managing CRTs are held accountable to the applicable requirements; (ii) state inspectors can verify compliance when needed; and (iii) CRTs exported for recycling or reuse are actually handled as commodities abroad.

EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that used CRTs are being managed in a manner protective of human health and the environment.

For the requirements applicable to CRTs, the aggregate annual burden to respondents over the three-year period covered by this ICR is estimated at 5,400 hours, with a cost of approximately $269,100. Average annual burden hours per respondent are estimated to be between 3.4 and 4.1 hours (the latter figure is for respondents who are exporters). There are an estimated 3,775 respondents. However, this represents a reduction in burden to respondents of approximately 17,306 hours, or $878,034. The estimated operation and maintenance costs are $100 (including the cost of postage and envelopes). There are no start-up costs and no costs for purchases of services. Administrative costs to the Agency are estimated to be 371 hours per year, or $11,173. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. In addition, EPA is amending the table in 40 CFR Part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of today's rule on small entities, I hereby certify that this action will not have a significant adverse impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a

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

The small entity analysis conducted for today's rule indicates that streamlining requirements for CRTs would generally result in savings to affected entities compared to baseline requirements. Under the full compliance scenario, the rule is not expected to result in a net cost to any affected entity.

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 the proposed and final rules with ''federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA requires federal agencies 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.

This final rule does not include a federal mandate that may result in expenditures of $100 million of more to state, local, or tribal governments in the aggregate, because the UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program. States are not legally required to have or maintain a RCRA authorized program. Therefore, today's final rule is not subject to the requirements of Sections 202 or 205 of UMRA. In addition, this final rule contains no regulatory requirements that might significantly or uniquely affect small governments under Section 203 of UMRA. Therefore we have determined that today's rule is not subject to the requirements of sections 202, 203, or 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications. It streamlines RCRA management requirements for CRTs and CRT glass being recycled, and will affect primarily those persons who are engaged in CRT recycling. 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.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with representatives of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) in developing this rule prior to finalization.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials nor does it impose substantial direct compliance costs on them. This rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

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

''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''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 potential effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866 and because it does not concern an environmental health or safety risk that the Agency has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's rule streamlines hazardous waste management requirements for used cathode ray tubes. By encouraging reuse and recycling, the rule may save energy costs associated with manufacturing new materials.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, though OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under this rule. Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today's rule would streamline hazardous waste management requirements for used cathode ray tubes sent for recycling. Facilities that would be affected by today's rule include those generating hazardous waste computers and televisions sent for recycling. Also affected would be facilities which recycle these materials. Disposal facilities themselves would not be affected by today's rule.

The wide distribution of affected facilities throughout the United States does not suggest any distributional pattern around communities of concern. Any building in any area could be affected by today's rule. Specific impacts on low income or minority communities, therefore, are undetermined. The Agency believes that emissions during transportation would not be a major contributor to communities of concern through which used CRTs may be transported. Any such material broken during transport would be contained in the required packaging. Overall, no disproportional impacts to minority or low income communities are expected.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 29, 2007.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 19, 2006.

Stephen L. Johnson,

Administrator.

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

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding new entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Identification and Listing of Hazardous Waste	
* * * * *	
261.39	2050–0053
261.40	2050–0053
261.41	2050–0053
* * * * *	

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 4. Section 260.10 is amended by adding in alphabetical order the definitions of ''Cathode ray tube,'' ''CRT collector,'' ''CRT glass manufacturer,'' and ''CRT processing'', to read as follows:

§ 260.10 Definitions.

* * * * *

Cathode ray tube or CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

* * * * *

CRT collector means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

CRT glass manufacturer means an operation or part of an operation that uses a furnace to manufacture CRT glass.

CRT processing means conducting all of the following activities:

(1) Receiving broken or intact CRTs; and

(2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(3) Sorting or otherwise managing glass removed from CRT monitors.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 6. Section 261.4 is amended by adding a new paragraph (a)(22), to read as follows:

§ 261.4 Exclusions.

(a) * * *

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in § 260.10 of this chapter are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in § 261.1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in § 260.10 of this chapter are not solid wastes when exported for recycling provided that they meet the requirements of § 261.40.

(iii) Used, broken CRTs as defined in § 260.10 of this chapter are not solid wastes provided that they meet the requirements of § 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of § 261.39(c).

* * * * *

■ 7. Part 261 is amended by adding subpart E to read as follows:

Subpart E—Exclusions/Exemptions

Sec.

Subpart E—Exclusions/Exemptions

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) *Prior to processing:* These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) *Storage.* The broken CRTs must be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container (*i.e.*, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(2) *Labeling.* Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: ''Used cathode ray tube(s)-contains leaded glass '' or ''Leaded glass from televisions or computers.'' It must also be labeled: ''Do not mix with other glass materials.''

(3) *Transportation.* The used, broken CRTs must be transported in a container meeting the requirements of paragraphs (a)(1)(ii) and (2) of this section.

(4) *Speculative accumulation and use constituting disposal.* The used, broken CRTs are subject to the limitations on speculative accumulation as defined in paragraph (c)(8) of this section. If they are used in a manner constituting disposal, they must comply with the applicable requirements of part 266, subpart C instead of the requirements of this section.

(5) *Exports.* In addition to the applicable conditions specified in paragraphs (a)(1)–(4) of this section, exporters of used, broken CRTs must comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported (*e.g.*, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(F) The name and address of the recycler and any alternate recycler.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: ''Attention: Notification of Intent to Export CRTs.''

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of

the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph (a)(5)(vi) of this section and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(b) *Requirements for used CRT processing:* Used, broken CRTs undergoing CRT processing as defined in § 260.10 of this chapter are not solid wastes if they meet the following requirements:

(1) *Storage.* Used, broken CRTs undergoing processing are subject to the requirement of paragraph (a)(4) of this section.

(2) *Processing.*

(i) All activities specified in paragraphs (2) and (3) of the definition of ''CRT processing'' in § 260.10 of this chapter must be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) *Processed CRT glass sent to CRT glass making or lead smelting:* Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in § 261.1(c)(8).

(d) *Use constituting disposal:* Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of 40 CFR part 266, subpart C instead of the requirements of this section.

§ 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of § 261.39(a)(5), and if they are not speculatively accumulated as defined in § 261.1(c)(8).

§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) Persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator. The notification must include a statement that the notifier plans to export used, intact CRTs for reuse, the notifier's name, address, and EPA ID number (if applicable) and the name and phone number of a contact person.

(b) Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

■ 8. Section 261.38 of subpart D is moved to subpart E.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 9. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 10. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
* * * * *		*	*
July 28, 2006	Final Rule for Cathode Ray Tubes	[Insert FR page numbers] ..	Jan. 29, 2007.
* * * * *		*	*

[FR Doc. 06–6490 Filed 7–27–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
July 28, 2006

Part IV

Nuclear Regulatory Commission

10 CFR Part 20, 30, 31 et al.

Requirements for Expanded Definition of Byproduct Material; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 31, 32, 33, 35, 50, 61, 62, 72, 110, 150, 170, and 171

RIN 3150–AH84

Requirements for Expanded Definition of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to include jurisdiction over certain radium sources, accelerator-produced radioactive materials, and certain naturally occurring radioactive material, as required by the Energy Policy Act of 2005 (EPAct), which was signed into law on August 8, 2005. The EPAct expanded the Atomic Energy Act of 1954 definition of byproduct material to include any discrete source of radium-226, any material made radioactive by use of a particle accelerator, and any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with other Federal officials named in the EPAct, determines would pose a similar threat to the public health and safety or the common defense and security as a discrete source of radium-226, that are extracted or converted after extraction for use for a commercial, medical, or research activity. In so doing, these materials were placed under the NRC's regulatory authority. The EPAct also mandated that the Commission, after consultation with States and other stakeholders, issue final regulations establishing requirements that the Commission determines necessary under the EPAct. This rulemaking effort is being undertaken in response to that mandate and includes significant contributions from many States that have regulated the naturally occurring and accelerator-produced radioactive material, the Organization of Agreement States, Inc., and the Conference of Radiation Control Program Directors, Inc. (CRCPD). In addition, this proposed rule was informed and guided by the CRCPD's applicable Suggested State Regulations for the Control of Radiation. Licensees and individuals who are engaged in activities involving the newly defined byproduct material in both Agreement States and non-Agreement States and United States Territories may be affected by this rulemaking.

DATES: Submit comments on the rule by September 11, 2006. Submit comments specific to the information collections aspects of this rule by August 28, 2006. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates. A copy of the draft proposed rule was made available on April 7, 2006 on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

ADDRESSES: You may submit comments on the rule by any one of the following methods. Please include the following number (RIN 3150–AH84) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

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

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 2005

On August 8, 2005, the President signed into law the EPAct. Among other provisions, Section 651(e) of the EPAct expanded the definition of byproduct material as defined in Section 11e. of the Atomic Energy Act of 1954 (AEA), placing additional byproduct material under the NRC's jurisdiction, and required the Commission to provide a regulatory framework for licensing and regulating this additional byproduct material.

Specifically, Section 651(e) of the EPAct expanded the definition of byproduct material by: (1) Adding any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of the EPAct for use for a commercial, medical, or research activity; or any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction, before, on, or after the date of enactment of the

EPAct for use for a commercial, medical, or research activity (Section 11e.(3) of the AEA); and (2) adding any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the Environmental Protection Agency (EPA), the Secretary of the Department of Energy (DOE), the Secretary of the Department of Homeland Security (DHS), and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and is extracted or converted after extraction before, on, or after the date of enactment of the EPAct for use in a commercial, medical, or research activity (Section 11e.(4) of the AEA).

Although Section 651(e) of the EPAct became effective on August 8, 2005, the NRC did not have regulations in place that would specifically apply to this newly covered byproduct material (hereafter referred to as NARM). However, the EPAct allowed the NRC 18 months from the date that the legislation was signed into law by the President to issue regulations to establish a national program for NARM. The EPAct also allowed the NRC to issue waivers to States and other entities while a regulatory framework for NARM was developed. A waiver was issued on August 31, 2005 (70 FR 51581).

Current Regulatory Structures for NARM

The AEA authorizes States to assume regulatory control of radioactive materials produced in or by a nuclear reactor, provided the State has an adequate program to protect the public health and safety and is compatible with the NRC's program for regulation of these materials and enters into an agreement with the NRC. As authorized by Section 274b of the AEA, 34 States have assumed responsibility for regulating certain activities related to radioactive material by entering into agreements with the NRC. The activities regulated by these ''Agreement States'' include the use of byproduct material, source, and special nuclear material. Each Agreement State issues licenses to persons who use these materials in that State except for DOE, other Government agencies, and Federally recognized Indian Tribes. The NRC issues licenses to persons using these materials in non-Agreement States.

Before enactment of the EPAct, the NRC did not have authority over NARM nor regulations for this type of material. Although the NRC has not regulated NARM in the past, all 33 Agreement States and certain non-Agreement States have regulatory programs for NARM. The NRC's current regulations do require licensees to account for dose contributed from NARM, as well as dose contributed from other byproduct, source, or special nuclear material, because the definition of occupational dose encompasses both licensed material and nonlicensed material such as NARM sources at a licensed facility. In addition, the NRC requires, in its radiological criteria for license termination, that licensees consider other nondiscrete sources including radium during decommissioning activities at sites contaminated with source material, such as rare-earth processing facilities.

Currently, there are 16 non-Agreement States plus United States (U.S.) Territories.Although most non-Agreement States and U.S. Territories have some type of programs for NARM, the regulatory structures vary greatly. Certain non-Agreement States have established a licensing structure for regulating their NARM users. As such, the regulatory structure could parallel the NRC regulations issued in Title 10 of the Code of Federal Regulations applicable to the current materials program, or it could parallel the Suggested State Regulations for the Control of Radiation (SSRs) developed by the CRCPD. Other non-Agreement States or U.S. Territories have elected to use registration as their regulatory structure for managing the NARM users. Some States register facilities; others register both facilities and devices. Some States use registration information to conduct inspections; others use registration to identify facility locations for security purposes. In general, there is limited regulatory oversight where registration is used in non-Agreement States. It was, in part, due to this lack of national consistency, that the EPAct placed these materials under NRC jurisdiction.

Agreement States have regulated NARM use for many decades in a fairly uniform and consistent manner. The Agreement States have accomplished this by using the same standards to regulate NARM as those used to regulate other byproduct, source, and special nuclear material under NRC authority. In many respects, regulations applicable to NARM adopted by the Agreement States are compatible with the NRC regulations for the current materials program, or parallel to the CRCPD's SSRs.

Although Agreement States do have some provisions specifically for NARM, in general, the regulatory structure used by Agreement States does not distinguish between NARM and other radioactive material. NARM users in Agreement States are expected to implement all aspects of standards for their radiation protection programs with respect to NARM, including those aspects relating to receipt, possession, use, storage, transfer, transportation, and disposal of NARM. This regulatory structure also subjects NARM users in the Agreement States to the same licensing, inspection, and enforcement policies as those using other byproduct, source, or special nuclear materials. In addition, this regulatory structure allows for both specific and general licensing of various NARM products, the distribution of certain NARM items to persons exempt from regulation and, in most cases, includes provisions to review and approve proposals for sealed sources and devices containing NARM.

The Agreement States have regulated a vast array of NARM produced for medical, industrial, research and development, commercial, and consumer purposes. In many Agreement States, this regulatory structure also captures some types of nondiscrete sources found in the oil and gas industry or mining industry; moreover, it captures inadvertently produced activation products from the use of proton beams for medical radiation therapy. However, the regulation of these nondiscrete sources and activation products has greater variation from Agreement State to Agreement State.

Other Federal Agencies' Regulatory Authority Over NARM

Before the passage of the EPAct, NARM was regulated as a radioactive material and/or a hazardous substance but was not regulated by the NRC. Although States had the primary responsibility for regulating the use of these materials, certain Federal regulations did and will continue to apply under some circumstances, such as environmental protection, workplace safety, drug safety, transportation, and disposal. With the passage of the EPAct, the NRC will have primary responsibility for radiation safety and in regulating the use of these materials in cooperation with the States, with the exception of those activities that are self-regulated by the DOE.

Other Federal agencies have established programs in regulating certain aspects of activities involving NARM. The Department of Transportation (DOT) regulates interstate transport of NARM. In cooperation with DOT, the NRC approves Type B packages through regulations in 10 CFR Part 71. The EPA has established controls for certain

NARM through several authorities, including the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. The Department of Labor (DOL) has established regulations addressing the exposure of minors to radioactive material in the workplace. The Occupational Safety and Health Administration (OSHA) has the oversight for occupational health and safety for non-AEA materials. The Department of Commerce (DOC) has controlled the export of radioactive material. Prior to the enactment of the EPAct, the DOC regulated the export of all radium-226. With the enactment of the EPAct, NRC will regulate the export of discrete sources of radium-226; DOC retains jurisdiction to regulate the export of nondiscrete sources of radium-226. The Consumer Product Safety Commission regulations have addressed hazardous substances other than byproduct, source, and special nuclear materials currently regulated by the NRC. The Food and Drug Administration (FDA) regulates all drugs (including drugs containing radioactive materials) by requiring good manufacturing practices to assure the purity, potency, and consistency of finished drugs with their labeling in establishing the safety and effectiveness of these drugs.

Section 651(e)(3) of the EPAct provides that byproduct material, as defined by paragraphs 11e.(3) or 11e.(4) of the AEA, may only be transferred to and disposed of in a disposal facility that is adequate to protect public health and safety, and is licensed by either the NRC or a State that has entered into an agreement with the Commission under Section 274b of the AEA or at a disposal facility in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA).

Development of the Suggested State Regulations

Since enactment of the AEA in 1954, scientists continue to develop new technologies in producing radionuclides, such as the use of particle accelerators. At the turn of the century, naturally occurring radioactive material, including radium-226, was routinely used in consumer products and in cancer treatment. Because there was no Federal mandate to regulate these materials, most States have since established regulatory structures for both accelerator-produced radioactive material and naturally occurring radioactive material, including radium-226.

In 1968, CRCPD was chartered as a nonprofit organization to provide a forum for enhancing communication among States and Federal agencies regarding radiation regulations and to promote a uniform radiation protection environment for all radioactive material. Throughout the years, CRCPD developed policies and guidance for its member States. In addition, CRCPD is responsible for the development of model regulations, known as the SSRs. CRCPD has formed many working groups to develop a set of SSRs for radioactive material compatible in many respects to the NRC regulations. Under the SSRs' regulatory framework, NARM is a regulated radioactive material comparable to byproduct material. Nearly all of the Agreement States have based their regulations on this model for NARM.

For NARM regulation only, CRCPD also established ''Licensing States'' similar to the Agreement State Program under Section 274 of the AEA. Licensing States recognized by CRCPD under criteria found in Publication 94–8, ''CRCPD Recognition of Licensing States for the Regulation and Control of NARM,'' are those States that have demonstrated an adequate and consistent regulatory control program for NARM. Licensing State designation assures comparable regulatory structures with respect to NARM, and other States may grant reciprocal recognition of their licenses or acceptance of their licensees' manufactured products.

Issuance of Waiver on August 31, 2005

Section 651(e) of the EPAct became effective immediately upon signature by the President on August 8, 2005. Before enactment of the EPAct, the NRC did not have authority over NARM and currently does not have regulations in place that would specifically apply to this material. Nonetheless, persons engaged in activities involving NARM could be, and States seeking to continue regulation of NARM would be, in technical violation of the AEA. Therefore, the NRC determined that it would be prudent to establish a mechanism to permit individuals currently engaged in activities involving NARM to continue with their activities. Although the Commission could have proceeded through issuing orders on a case-by-case basis to oversee activities involving NARM while establishing the regulatory framework for regulating this material, the Commission determined that this would be inefficient and resource intensive.

Section 651(e)(5) of the EPAct authorizes the Commission to issue a waiver of the requirements of Section 651(e) to any entity with respect to NARM for specified periods of time if the Commission determines that the waiver is in accordance with the protection of the public health and safety, and the promotion of the common defense and security. The Commission determined that this waiver could be granted to entities that engaged in activities involving NARM. The Commission determined that there was no basis to conclude that these materials would not continue to be used in a manner that is protective of public health and safety while the waiver is in effect. The Commission also determined that it would be in the best interests of the public to allow continued use of NARM, especially for medical purposes, and to allow the States to continue to regulate NARM until the Commission could codify new regulations for these materials.

The Commission believed that granting the waiver would allow the States to continue with their regulatory programs, allow persons engaged in activities involving NARM to continue their operations in a safe manner, and allow continued access to medical radiopharmaceuticals. In addition, it would enable the Commission to work with the States in developing appropriate regulations for NARM and in formulating a sound transition plan for implementation of these regulations. It would also provide an opportunity for non-Agreement States that currently do not have Agreement State regulatory programs under Section 274b. of the AEA to consider entering into an agreement with the NRC. The Commission determined that issuance of the waiver would be in accordance with the protection of public health and safety and the promotion of the common defense and security.

Therefore, the Commission granted a waiver (70 FR 51581; August 31, 2005) from the requirements of Section 651(e) of the EPAct to: (1) All persons engaged in export from or import into the U.S. of byproduct material through August 7, 2006, unless terminated sooner if the Commission determined that an earlier termination was warranted; and except with regard to the requirements of the DOC relating to export of byproduct material; (2) all persons acquiring, delivering, receiving, possessing, owning, using, or transferring byproduct material through August 7, 2009, unless terminated sooner if the Commission determined that an earlier termination

was warranted; and (3) all States that had entered into an agreement with the Commission under Section 274b. of the AEA, and States that had not entered into such an Agreement, through August 7, 2009, unless terminated sooner if the Commission determined an earlier termination was warranted, or for an Agreement State if the Commission made certain determinations required by Section 651(e)(5)(B)(ii) of the EPAct.

II. Discussion

A. Initiating the Rulemaking Process

The NRC took several initiatives in an effort to enhance stakeholder involvement and to improve efficiency during the rulemaking process. With assistance from the Organization of Agreement States (OAS) and CRCPD, the NRC was able to obtain participation of several State representatives in various working groups in the development of the proposed rule. Principals from OAS and CRCPD, representing interests for both Agreement States and non-Agreement States, also participated in the steering committee forming a partnership with the NRC in making rulemaking decisions. In an effort to keep stakeholders informed, the NRC held a public roundtable meeting in early November and has established the ''Expanded Definition of Byproduct Material (NARM Rulemaking)'' Web page via the rulemaking Web site *http://ruleforum.llnl.gov* for posting rulemaking-related documents. In addition, the NRC has met with other Federal agencies to ensure coordination regarding this rulemaking, *e.g.*, the NRC met with OSHA on August 30, 2005. At the meeting, the participants discussed the NRC's role under the EPAct.

Forming Working Groups

In October 2005, the NRC formed a NARM Rulemaking Working Group for developing a regulatory framework for the expanded definition of byproduct material and for drafting this proposed rule. In addition to the NRC staff, the NARM Working Group also included participants from the State of Florida and the State of Oregon representing the CRCPD, the State of Texas representing the OAS, and the State of Michigan. Weekly meetings were held to take full use of the expert resources available within the NARM Working Group.

The NRC also established an Office of Nuclear Material Safety and Safeguards (NMSS) EPAct Task Force with members from the States of Oregon and North Carolina and with resource members from the States of Illinois and California. The State participants assisted the NARM rulemaking by gathering State-specific data, developing certain technical bases, and formulating certain regulatory approaches for the proposed rule. The State participants of the NMSS EPAct Task Force have performed key roles in the proposed rule development and have provided valuable input to the rulemaking process.

In addition, a Steering Committee was formed to provide oversight for both the NMSS EPAct Task Force and NARM Rulemaking Working Group. The Steering Committee is comprised of managers from the affected NRC program offices and principals from OAS and CRCPD. During the proposed rule development process, the Steering Committee met weekly to resolve issues and to provide management direction on the rulemaking. The Steering Committee plans to continue to meet on a regular basis until the rule is final.

Roundtable Public Meeting

The NRC held a public meeting on November 9, 2005, to discuss rulemaking activities to incorporate NARM into its regulatory framework as mandated by the EPAct. The public meeting was in a ''roundtable'' format to allow stakeholders an opportunity to discuss concerns and to enhance interaction among all interested parties on the subject of the NRC regulating NARM. Representatives from other Federal agencies, States, and a broad spectrum of interest groups were invited to participate in the ''roundtable'' discussion. A transcript of this meeting is available via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

During the public meeting, the NRC provided an overview of the EPAct and discussed the rulemaking process and the role of the NMSS EPAct Task Force that was established to help implement the requirements of the EPAct. Other topics that were discussed included the role of State regulations, potential implications regarding production of radiopharmaceuticals and availability of radiopharmaceuticals to patients, definition of discrete source, the NRC jurisdiction over accelerator-produced radioactive material, and waste and transportation issues.

Following the public meeting, the NRC received five written comments from interested parties related to the discussion at the meeting and the rulemaking activities. These comment letters are available via the NRC rulemaking Web site at *http://ruleforum.llnl.gov* and have been reviewed and considered by the NRC staff in the development of this proposed rule.

Interface With Other Federal Agencies and States

In addition to the public meeting, the NRC interacted and met with FDA staff to exchange information regarding the NRC's NARM rulemaking efforts and the FDA's regulations for accelerator-produced drugs. The primary objective of the FDA's regulations is to ensure medical safety, purity, potency, and effectiveness of the drugs, and that of the NRC's regulations is to ensure radiation safety. During the meeting, areas of potential dual regulation were discussed. Because the NRC and the FDA have different missions, the associated regulations are more complementary than duplicative. FDA has published a proposed rule (70 FR 55038; September 20, 2005), ''Current Good Manufacturing Practice for Positron Emission Tomography Drugs,'' and expects to finalize the rule soon. The FDA's final rule will establish criteria for the production and process/quality controls of the Positron Emission Tomography (PET) drugs in PET centers registered with the FDA. In this proposed rule, the NRC proposes to recognize the FDA registration in the NRC's regulations.

The NRC hosted a meeting of Federal agency representatives on November 22, 2005, to discuss the development of a definition of Discrete source to be added to the NRC regulations. The meeting consisted of members of the NRC's Interagency Coordinating Committee that had already been established for development of the National Source Tracking System. Agencies represented at this meeting were DOT, DOE, including the National Nuclear Security Administration, Department of Defense, DOC, EPA, and the U.S. Customs and Border Protection. The participants briefly discussed their agency's jurisdiction over, and involvement with, radium-226 and other naturally occurring radioactive materials. At the conclusion of the meeting, a draft definition was formulated. This definition formed the basis for the definition in the proposed rule, with only minor changes and text rearrangement for clarity.

An ad hoc focus group was formed to specifically address issues related to the broad spectrum of old radium-226 sources and to formulate a regulatory strategy. The focus group included individuals from the NRC Headquarters and Regions and representatives from the States of Florida, North Carolina, Illinois, Michigan, Oregon, and Texas. Although many of the old discrete radium-226 sources have been used for decades, no specific quantitative nor

qualitative technical information was identified during the development of the proposed rule that would support a broad exemption for these old discrete radium-226 sources. Because of the lack of specific health and safety information associated with many of the old radium-226 sources, the NRC is proposing a graded approach by using a general license to regulate different groups of radium-226 sources. In addition, in this proposed rule, the NRC is asking the public for any technical information that may be available to support an exemption, now or in the future.

B. The New Expanded Definition of Byproduct Material

Section 651(e) of the EPAct expanded the definition of byproduct material to include: (1) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of the EPAct for use for a commercial, medical, or research activity; (2) any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction, before, on, or after the date of enactment of the EPAct for use for a commercial, medical, or research activity; and (3) any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the EPA, the Secretary of DOE, the Secretary of DHS, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security, and that is extracted or converted after extraction, before, on, or after the date of enactment of the EPAct for use in a commercial, medical, or research activity. The NRC is proposing a revision of the definition of Byproduct material in 10 CFR Parts 20, 30, 50, 72, 150, 170, and 171 to be consistent with the EPAct. The same revised definition of Byproduct material will be promulgated in a separate rulemaking for 10 CFR Part 110. A different definition for the term Byproduct material is used in 10 CFR Part 40, because 10 CFR Part 40 regulations are limited to source material and the tailings or wastes associated with the extraction or concentration of source material. Therefore, 10 CFR Part 40 regulations are not impacted by the EPAct, and the definition of Byproduct material remains unchanged by this proposed rule.

Radium-226

Radium is a chemically reactive, silvery white, radioactive, metallic element with an atomic number of 88 and symbol of Ra. Radium-226, the most abundant and most stable isotope of radium, is formed by the radioactive disintegration of thorium-230 in the decay series starting with uranium-238. Radium-226 can be found in all uranium ores. The half-life of radium-226 is 1599 years. Radium-226 emits alpha particles, gamma radiation, and decays to radon gas.

Although radium was discovered in the ore pitchblende by the chemists Marie and Pierre Curie in 1898, no one understood the dangers of radium until later in the twentieth century. Based on radium's properties, especially its ability to stimulate luminescence, industries started manufacturing hundreds of consumer products containing radium. With advertisements proclaiming its special powers, radium was added to products such as hair tonic, toothpaste, ointments, and elixirs. Radium paint was used in the mid-1900s to paint the hands and numbers of some clocks, watches, doorknobs, and other objects to make them glow in the dark. Glow-in-the-dark watch and clock faces were particularly popular. Radium was also used as a radiation source in needles or as plaques for cancer treatment. Most of these uses were eventually discontinued for health and safety reasons, but its wide use in luminescent paints continued through World War II because radium's luminescent glow made aircraft and vehicle dials, gauges, and other instruments visible at night. Many of these early products still remain in the possession of museums and individual collectors. Large inventories of radium luminescent military and aircraft devices remain and periodically turn up in repair shops and have resulted in contamination incidents. In more recent times, radium sources were used in industrial radiography and industrial smoke detectors. Currently, radium sources are still being used in some industrial products such as industrial gauges that measure certain physical properties such as moisture and density.

Accelerator-Produced Radioactive Material

Particle Accelerators

A particle accelerator is a device that imparts kinetic energy to subatomic particles by increasing their speed through electromagnetic interactions. Particle accelerators are used to produce radioactive material by directing a beam of high speed particles at a target composed of a specifically selected element, which is usually not radioactive. Nuclei in the target are struck by the high speed particles and undergo a nuclear transformation. A nuclide that is struck is transformed into a different nuclide. By careful selection of the target element, the particles accelerated, and the operating parameters of the accelerator (*e.g.*, beam energy), a resultant proton-heavy nuclide can be produced. Usually the nuclide produced is radioactive and is created for the use of its radiological properties. The process of transforming nuclei from a stable element into a radionuclide is called activation.

The two basic designs of particle accelerators are linear and circular. In either case, charged particles are injected into the accelerator to form a beam. The beam is accelerated and focused onto the target. In the circular designs, the beam must also be bent into the circular shaped path. The process of accelerating, focusing, and bending (if necessary) the beam is accomplished by a combination of electrically charged structures and magnetic fields in the accelerator. During operation, these internal structures will be struck by particles from the beam and activated incidentally. In some cases, targets consist of nuclides intended for activation and other nuclides that are also incidentally activated. Accelerators may also produce a neutron flux capable of activating materials. The production of incidental radioactive material is an inextricable part of any accelerator operation.

Particle accelerators are often classified by the maximum energy of the accelerated particles, expressed in megaelectron-volts (MeV). An electron-volt is the amount of energy imparted to an electron by an accelerating potential of one volt. The small cyclotrons that produce radionuclides used in PET nuclear medicine usually operate at energies of up to about 30 MeV. By comparison, the accelerators used in basic physics research facilities reach energies in excess of 1000 MeV.

For the purposes of this rulemaking, the NRC divided particle accelerators into three groupings: (1) Those that are always operated to intentionally produce radioactive materials in quantities useful for their radioactive properties for a commercial, medical or research activity; (2) those that are operated to produce only particle beams and not radioactive materials; and (3) accelerators that are used to produce both radioactive materials and particle beams for other uses. Examples of accelerators that are operated to produce only particle beams and not radioactive

materials include linear accelerators used for medical treatment of cancer and other health-related conditions. Other examples include the experimental particle physics research colliders used to probe the fundamental properties of nature (as long as that is their only use) and electron microscopes, i.e., particle accelerators that probe the structure of materials at a very small dimension (high magnification). Ion implanters are particle accelerators used to modify the electrical properties of materials in semiconductor fabrication. In these activities, no radioactive material is intentionally created; all activation is incidental to the intended use of the accelerator.

The NRC proposes to regulate the radioactive material both intentionally and incidentally produced by all accelerators that are intentionally operated to produce a radioactive material for its radioactive properties. The NRC does not propose to regulate the incidental radioactive material produced by accelerators that are operated to produce only particle beams and not radioactive materials for use for a commercial, medical, or research activity. For those accelerators that are used to produce both radioactive material and particle beams, the NRC proposes to regulate the intentionally produced radioactive material and all of the incidentally produced radioactive material, including incidental radioactive material produced when the accelerator is operated to produce radioactive material, as well as incidental radioactive material produced when it is operated to produce only a particle beam. The incidental radioactive materials produced in these accelerators are indistinguishable, so both are covered by this proposed rule. The NRC believes very few, if any, accelerators are operated in this way. NRC is seeking comments on the extent, if any, that accelerators are used to intentionally produce radioactive material and to provide beams for basic science research.

The EPAct does not give the NRC authority to regulate the possession or use of particle accelerators. The NRC does not propose to adopt any rule regarding the operation of a particle accelerator or the qualification of any person maintaining or operating a particle accelerator. However, nothing in the EPAct directs the NRC to change the policy that radiation safety standards must consider unregulated as well as regulated sources of radiation. The NRC will continue to require any person subject to the dose limits in 10 CFR Part 20 to continue to include radiation dose from the operation of a particle accelerator in meeting the dose limitations. The NRC is aware that the operation of a particle accelerator may activate materials in the structure of the building and facilities housing the accelerator. The NRC is considering how to assure the safe decommissioning of particle accelerator buildings and facilities, including the removal and disposal of activated building materials, to assure that the dose limits to members of the public are not exceeded. Comments are requested on the decommissioning of accelerator facilities, specifically addressing the extent to which accelerator components and facility building materials may become activated, the need to remove and properly dispose of the activated material during decommissioning to meet the radiation dose limits in 10 CFR Part 20 Subpart E—Radiological Criteria for License Termination, the costs of the decommissioning and disposal, if required, and the need for financial assurance by accelerator facilities to guarantee sufficient funding for proper decommissioning.

The majority of accelerator-produced radioactive material is now created for use in medicine. The NRC is aware of only two operations in the U.S. and a few importers, mostly from Europe and Canada, that are commercial producers of accelerator-produced radioactive material for use in industrial activities. The proposed regulatory approach for manufacturing accelerator-produced radioactive material for industrial purposes is similar to the proposed regulatory approach for manufacturing accelerator-produced radioactive material for medical purposes.

Accelerator-Produced Radioactive Material Used in Medical Activities

Medical use of radioactive material began over 50 years ago. The medical use of sealed and unsealed radioactive materials is now an important component of medical specialties for both diagnosis and therapy purposes. Today, the use of unsealed radioactive materials in nuclear medicine offers procedures that are essential in many medical specialties, from pediatrics to cardiology to psychiatry. Approximately 4,000 hospital-based nuclear medicine departments and many freestanding imaging centers in the U.S. perform millions of nuclear medicine imaging studies every year. Nuclear medicine is now an integral part of patient care and is extremely valuable in the early diagnosis and treatment of medical conditions. Nuclear medicine uses very small amounts of radioactive materials (radiopharmaceuticals) to diagnose and treat disease. In diagnosis, the radiopharmaceuticals are used and then detected by special cameras with the aid of computers in providing very precise images for the area of interest. In therapeutic nuclear medicine applications, the radiopharmaceuticals can be directed to the specific organ being treated. Radiation oncology uses larger amounts of radioactivity in sealed sources to deliver therapeutic or palliative radiation doses.

Radiopharmaceuticals could be made from radionuclides produced either in nuclear reactors or in particle accelerators. Currently, reactor-produced byproduct radionuclides for radioactive drugs are imported into the U.S. Although most reactor-produced radionuclides used in sealed sources are also imported, some are produced in an NRC-regulated nonpower reactor. Commercial manufacturers use these imported radionuclides to produce specific sealed sources, radioactive drugs, and biologics.

The most noteworthy radioactive drug source is the molybdenum-99/technetium-99m generator since technetium-99m is used in approximately 85 percent of all diagnostic studies in nuclear medicine. Commercial nuclear pharmacies subsequently use commercially produced radioactive drugs and drug sources, such as molybdenum-99/technetium-99m generators, to prepare unit dosages of other radioactive drugs such as technetium-99m sulfur colloid. The commercial nuclear pharmacy may also use radiochemicals to prepare radioactive drugs.

There are a limited number of commercial manufacturers in the U.S. that produce radiopharmaceuticals using radionuclides, such as thallium-201, iodine-123, indium-111, and gallium-67, that are produced in particle accelerators. The use of fluorine-18, carbon-11, nitrogen-13, and oxygen-15 in radiopharmaceuticals, also known as the PET drugs, has increased in recent years. PET radionuclides and drugs are primarily produced in cyclotron facilities (often referred to as PET centers). PET drugs use radionuclides that decay by positron emission, which provides dual photons traveling in opposite directions that give a better spacial resolution of images for the area of diagnostic interest. Due to the relatively short half life (minutes to hours), PET radionuclides and drugs are produced at locations in close proximity to the patients (*e.g.*, in hospitals or academic institutions) or at nearby locations.

Palladium-103 is the most common accelerator-produced medical use radionuclide contained in a sealed source. Palladium-103 manual brachytherapy sources were originally produced at reactor facilities, but currently all palladium-103 used in the U.S. is commercially produced by accelerators with a significant amount produced by U.S. accelerators. Other medical use radionuclides, used in radiation therapy, can also be produced with either reactors or accelerators. With the new definition of byproduct material, sealed sources that can be produced from either pathway will be uniformly regulated. At this time, there are no remote afterloader or gamma stereotactic radiosurgery units with accelerator-produced sources.

Because production accelerators for medical radionuclides (e.g., PET production facilities) and industrial radionuclides are used to intentionally produce radioactive material for use of its radioactive properties for a commercial, medical, or research activity, the NRC proposes to regulate both the radionuclides produced in these accelerators as well as the incidentally activated radioactive material.

Other Naturally Occurring Radioactive Material With Similar Risk as Radium-226

The EPAct amends the definition of Byproduct material to include any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the EPA, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security, and is extracted or converted after extraction, before, on, or after the date of enactment of the EPAct for use in a commercial, medical, or research activity.

The inclusion of discrete sources of naturally occurring radioactive material into the definition of Byproduct material is contingent on the Commission's determination, in consultation with other Federal agencies, that such discrete sources would pose a threat similar to the threat posed by a discrete source of radium-226. At this time, the proposed rule does not suggest any discrete sources of naturally occurring radioactive material for inclusion, and the proposed rule does not contain criteria for making such a determination. For comparison, the International Atomic Energy Agency (IAEA) has identified a list of sources that are considered to pose a high risk to human health and safety if not managed safely and securely. The IAEA Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct) identified certain quantities of 26 radionuclides that pose a significant risk to individuals, society, and the environment. The activity of these radionuclides at the IAEA Code of Conduct Category 1 or 2 levels could be fatal or cause permanent injury to a person, who handled them or was otherwise in contact with them, for a short time if not safely managed or securely protected. Of these 26 sources, only two naturally occurring radionuclides are listed: radium-226 and polonium-210. Since this proposed rule addresses discrete sources of radium-226, the only other naturally occurring radioactive material similar in hazard to radium-226 is polonium-210 when using the IAEA criteria. However, naturally occurring polonium is scarce. One ton of uranium ore contains only about 100 micrograms (0.0001 grams) of polonium. Due to its scarcity, polonium-210 used for commercial purposes is usually produced by bombarding bismuth-209 with neutrons in a nuclear reactor. Therefore, the polonium-210 used in commerce had been regulated by the NRC before the EPAct. Additionally, polonium-210 is very unlikely to be commercially used in individual radioactive sources with activity levels that would place them within IAEA Code of Conduct Category 1 or 2.

As noted previously, the NRC hosted an informal meeting with other Federal agency representatives on November 22, 2005, to discuss the development of a definition for discrete source to be added to the NRC regulations. At this meeting, in a general discussion, the participants briefly discussed the issue of other naturally occurring radioactive material that pose a threat similar to discrete sources of radium-226. Only polonium-210 was considered as a naturally occurring radionuclide that currently has any commercial importance to generating potentially significant quantities.

At this time, the NRC staff has determined that no other discrete sources of naturally occurring radioactive material pose a threat similar to radium-226-level or IAEA Code of Conduct Category 1 or 2 sources. In developing the proposed rule, and interacting with other Federal agencies and States, the NRC concluded that only polonium-210 has the potential to pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security. The NRC had already been regulating the use and possession of polonium-210 because it is produced in nuclear reactors and is rarely extracted as naturally occurring radioactive material. Therefore, this proposed rule does not propose to add any discrete sources of naturally occurring radioactive material to the definition of Byproduct material, other than radium-226 and polonium-210 covered elsewhere in the definition of Byproduct material. The EPAct has provided a mechanism for the Commission to include additional discrete sources of naturally occurring radioactive material in the future following consultation with other Federal agencies, if the need arises to consider other naturally occurring radioactive material for byproduct material.

C. The NRC's Regulatory Approach

Consideration of SSRs

All 34 Agreement States have regulations for NARM. Twelve non-Agreement States and certain U.S. Territories have some type of regulatory structure for NARM, while four non-Agreement States have no program for regulating NARM. The EPAct mandated that the NRC use model State regulations to the maximum extent practicable in issuing regulations for the expanded definition of byproduct material. CRCPD published SSRs which included the model regulations for radioactive materials. Because SSRs are the model regulations that most CRCPD member States have adopted, or States have issued requirements that are similar to the SSRs, then the SSRs provide the NRC a model for the basic regulatory framework for regulating the additional byproduct materials as defined by the EPAct. The SSRs are available on the CRCPD Web site at *http://www.crcpd.org/free_docs.asp.* The majority of stakeholders at the November 9, 2005, public meeting supported the recognition of SSRs as the model regulations referred to in the EPAct. Although varying slightly from State to State, the majority of States regulating NARM have adopted the guidelines in SSRs.

The NRC considered the SSRs in developing the proposed rule. The NRC considered the SSRs in evaluating NARM radionuclides for potential inclusion in radionuclide-specific values listed in 10 CFR Part 20, Appendices B and C. The NRC found that there are no other radionuclides identified in comparable provisions in

Part D of the SSRs that are not already included in 10 CFR Part 20. The NRC evaluated values in SSRs for exempt concentrations (Schedule A to 10 CFR Part 30) and exempt quantities (Schedule B to 10 CFR Part 30). These exemption values were carefully reviewed because of their potential impact on interstate commerce, reciprocity, and other commercial activities. The NRC determined that these values included in SSRs were consistent with the existing NRC approach and were derived using the same methodology. Hence, there is no change needed in the regulatory approach for exempt concentrations. With respect to the exempt quantities, the NRC is proposing to adopt the values included in SSRs into 10 CFR Part 30.

The NRC also evaluated pertinent sections of Part C of the SSRs that are relevant to control of radium and products containing radium. In Section C.4.b.ii, the SSRs indicate that the exempt quantity exemption applicable to radioactive material received under a former general license does not apply to radium-226. In Section C.4.c, the SSRs provide an exemption for timepieces or other articles containing not more than 37 kilobecquerels (kBq) (1 microcurie (μCi)) of radium-226, which were previously acquired. In Section C.22, the SSRs allow a general license, applicable to specifically licensed businesses and government agencies, to possess and use up to 185 kBq (5 μCi) of radium as calibration sources. The use of radium sources in industrial gauging devices may also be authorized under a general license specified in this section. In Section C.28, the SSRs allow up to 3.7 kBq (0.1 μCi) of radium-226 that may be incorporated into smoke detectors distributed under an exempt license. Some Agreement States also include radium-226 in their exempt concentration and exempt quantities regulations.

The NRC evaluated certain sections of the SSRs regarding radioactive material used in medical activities. Section C.22(i) of the SSRs includes a general license for use of radioactive material for certain in vitro clinical or laboratory testing that is comparable to the requirements in 10 CFR 31.11 for the same type of general license. The SSRs indicated that cobalt-57, in units not exceeding 370 kBq (10 μCi) each, could be used under this general license. In this proposed rule, the use of cobalt-57 was added to the general license requirements in 10 CFR 31.11, and the cobalt-57 products included in the general license were added to 10 CFR 32.71 requirements, which provide the licensing criteria for the manufacturer and distributor of the products used under the general license. Section 32.71 of the NRC regulations is comparable with Section C.28(h) of the SSRs.

Paragraphs (j) and (k) of Section C.28 of the SSRs were reviewed for specific information on NARM radiopharmaceuticals or PET drugs, but no such information was found. Section G.48 of the SSRs includes contamination limits for strontium-82/rubidium-82 generators. The contamination limits from the SSRs are more than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride), or more than 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82). In this proposed rule, the contamination limits and requirements to measure the contamination limits were added to 10 CFR 35.204 with corresponding recordkeeping requirements added to 10 CFR 35.2204. There were no additional regulatory requirements in the SSRs applicable to medical use licensees.

In developing this proposed rule, and as specifically discussed at the November 9, 2005, roundtable public meeting, the NRC learned that few SSRs specifically address accelerator-produced radioactive material. Because most Agreement States have regulated accelerator-produced radioactive material in a manner similar to and under the same requirements as reactor-produced radioactive material, few SSRs exist solely to address accelerator-produced radioactive material. While SSRs do exist that address naturally occurring radioactive material issues, there appear to be few model State regulations specific to accelerator-produced radioactive material upon which the NRC can base this proposed rule. However, there is general agreement among the States, and reflected in the SSRs, that accelerator-produced radioactive material should be regulated under the same requirements as reactor-produced radioactive material. This proposed rule takes the same regulatory approach.

Common Defense and Security Considerations

The NRC has supported efforts to establish international guidance for the safety and security of radioactive materials of concern. This effort has resulted in a major revision of the IAEA Code of Conduct. The revised Code of Conduct was approved by the IAEA Board of Governors in September 2003, and is available on the IAEA Web site at *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf.* Table 1 of the Code of Conduct lists those radionuclides that pose a significant risk to individuals, society, and the environment. While the Code of Conduct initially focused on sealed source management and control from a safety perspective, terrorist events have caused the scope to be broadened to include a security consideration. The Code of Conduct included 26 radionuclides with quantities that could be fatal or cause permanent injury to a person if not safely managed or securely protected. Of these 26 radionuclides, only two naturally occurring radionuclides are listed: radium-226 and polonium-210. With the passage of the EPAct, the NRC has regulatory authority over each of the radionuclides listed in Table 1 of the Code of Conduct. Radium-226 is one of the isotopes of concern for use in a radiological dispersal device, and it is on the list of radioactive sources in the IAEA Code of Conduct that could pose a significant risk.

The NRC has published a final rule relating to the export and import of radioactive materials for certain radionuclides listed in the Code of Conduct (70 FR 37985; July 1, 2005) and a proposed rule for national source tracking of sealed sources (70 FR 43646; July 28, 2005). In a separate rulemaking, the NRC will amend its regulations in 10 CFR Part 110 on export and import of radioactive material to address discrete sources of radium-226 in a manner consistent with the Code of Conduct.

Definition of Discrete Sources

The EPAct extended the definition of Byproduct material to include any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of the enactment of the EPAct, for use for a commercial, medical, or research activity. The EPAct gives the NRC authority over discrete sources of radium-226 but not over diffuse sources of radium-226. The result did not extend the NRC's authority over radium-226 as it occurs in nature, nor over other processes where radium-226 may be unintentionally concentrated. Scale from pipes used in the fossil fuel industry, fly ash from coal power plants, phosphate fertilizers, or residuals from treatment of water to meet drinking water standards are not considered as discrete sources; however, uranium and thorium within these materials may become licensable source material

depending upon their concentration. To more clearly establish the limit of its authority regarding radium-226, the NRC was tasked with defining what constitutes a discrete source. The NRC is defining the term in this proposed rule.

The term Discrete source is not defined in the EPAct, and the EPAct specifically indicates that the final regulations, in establishing requirements necessary to carry out the amendment, shall include a definition of the term Discrete source. This definition of Discrete source will be used for purposes of the new definition of Byproduct material in the case of radium-226 and other naturally occurring radioactive material, other than source material. The term Discrete source is not used in conjunction with accelerator-produced radioactive material in the EPAct language.

The NRC believes that this new authority over radium-226 and other naturally occurring radioactive material was not intended to extend to all naturally occurring radioactive material. The focus was on those materials that presented a threat to public health and safety or to the common defense and security similar to the threat posed by discrete radium-226 sources. The authority does not extend to naturally occurring radioactive material that is found in nature in its original form and location, nor to naturally occurring radioactive material moved or concentrated inadvertently in some man-made process. The intent of the NRC in developing the definition of Discrete source for radium-226 and other naturally occurring radioactive material was to better define the materials covered by the new authority.

In defining radium-226 and other naturally occurring radioactive material as byproduct material, Discrete source means ''a radioactive source with physical boundaries, which is separate and distinct from the radioactivity present in nature, and in which the radionuclide concentration has been increased by human processes with the intent that the concentrated radioactive material will be used for its radiological properties.'' The discrete source will have the same radiological characteristics (type of radiation, half-life, etc.) as the radionuclide found in nature, but will have been concentrated and purposefully used for its radiological properties, after it has been removed from its original location in nature. This excludes the NRC jurisdiction over inadvertent movement or concentration of naturally occurring radioactive material. It does not change the NRC's authority, in any manner, over source material. This definition of Discrete source clarifies those radium-226 sources and other naturally occurring radioactive material, other than source material, that will be delineated as byproduct material and will fall under the expanded definition of Byproduct material as mandated in the EPAct. This definition of Discrete source does not include material encapsulated or sealed only for disposal. However, it should be noted that once a radioactive material, as defined under this definition of Discrete source, becomes a byproduct material, it will continue to be regulated as a byproduct material even if the discrete radioactive source is leaking or broken, or no longer has a physical boundary.

D. Changes to Existing NRC Regulations To Accommodate the New Byproduct Material

The Commission has authority to issue both general and specific licenses for the use of byproduct material and to exempt byproduct material from regulatory control under Section 81 of the AEA. A general license, as provided by regulation, grants authority to a person for certain activities involving byproduct material and is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. Requirements for general licensees appear in the regulations and are designed to be commensurate with the specific circumstances covered by each general license.

In considering the expansion of the definition of Byproduct material to include discrete sources of radium-226 and accelerator-produced radioactive material, the NRC has evaluated products and materials previously approved by States for use under an exemption from licensing and under a general license. Generally, the NRC's intent in this proposed rule is to accommodate existing products and materials that were previously regulated by the States under similar provisions if the potential doses are similar to those expected from other currently regulated products and materials. Many of these products have not been made for some time, so some of the provisions in this proposed rule are only intended to accommodate items manufactured in the past, which may still be in use or in storage. For example, radium-226 was used in timepieces and other self-luminous products, and in smoke detectors. Some time ago, promethium-147 and tritium replaced radium-226 in self-luminous products. For many years, americium-241 has been the primary radionuclide used in smoke detectors; consequently, the use of radium-226 in the manufacture of smoke detectors stopped several years ago.

The bases of these proposed provisions are primarily the SSRs and also information in the NRC's sealed source and device (SS&D) registry. The SS&D registry is the NRC's national database of technical information on sealed sources and devices. Manufacturers or distributors may submit a request to the NRC for an evaluation of a product's radiation safety information and for registration of the product. After satisfactory completion of the evaluation, the NRC issues a certificate of registration to the person making the request, and this certificate is added to the SS&D registry. Many Agreement States have similar registration procedures, and registration certificates for the sources and devices they review are added to the national SS&D registry. The NRC also has included SS&D certificates for NARM, which have been issued by States. While this is not a complete database with respect to NARM, it includes detailed information about many products containing NARM previously evaluated by States. In addition to SSRs and the information in the SS&D registry, the specific provisions of the various States also have been considered in developing this proposed rule.

Exemptions From Licensing

Part 30 of Title 10 of the Code of Federal Regulations includes a number of exemptions from licensing requirements. These exemptions allow for certain products and materials containing byproduct material to be used without any regulatory requirements imposed on the user. The two exemptions in 10 CFR 30.19 and 10 CFR 30.20, Self-luminous products and Gas and aerosol detectors, respectively, are class exemptions, which cover a broad class of products. Under these provisions, new products can be approved for use through the licensing process if the applicant demonstrates that the specific product is within the class and meets certain radiation dose criteria. This contrasts with other exemptions for which the level of safety is controlled through such limits as specification of radionuclides and quantities. Sections 30.14 and 30.18 of NRC's regulations, Exempt concentrations and Exempt quantities, respectively, are broad materials exemptions, which allow the use of a large number of radionuclides. The specific radionuclide limits on these concentrations and quantities are contained in tables in 10 CFR 30.70 and

10 CFR 30.71, respectively. The remaining exemptions from licensing are product specific, for which many assumptions can and have been made concerning how the product is distributed, used, and disposed of. The proposed rule would add some products and materials containing NARM to some of the current exemptions. The table of exempt concentrations in 10 CFR 30.70 already includes all of the radionuclides and associated limits contained in the equivalent section of the SSRs. Thus, the NRC is not proposing to revise the exempt concentration table in this proposed rule.

Exempt Quantities

Part C of the SSRs includes a list of exempt quantities which are identical to those in 10 CFR 30.71 but includes an additional 13 radionuclides, which are accelerator produced. The proposed rule would add these 13 radionuclides and their respective quantities, as currently included in the SSRs, to the list of exempt quantities in 10 CFR 30.71. The technical bases of these values are similar to those used for the existing values in 10 CFR 30.71.

The NRC considered whether there were additional radionuclides in use under comparable State exemptions that should be accommodated under 10 CFR 30.71. It was noted that a few of the States' regulations for exempt quantities include additional radionuclide-specific values, each appearing in only one or two State's regulations. These radionuclides are specifically exempted in only one or two States; thus, they do not represent nationally recognized exemptions. It was also not clear as to what approach was used to calculate their exemption values. Therefore, the NRC is proposing to add only the 13 radionuclides and values from the SSRs, and no further additions to 10 CFR 30.71 are included in the proposed rule. It is noted, however, that for other byproduct material, excluding alpha emitters, which is the last item on the list in 10 CFR 30.71, Schedule B, allows for 3.7 kBq (0.1 μCi) to be used as an exempt quantity. This would apply to accelerator-produced radionuclides as well.

Timepieces Containing Radium-226

The exemption in 10 CFR 30.15(a)(1) would be revised to include timepieces (including dials, watch faces, and hands) that were manufactured prior to the effective date of the rule and containing no more than 37 kBq (1 μCi) of radium-226. This limit is consistent with the SSRs. However, as the hazard of handling non-intact timepieces and hands and dials, particularly the repair, may be more significant because of the effects of aging on the radium-containing paint, the exemption in the proposed rule would be limited to ''intact'' timepieces, with an exception to allow for repairing a limited number of timepieces, per year, proposed as ten. This latter exception is intended to recognize historical practices and minimize impacts on small businesses and antique collectors, while NRC gathers data to determine if more specific requirements should be placed on the possession and repair of antiques containing radium-226. It is believed that the incidence of handling of watch and other timepiece parts and the repair of timepieces containing radium-226 is generally limited; however, the Commission requests input regarding the appropriateness of this number and other comments concerning how active the repair of radium timepieces may be, the safety significance of this exemption, alternatives to potential regulations, or justification for continuing the exemption in this area. As discussed later, the possession, but not the repair, of a larger number of timepiece parts would be covered by a proposed new general license. However, if a significant number of such items are being handled in a facility, the controls associated with a specific license would be appropriate. As noted elsewhere in this **Federal Register** notice, the Commission will be gathering additional information about the quantities of radium-226 in products in order to better evaluate the health and safety implications associated with the various products and activities involving radium-226.

Self-Luminous Products

Although the SSR section similar to 10 CFR 30.19 includes an exemption for previously acquired self-luminous articles containing less than 3.7 kBq (0.1 μCi) of radium-226, 10 CFR 30.19 would not be amended to include this exemption. The basis for not including this exemption is that, as currently written, 10 CFR 30.19 only applies to products manufactured and distributed under a specific license issued under 10 CFR 32.22. The SSR exemption does not require that these products be previously manufactured and distributed under a specific license, nor do the SSRs provide for such a license with regard to radium. Instead, the possession, use, and transfer of these items would be subject to the general license for certain previously manufactured items and self-luminous products containing radium-226 established in 10 CFR Part 31. The NRC plans to further evaluate the health and safety implications of self-luminous products to determine if exemptions may be appropriate.

Smoke Detectors

Smoke detectors are included in the class exemption in 10 CFR 30.20 for gas and aerosol detectors. This exemption is revised in the proposed rule to include previously manufactured detectors containing radium-226. The provision for smoke detectors is different from the SSRs in that the SSRs contain a specific limit of 3.7 kBq (0.1 μCi) for radium-226 that manufacturers may incorporate into the currently manufactured detectors. However, the SS&D registry includes certificates for smoke detectors categorized as exempt containing up to 74 kBq (2 μCi) of radium-226. While some of these certificates are categorized as ''Active,'' meaning that continued distribution is permitted, a survey of the States with these certificates confirmed that the distribution of radium in smoke detectors was, in fact, a past practice. The proposed provision added to 10 CFR 30.20 for detectors containing radium-226 would be limited to detectors previously manufactured and distributed under a specific license issued by a State under comparable provisions to 10 CFR 32.26. Thus, similar standards would have been used in approving distribution of these detectors for use under an exemption from licensing. This exemption would not cover smoke detectors manufactured earlier with larger quantities of radium-226 and authorized for use under a general or specific license, or smoke detectors that may not have been distributed under a specific license.

Distribution to Exempt Persons

The NRC continues to retain the authority for authorizing distribution of products and materials where the end user is exempt from licensing and regulatory requirements by regulation in 10 CFR 150.15(a)(6). The current 10 CFR 150.15(a)(6) states, in part, that persons in Agreement States are not exempt from the Commission's licensing and regulatory requirements with respect to the transfer of possession or control of any equipment, device, commodity, or other products containing byproduct material to persons who are exempt from licensing and regulatory requirements of the Commission. The NRC does not transfer this authority when a State enters into an Agreement with the NRC. Therefore, persons who initially transfer products containing byproduct material to persons who are exempt from licensing and regulatory requirements must have a license from the NRC authorizing these activities.

These distributors also need a specific license from either an Agreement State or from the NRC authorizing the possession and use of the byproduct material. As a result of the expansion of the definition of Byproduct material, the distribution of NARM to exempt persons, including distribution by licensees in Agreement States, will also be authorized only by the NRC. Currently, States have only authorized a few distribution licensees for distribution to persons exempt from licensing requirements of exempt quantities of accelerator-produced radioactive material. These distribution licensees already have an NRC license under 10 CFR 32.18 authorizing the distribution of exempt quantities of pre-EPAct byproduct material. Thus, only a simple amendment of those NRC licenses will be required as a result of this aspect of this proposed rule.

Existing General Licenses

General License for Devices in 10 CFR 31.5

Section 31.5 is the primary general license provision in 10 CFR Part 31. It covers a broad range of devices: those ''designed and manufactured for the purpose of detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.'' These devices must be distributed under specific licenses issued under 10 CFR 32.51 or equivalent regulations of an Agreement State. There are numerous SS&D certificates for devices containing NARM that have been approved by States for use under a general license. These are almost all for devices containing cobalt-57, sodium-22, or radium-226. In many cases, models have been approved which are authorized to contain one of these radionuclides or one or more other radionuclides that were byproduct material before the EPAct. They have been evaluated under equivalent, in most cases, or at least comparable, standards by the States. The proposed rule would accommodate generally licensed devices meeting the restrictions of the general license that were previously approved by States under comparable provisions to 10 CFR 32.51. Active certificates would stand with amendments, if needed, being made to the distributors' licenses to cover changes in response to this proposed rule. Any new certificates would be issued by the NRC or the Agreement States under the AEA encompassing the new definition of Byproduct material.

The criteria for registration of generally licensed devices under 10 CFR 31.5(c)(13)(i) would be revised to include a criterion for registration by general licensees of devices containing 3.7 megabecquerels (MBq) (0.1 millicurie (mCi)) or more of radium-226. This registration is separate and quite different from the SS&D registration by the distributors. It requires physical inventories and certification of device information by general licensees, allows the NRC and Agreement States with equivalent regulations to more fully track generally licensed devices meeting these criteria, and serves to remind general licensees of their responsibilities under the general license. SS&D certificates for generally licensed devices that would come under 10 CFR 31.5 include devices with 37 MBq (1 mCi) or more of radium-226. These devices would be subject to the registration requirement. Other certificates, which include devices with radium-226, allow only much smaller quantities. These devices would not be required to be registered. This criterion for registration of radium-226 was chosen because of the low concentration levels which typically are required for decontamination and decommissioning involving radium-226, as well as the relative dispersibility of radium-226. A principal purpose of the registration process concerns reducing losses of devices that could significantly contaminate a smelter, if inadvertently melted. At this time, the NRC does not believe there are accelerator-produced materials used in significant quantities in these types of generally licensed devices to warrant registration.

Distributors of NARM have typically also been distributors of pre-EPAct byproduct material. Many of them have not excluded information about transfers of devices containing NARM from reports of transfers made to the NRC on generally licensed devices transferred into the NRC jurisdiction. Therefore, the NRC already has information on some of these devices in its general license tracking system. Information available from States will also be added. It is expected that the registration process will identify additional devices containing registrable quantities of radium-226, as users in many cases will already be registering other devices with the NRC containing other radionuclides and would need to add devices containing radium-226 during the registration process.

Calibration and Reference Sources in 10 CFR 31.8

Section 31.8 of 10 CFR Part 31 currently provides a general license for the use of up to 185 kBq (5 μCi) of americium-241 in calibration and reference sources. The SSRs and many State regulations also include radium-226 in their comparable provisions to the general license. This proposed rule would add radium-226 to 10 CFR 31.8, consistent with the SSRs. This general license is only applicable to specific licensees that have calibration, and reference sources as defined in 10 CFR 31.8, and simply eliminates certain administrative requirements to address these sources under the specific license. The sources are covered by requirements applicable under the specific license, as well as additional requirements in 10 CFR 31.8.

General License for in vitro Test Kits in 10 CFR 31.11

The general license for in vitro test kits in 10 CFR 31.11 would also be revised. In vitro test kits are discussed later under ''Regulatory Framework for Accelerator-Produced Radioactive Material Used in Medical Activities.''

New General License for Certain Items and Self-Luminous Products Containing Radium-226

A new section would be added to 10 CFR Part 31 to provide a general license to any person for other products and discrete sources containing radium-226 which are apparently in the public domain but may not be otherwise covered under a license and are not specifically addressed in the SSRs. The general license would include: (1) Antiquities originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, healing pads, etc.; (2) luminous hands and dials not contained in timepieces and other luminous items, provided that no more than 50 are used or stored at the same location at any one time; (3) luminous gauges and other aircraft safety items containing radium-226 installed in aircraft; (4) luminous aircraft gauges and other aircraft safety items containing radium-226 no longer installed in aircraft, provided that no more than 100 are used or stored at the same location at any one time; and (5) small radium sources containing no more than 37 kBq (1 μCi) of radium-226 as discrete survey instrument calibration sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers, spinthariscopes, etc.), electron tubes, lightning rods, ionization sources, and static eliminators.

The general license would allow any person to acquire, receive, possess, use, or transfer radium-226 contained in the aforementioned products. Persons who receive, possess, use, or transfer the radium-226 items under the general license would be exempt from the provisions of 10 CFR Parts 19, 20, and 21 to the extent that the receipt, possession, use, or transfer is within the terms of the general license.

The proposed general license would prohibit the manufacture, assembly, disassembly, repair, or import of products containing radium-226; prohibit export under the general license; and require that the product is only to be disposed of by transfer to a specific licensee authorized to receive it or to a disposal facility authorized to dispose of the material in accordance with any Federal or State solid or hazardous waste law. The proposed general license would also prohibit abandonment of the product. The general license would require notifying the NRC or the Agreement State if there is any indication of a possible failure of, or damage to, the product that could result in a loss of the byproduct material and would require persons possessing these devices under a general license to respond to written requests for information from the NRC or the appropriate Agreement States.

The Commission intends to conduct an evaluation to better understand the products, determine the extent to which radium may have been used in the products, the activities or quantities of radium-226 that might have been used or remain in the products, and determine any health and safety or environmental impacts that the products pose. It is anticipated, based on the information developed from this evaluation, that the Commission may determine that it is appropriate to exempt additional products from further regulatory control, or modify the general license. Meanwhile, it is the NRC's intent, to a large extent, to maintain the existing ''status quo'' with Agreement State regulation of NARM through the imposition of minor restrictions on transfer and possession, except when larger numbers of products may be involved or significant contamination of property has resulted.

The Commission specifically requests comments to provide information that may assist the NRC to more fully evaluate potential impact to public health and safety and the environment due to activities involving radium-226 sources. In particular, the Commission requests input on any quantitative or qualitative health and safety information regarding radium-226 sources that may be used to support a regulatory framework other than general licensing, such as an exemption. The Commission also requests comments regarding the specific constraints in the proposed exemption in 10 CFR 30.15(a)(1)(viii) and in its general license approach for certain items and self-luminous products containing radium-226 that were manufactured prior to the effective date of the rule, regarding under what circumstances an exemption is a more effective and viable approach, and requests additional information for the technical basis supporting an exemption in lieu of a general license. In particular, the Commission would appreciate input on whether this general license approach, and its allowances and restrictions, is reasonable while the Commission evaluates the products; whether the general license should allow possession of radium-226 luminous items, such as individual watch hands, dials, gauge indicators and faces, which are not contained in an intact finished product regardless of number; whether commercial transfers should be restricted and require a specific license; or whether data are available to justify an exemption for certain types of radium-226 sources, now or in the future.

Regulatory Framework for Accelerator-Produced Radioactive Material Used in Medical Activities

Section 651(e) of the EPAct requires the NRC to consider the impact of its regulations on the availability of radioactive drugs to physicians and patients. The NRC has a well established regulatory framework for the commercial production, distribution, and use of in vitro test kits, radioactive drugs, biologics, and SS&Ds for medical activities involving byproduct material yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material. The NRC believes this existing regulatory framework is also applicable to the commercial producers, distributors, and medical users of in vitro test kits, radionuclides, radioactive drugs, biologics, and SS&Ds containing NARM that are now included in the EPAct's expanded definition of byproduct material. The NRC also believes this framework will minimize the impact of its regulations on the availability of radioactive drugs containing accelerator-produced radionuclides.

This regulatory framework for the commercial radioactive drug manufacturer and the commercial nuclear pharmacy consists of licenses (or authorizations) issued under 10 CFR Part 30 to possess and use the radioactive materials, a distribution license issued under 10 CFR 32.71 to distribute certain in vitro test kits to generally licensed medical and veterinary clinical laboratories, and a medical distribution license issued under 10 CFR 32.72 to distribute radioactive drugs to medical use licensees. While the medical SS&D manufacturers also have licenses (or authorizations) issued under 10 CFR Part 30, their medical distribution licenses are issued under 10 CFR 32.74. The medical distribution licenses (or authorizations) issued under 10 CFR 32.72 and 10 CFR 32.74 authorize distribution to medical use licensees, but do not authorize the possession and use of byproduct material.

This regulatory framework is directly applicable to longer half-life NARM radionuclides, *e.g.*, thallium-201, cobalt-57, and palladium-103, that are produced in a few accelerator facilities for import by, or transfer to, drug manufacturers, in vitro kit manufacturers, commercial nuclear pharmacies, and sealed source producers. It is also applicable to the commercial production and distribution of PET radionuclides, *e.g.*, fluorine-18, oxygen-15, and carbon-11, which are a special subset of NARM radionuclides. The NARM (including PET) radionuclide producers will be licensed for the production and subsequent possession and use of the NARM (or PET) radionuclides under 10 CFR Part 30. The NARM (including PET) radionuclide producer can transfer these radionuclides to other licensees under the provisions of 10 CFR 30.41. This includes distribution of NARM (or PET) radionuclides to individuals, including universities and research laboratories, for basic research but not medical use. If the NARM (including PET) radionuclide producer also uses these radionuclides to make radioactive drugs (including PET drugs) or medical sealed sources that are distributed directly to medical use licensees, then the NARM radionuclide producer also needs a 10 CFR 32.72 or 10 CFR 32.74 medical distribution license for this purpose. These medical use licensees are authorized to use these materials on patients or human research subjects. The commercial NARM (including PET) radioactive drug or biologic manufacturer and commercial nuclear pharmacy preparing NARM (including PET) radioactive drugs and biologics will need a license (or authorization) issued under 10 CFR Part 30 and another issued under 10 CFR 32.72.

PET drugs are a special subset of NARM drugs that are characterized by the radiation they emit and usually have very short half lives. Individual hospitals and academic institutions, in addition to the commercial drug manufacturers and commercial nuclear pharmacies, may also have cyclotrons that are used to produce PET radionuclides and may prepare PET drugs from these nuclides. Although PET drugs have very short half lives, certain PET radionuclides with longer half lives can be transported from the production facility to the user's site. This permits the commercial distribution of some PET drugs (*e.g.,* fluorine-18 glucose) to medical users that do not have a cyclotron. Even medical users with cyclotrons may purchase widely used PET drugs from commercial manufacturers or nuclear pharmacies so their cyclotrons can be used to produce other PET radionuclides. The longer half-life PET radionuclides may also be combined with nonradioactive chemicals and biologics to produce new PET drugs and biologics.

The extremely short half-life radionuclides used for medical use have to be administered immediately after production and would essentially necessitate that the cyclotron be located in the medical facility. Some hospitals form ''consortiums'' with adjacent or nearby hospitals to make PET radionuclides and drugs available to these associated facilities through noncommercial distributions. While the NRC's existing regulatory framework works for the commercial production and distribution of PET radionuclides and drugs, it was not developed to handle the noncommercial distribution between medical use licensees. Failure to address noncommercial distribution would impact the availability of these radioactive drugs to physicians and patients.

Therefore, the NRC developed a new regulatory process based upon existing practices to minimize impact on the noncommercial distribution of PET radionuclides, drugs, and biologics among medical use licensees. In accordance with this process, a medical use facility, which uses its own cyclotron to produce PET radionuclides for use under its own medical use license, would not need a medical distribution license, but it would need to have either a separate 10 CFR Part 30 license for the PET radionuclide production facility or a 10 CFR Part 30 authorization for this production facility on its medical use license. As with other radionuclide production facilities, the radiation safety program will be reviewed in accordance with the criteria in 10 CFR 30.33. If the licensee has a broad scope authorization for 10 CFR Part 30 uses, then the program also will be reviewed in accordance with 10 CFR Part 33.

Under the new regulatory framework, if the medical use facility does not intend to commercially distribute the PET radionuclides, drugs, or biologics, but intends to transfer them to other medical facilities in its consortium, a medical distribution license is not needed, but an authorization for the noncommercial transfer of the radionuclides, drugs, and biologics to other medical use licensees is needed. With minor revisions to 10 CFR Part 35, the consortium medical use facilities would be authorized by regulation to receive these PET drugs.

The NRC is distinguishing between the ''production'' of PET radionuclides which requires the presence of the cyclotron and the ''preparation'' of PET drugs which may occur at another location. To ensure the continued availability of PET drugs, all PET centers (*i.e.,* facilities with cyclotrons used to produce PET radionuclides), including commercial nuclear pharmacies, that are registered with FDA or a State will be authorized to produce PET radionuclides under their 10 CFR Part 30 license or 10 CFR Part 30 authorization. The NRC will review the radiation safety programs of these facilities in accordance with the criteria in 10 CFR 30.33.

To ensure availability of PET drugs from commercial nuclear pharmacy PET centers that are not registered with the FDA or a State, these pharmacies will be authorized for PET radionuclide production if their radiation safety programs meet the criteria in 10 CFR 30.33, which includes individuals with training and experience in the production of PET radionuclides, *i.e.*, the processes from insertion of targets in the accelerator/cyclotron beam to radiochemical isolation, purification, and testing, so that the requirements in 10 CFR 30.33(a)(3) are met. Individuals, such as radiochemists, physicists, engineers, and others with appropriate training and experience, will be recognized as authorized users under the pharmacy's 10 CFR Part 30 authorization for the production of PET radionuclides and other radionuclides using cyclotrons and other types of accelerators. This training and experience will be evaluated by the NRC through reviewing and processing of a license application on a case-by-case basis.

Authorized nuclear pharmacists will continue to be authorized to use already produced reactor-produced radionuclides, PET radionuclides, and other accelerator-produced radionuclides to prepare PET drugs and other radioactive drugs, *i.e.,* compound PET drugs and other radioactive drugs, under the practice of pharmacy. Medical use licensees that receive PET radionuclides that are added to ''cold kits'' may prepare them under the same authorization in 10 CFR 35.100(b), 35.200(b), and 35.300(b) as other unsealed byproduct materials for medical use.

Further, to ensure the availability of NARM (which includes PET) radioactive drugs and biologics, individuals who may include nuclear pharmacists among others, responsible for the production of PET radionuclides at the cyclotron facilities under the NRC waiver issued on August 31, 2005, will be ''grandfathered'' and will not be required to meet new training and experience requirements as long as their duties and responsibilities under the new license do not significantly change. When adding these individuals to a license, the applicant will be required to document that these individuals were responsible for the production of PET radionuclides using a cyclotron or accelerator during the period the waiver was in effect.

To ensure a smooth transition and availability of NARM (which includes PET) radioactive drugs, biologics, and sealed source use in medical facilities, those individuals that used only NARM byproduct materials for medical uses under the NRC's August 31, 2005, waiver will be ''grandfathered'' in the regulations with appropriate changes to 10 CFR Part 35.

The radiation safety knowledge needed to safely use the newly added byproduct material radionuclides for medical uses is similar to that for the existing byproduct radionuclides used in medicine. Individuals already authorized to use byproduct material in 10 CFR Part 35 are therefore authorized to use the newly added byproduct material for medical use. Further, no changes were made to the training and experience criteria in 10 CFR Part 35 for any authorized individual.

In summary, to minimize the regulatory impact on the availability of accelerator-produced radioactive drugs, the NRC is taking the following actions: (1) Applying its established regulatory framework to the commercial distribution of these drugs; (2) expanding the regulations to permit noncommercial distribution of these drugs by medical use licensees; (3) expanding the authorization for commercial nuclear pharmacies to

produce PET radionuclides; (4) ''grandfathering'' current users of accelerator-produced radioactive drugs; (5) retaining the existing training and experience criteria in 10 CFR Part 35 for authorized individuals; and (6) permitting individuals to continue to prepare and use radioactive drugs while they are applying for new licenses or amendments.

The medical use of extremely short half-life radionuclides, *e.g.*, oxygen-15, requires the radionuclide to be administered in the imaging and localization medical use area (10 CFR 35.200) immediately after the radionuclide is produced by the cyclotron. This necessitates the medical use area to be co-located with the cyclotron or to have a radionuclide delivery line from the PET radionuclide production area. This introduces the potential for a high radiation area in a medical use area that is normally considered a low radiation area. This is a unique situation and was not envisioned when NRC developed the requirements that permitted licensees to make changes in the areas where byproduct material is used only in accordance with 10 CFR 35.100 or 10 CFR 35.200 without submitting a license amendment. These requirements are found in 10 CFR 35.13, ''License amendments,'' 10 CFR 35.14, ''Notifications,'' and 10 CFR 35.15, ''Exemptions regarding Type A specific licenses of broad scope.'' The proposed rule clarifies that an amendment would be required in the unique situation described previously if the changes involved movement of the cyclotron or a radionuclide delivery line from the PET radionuclide production area. Changes to the typical 10 CFR 35.100 and 10 CFR 35.200 medical use areas are not affected.

Consideration of NARM in 10 CFR Part 20, Appendix B

The comparable provisions in Part D of the SSRs do not include any new accelerator-produced radionuclides other than the ones already in 10 CFR Part 20, Appendix B. The NRC considered whether some other radionuclide-specific values should be added to 10 CFR Part 20, Appendix B. Since nitrogen-13 and oxygen-15 are two of the accelerator-produced radionuclides that are produced for medical uses, the NRC performed a preliminary calculation of values based on dose factors published in National Council on Radiation Protection and Measurements (NCRP) Report No. 123I on Screening Models for Releases of Radionuclides to Atmosphere, Surface Water, and Ground. Certain dose conversion factors were not readily available. Results from these preliminary calculations yielded a derived air concentration (DAC) based on the submersion scenario for both nitrogen-13 and oxygen-15 of about 4×10^{-6} microcurie per milliliter (1.48×10^{-2} becquerels per milliliter) for occupational exposure and a corresponding effluent concentration of 2×10^{-8} microcurie per milliliter (7.4×10^{-4} becquerels per milliliter) for exposure of members of the public. The above calculated values are larger than the default values for DAC and effluent concentration by a factor of 40 and 20, respectively, in 10 CFR Part 20, Appendix B. Because the approach used in calculating values for nitrogen-13 and oxygen-15 is different from that used for other radionuclides included in 10 CFR Part 20, Appendix B, the NRC is not proposing to add specific values for these radionuclides in this rulemaking at this time. Since certain medical communities have expressed the desire of having specific DACs for these two radionuclides, the Commission specifically requests public comment on the default values, and whether it should include larger specific values for oxygen-15 and nitrogen-13 in the final rule.

Emergency Planning

The regulations in 10 CFR 30.32(i)(1) require applications for specific licenses for byproduct material in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in 10 CFR 30.72, ''Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release,'' to contain either an evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials would not exceed 0.01 sievert (1 rem) effective dose equivalent or 0.05 sievert (5 rems) to the thyroid, or an emergency plan for responding to a release of radioactive material. Schedule C also contains a release fraction for each radionuclide against which aspects of the evaluation submitted in place of an emergency plan must be compared in accordance with 10 CFR 30.32(i)(2).

Although Part P, ''Contingency Planning for Response to Radioactive Material Emergencies,'' of the SSRs addresses an emergency plan, a value for radium-226 is not specifically listed. The staff therefore considered NUREG–1140, ''A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees,'' dated August 1991. NUREG–1140 was used as the technical basis in a past rulemaking effort related to quantities of radioactive materials requiring an emergency plan. NUREG–1140 provided the basis for 10 CFR 30.72 Schedule C values. Schedule C also contains a default value for alpha emitters of 74 gigabecquerels (GBq) (2 curies (Ci)) (with release fraction 0.001), which would apply to discrete sources of radium-226 absent a specific value being added to the table. However, the quantity value for radium-226 in NUREG–1140 is 3.7 terabecquerels (TBq) (100 Ci) along with a release fraction value of 0.001. This proposed rule would add radium-226 with the quantity 3.7 TBq (100 Ci) and release value 0.001 to 10 CFR 30.72 Schedule C, which is consistent with the technical basis for the original emergency planning requirements. Although it is expected that few, if any, licensees, or applicants for a license, would have 3.7 TBq (100 Ci) of discrete sources of radium-226, the requirement includes the use of the ''rule of ratios'' (*See* Footnote 1 to 10 CFR 30.72), so that licenses authorizing other byproduct material, in quantities approaching values that would require emergency planning being amended to add significant quantities of discrete sources of radium-226, could potentially result in authorizing total quantities of byproduct material that would meet the criteria for emergency plan requirements. It is not expected that accelerator-produced radioactive materials are used in significant enough quantities to affect the applicability of emergency plan requirements.

Low-Level Radioactive Waste and Decommissioning

Low-Level Radioactive Waste

Section 651(e)(3) of the EPAct mandates that the newly added byproduct material is not considered to be low-level radioactive waste for the purposes of the Low-Level Radioactive Waste Policy Amendments Act (42 U.S.C. 2021b) (LLRWPAA). The intent of this provision is that the newly added byproduct material is not to be impacted by the compact process of the LLRWPAA. This provision does not have an impact on the NRC policy and requires only a minor change to the regulations to ensure that the term ''low-level radioactive waste,'' when used in the NRC requirements, does not include the newly added byproduct material.

Although the newly added byproduct material is not considered low-level radioactive waste, it does pose a similar hazard, and it does need to be disposed of appropriately. Section 651(e)(3) of the EPAct requires that the newly added

byproduct material must be disposed of in a facility that: (1) Is adequate to protect public health and safety; and (2) is licensed by the Commission or by an Agreement State. Even though it is not low-level radioactive waste, this provision clarifies that the newly added byproduct material be disposed of in a facility licensed by the NRC under 10 CFR Part 61 or the Agreement State requirements, which are compatible to 10 CFR Part 61. This provision also allows for the disposal of the newly added byproduct material in a facility licensed by the NRC under other parts of the NRC's regulations, such as facilities licensed under 10 CFR Part 40, Appendix A.

To ensure that disposal facilities licensed under 10 CFR Part 61 continue to be adequate to protect public health and safety, the NRC must consider the specific health and safety issues associated with disposal of discrete sources of radium. Rather than proposing any changes to 10 CFR Part 61 at this time, NRC will evaluate any specific disposals of discrete sources of radium at an NRC-licensed disposal facility under 10 CFR 61.58, Alternative requirements for waste classification and characteristics. The NRC has not identified any other radionuclides being added to the definition of byproduct material that require any specific evaluations to ensure the proper disposal of waste in accordance with 10 CFR Part 61.

Section 651(e)(3) of the EPAct also allows that, notwithstanding the previously mentioned provisions that require the NRC licensing of the disposal of the newly added byproduct material, the authority of any entity to dispose of the newly added byproduct material at a disposal facility in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, is not affected. This means that Federal and State solid or hazardous waste laws can continue to be used as an authority to permit disposal of this newly added byproduct material. Disposal solutions already in place to allow disposal of the newly added byproduct material are unaffected by the EPAct. To implement this provision of the EPAct, the NRC is proposing a change to its regulations in 10 CFR Part 20 that would redefine the definition of Waste to allow disposal of the newly added byproduct material in the NRC-regulated disposal facilities or in a disposal facility permitted under Federal or State solid or hazardous waste laws.

Appendix G of 10 CFR Part 20, the uniform manifesting requirements for low-level radioactive waste, includes numerous requirements containing the words ''low-level radioactive waste'' and ''waste.'' This is potentially confusing because the newly added byproduct material is not low-level radioactive waste in accordance with the provisions of the EPAct. However, no changes have been made to Appendix G. The text changes made to the 10 CFR Part 20 regulations to clarify that the newly added byproduct materials are not ''low-level radioactive waste'' make it clear that the Appendix G requirements must be met if any of the newly added byproduct material waste is to be disposed of at a facility licensed under 10 CFR Part 61 or an equivalent Agreement State rule.

Decommissioning Issues

The inclusion of accelerator-produced radioactive material that is used for a commercial, medical, or research activity, in the definition of Byproduct material, requires the NRC to ensure that decommissioning funding is adequate at accelerator facilities to adequately decontaminate and decommission their facilities for license termination. Radioactive materials produced in accelerator facilities, that are extracted or converted after extraction for use for commercial, medical, or research purposes and that are no longer residing in the accelerator, are not a concern for decommissioning. However, materials intentionally or incidentally made radioactive as a result of the production of the radioactive materials for use for commercial, medical, or research purposes must be managed safely. Any radioactive material residing in the accelerator or within the facility that houses the accelerator must be adequately considered for safe operation, and managed appropriately at the time of decommissioning of the accelerator-produced radionuclide production facility, including the accelerator, and the NRC must ensure that adequate financial assurances are put in place to address the costs of decommissioning when the radionuclide production operation ceases, and the accelerator is shutdown, and the license is terminated. As with all decontamination and decommissioning situations, short-lived radionuclides are expected to decay to safe levels before license termination. Therefore, only radionuclides with a half-life of more than 120 days, that are present in sufficient quantities to cause a public health and safety concern, need to be addressed for the purposes of establishing adequate financial assurances for decommissioning leading to license termination.

Similarly, the addition of discrete sources of radium-226 in the definition of byproduct material requires the NRC to ensure that decommissioning funding is adequate for holders of specific licenses for possession of discrete sources of radium-226. Radium-226 is already included in Appendix B of 10 CFR Part 30 to determine the required level of financial assurance for holders of specific licenses in accordance with the requirements of 10 CFR 30.35. Therefore, applicants for specific licenses to possess discrete sources of radium-226 will need to assure that adequate financial assurances are provided for the types of sources and the total amount of radium-226 contained in the sources they will possess. Holders of general licenses for possession of discrete sources of radium-226 do not need financial assurance for decommissioning. However, in accordance with the approach for general and specific licensing of discrete sources of radium-226 being proposed by the NRC, a general licensee may become subject to specific licensing if a large number of discrete sources of radium-226 are accumulated (e.g., more than 50 luminous products in one location). If a general licensee becomes subject to specific-licensing, the licensee would be required to acquire the financial assurances required under 10 CFR 30.35.

The NRC believes that the financial assurance requirements included in 10 CFR 30.35 are adequate to ensure that any individuals who will receive a specific license authorizing possession and use of byproduct material will be required to have adequate financial assurance in place for decommissioning the facility. Therefore, the NRC is not proposing any changes in the financial assurance of the decommissioning regulation.

The NRC is cognizant of the potential existence of facilities and sites which may be, or have the potential to become, contaminated with significant amounts of radium-226 from past practices or operations. Additionally, the potential exists for significant quantities of discrete sources of radium-226 to have been previously disposed of by both licensees and nonlicensees at their facilities. The existing requirements for licensing and decommissioning in 10 CFR Part 30 are sufficient to address these situations for any facilities that will apply for a specific license to authorize possession of discrete sources of radium-226 for their current operations. The applications to the NRC, in these cases, would include a facility-specific decommissioning plan that

addresses the current contamination and any previous onsite disposals.

There are no similar assurances for any facility that is currently contaminated from discrete sources of radium-226. With the inclusion of discrete sources of radium-226 in the definition of byproduct material, the NRC acquires the regulatory authority to address these situations where a specific license has not been issued (or where a potential licensee cannot be identified). There is not enough known about the breadth or depth of these potential radium-226 contamination situations, and how many of them exist at facilities that will apply for specific licenses, to propose any additional requirements to address them at this time. Therefore, the NRC proposes to address these situations on a case-by-case basis as they are identified following issuance of the new requirements for the newly added byproduct material.

E. License Application and Annual Fees

The NRC is required to recover approximately 90 percent of its budget authority each year under the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended. Therefore, the NRC charges licensing, inspection, and annual fees to its applicants and licensees. Each type of fee includes agency and program overhead. The NRC revises these fees each year in light of its current fiscal year budget and other factors, including changes in the regulatory efforts associated with the different classes of licensees.

Persons applying for a license with the NRC, or requesting an amendment to their current licenses that may result in addition of a new fee category, are required to pay a license application fee under 10 CFR Part 170, unless exempt under the fee exemption provisions of 10 CFR 170.11. The application fees for materials users are 'flat' fees that are calculated by multiplying the average professional staff hours needed to process the application by the Materials Program hourly rate in 10 CFR 170.20 (currently $197). An application fee must generally be paid for each applicable fee category.

Additionally, all persons who hold licenses issued by NRC are subject to annual fees under 10 CFR Part 171, unless exempt under the provisions of 10 CFR 171.11. The Part 171 fee categories and the associated fees for materials users are provided in 10 CFR 171.16, and must generally be paid for each applicable fee category. A licensee may request consideration as a small entity for the annual fees which may result in a reduced fee, as described in 10 CFR 171.16.

The annual fees for the materials users fee class are calculated based on the NRC's budgeted resources allocated to regulating these types of licensees, less any receipts received from this fee class for Part 170 activities. The net dollar value of budgeted resources for this fee class is allocated to all materials users fee categories (subclasses) based on the average application and inspection costs associated with each category. This approach provides a proxy for allocating the generic and other regulatory resources to the diverse categories of licensees based on how much it costs the NRC to regulate each fee category. The fee calculation also considers the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with these categories of licenses. The annual fees for a materials users license (other than a master materials license) currently range from $750 for fee category 2.B (shielding) to $27,300 for fee category 7.B (broad-scope medical).

The license application fees schedule is in 10 CFR 170.31. The annual fees schedule is in 10 CFR 171.16. The fee amounts noted in this section are the FY 2005 fees which may change in July 2006, once the FY 2006 Fee Rule becomes effective.

The NRC believes that the majority of NRC licensees affected by this rulemaking will be using radioactive material in a manner similar to their existing authorizations, and their existing fee categories should not change as a result of this rule. However, some licensees may need to amend their licenses to add one or more new fee categories, if applicable, for new uses and radioactive material now considered byproduct material, i.e., accelerator-produced radioactive material or discrete sources of radium-226.

The NRC is proposing three new fee categories for activities that are currently not covered by its regulations, but are covered under this proposed rule. The new fee categories would apply to certain previously manufactured items and self-luminous products containing radium-226 and to the production of accelerator-produced radioactive material. In determining the fees for these new categories, the NRC evaluated existing fee categories that NRC believes require a similar level of regulatory effort as these newly regulated activities for actions such as licensing, inspection, and event response.

Most individuals collecting items containing radium-226 are expected to be eligible for a general license under the proposed new 10 CFR 31.12, General license for certain items and other self-luminous products containing radium-226. Therefore, they would be subject to the requirements of 10 CFR 31.12 (*e.g.* proper disposal of the radioactive material). However, if an individual collects more than the number of items or limits specified in this section, that individual would be required to obtain a specific license and be subject to the regulations regarding license application and annual fees. The NRC is proposing a new fee category, 3.R., with a two-tiered fee level, for those individuals requiring a specific license for items containing radium-226. The distinction between the two fee levels is based on the number of items or limits specified in 10 CFR 31.12(a)(3), (4), or (5) and the estimate of the level of regulatory effort between the two levels. Licensees who currently possess radium sources in amounts that exceed the proposed general license provisions of 10 CFR 31.12 would be required to add the sources to their specific license. This would normally subject the licensee to the fees in this new fee category. However, if the radium-226 sources are used for operational purposes that are covered under another fee category, the licensee will not be subject to the fees in this new fee category. This exception will not apply if the radium sources are possessed for storage only.

The first proposed new fee category, 3.R.1., is for individuals possessing quantities greater than the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5), but less than or equal to 10 times these quantities. Since the estimated level of regulatory effort is comparable to the level of effort for category 8, civil defense, the license application and annual fees for 3.R.1. would be $450 and $1,600, respectively. The second proposed new fee category, 3.R.2., is for individuals possessing quantities greater than 10 times the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5). The license application and annual fees for this new category, 3.R.2., would be $1,100 and $2,500, respectively, comparable to the fees for category 3.P., ''All other specific byproduct material licenses, except those in Categories 4A through 9D.''

Persons who wish to disassemble, repair, or assemble products containing radium-226 would be required to obtain a specific license and would be subject to the applicable license application and annual fees. The NRC is proposing to include this use in fee category 3.B., Other licenses for possession and use of byproduct material issued under 10 CFR Part 30 of this chapter for processing or

manufacturing of items containing byproduct material for commercial distribution. The license fee for this category is currently $3,500, and the annual fee is currently $8,200.

The NRC is proposing to add a new fee category, 3.S., for the production of accelerator-produced radioactive materials. The NRC is proposing this new fee category because these production activities need to be distinguished from those activities that only involve use of already prepared radionuclides. The estimated regulatory effort for the proposed new fee category, 3.S., would be comparable to that for fee category 3.C. The license application and annual fees for this new category would be $4,700 for the application fee and $10,200 for the annual fee.

The NRC is specifically requesting comments on the proposed fee categories and amounts. The NRC is requesting these comments based upon its assumption that the majority of existing NRC licensees covered by this rulemaking will not be impacted because the existing fee categories remain sufficient to cover all regulated activities. The NRC would like to receive comments from current NRC licensees who believe they will need to amend their licenses. Some amendments will be needed to add the new fee categories, with the attendant Parts 170 and 171 fees as a result of this rulemaking. The NRC is currently assuming that approximately 75 requests for a new license or an amendment will contain one of the new fee categories.

Additionally, the NRC requests comments from potential licensees currently not regulated by the NRC, but who may be required to obtain an NRC license as a result of this rulemaking. The NRC is interested in information on whether these licenses would fall under the current fee categories, and/or the new fee categories proposed in this rulemaking.

Regarding the regulation of radium-226, the NRC is specifically requesting comments from private collectors of items or products containing radium-226 as to whether private collectors believe that they will remain within the boundaries of the proposed general license in 10 CFR 31.12 and whether there are private collectors who believe that they will be required to obtain a specific license.

The NRC would also like to receive comments on the proposed two-tiered fee level under fee category 3.R. Currently, the NRC estimates receiving approximately 20 new applications for tier one fee category and one new application for the tier two fee category.

The NRC would like to receive comments on the proposed new fee category, 3.S., for the production of accelerator-produced radioactive materials. The NRC is currently assuming that approximately 25 new applications will be received for this fee category. Specifically, the NRC requests comments on whether operators of production facilities agree that a new category is needed or believe that they fall into existing categories.

F. Implementation Strategy

Several actions are planned or must occur coincident with, or following, the NRC issuance of final rules covering the newly added byproduct material, including:

(1) Issuance and publication of a transition plan for the orderly transition of regulatory authority for the newly added byproduct material for Agreement and non-Agreement States;

(2) Termination of the waiver issued by the NRC (70 FR 51581; August 31, 2005) for States and users of the newly added byproduct material; and

(3) An implementation period for users of the newly added byproduct material to come into compliance with the newly issued regulations.

Transition Plan

Section 651(e) of the EPAct requires the NRC, in issuing new regulations for the newly added byproduct material, to prepare and publish a transition plan for the orderly transition of regulatory authority over the newly added byproduct material for Agreement and non-Agreement States. The EPAct requires that the transition plan describe the conditions under which a State (including U.S. Territories and the District of Columbia) may exercise authority over the newly added byproduct material, and include a statement of the Commission that any agreement between the Commission and a State, under Section 274b. of the AEA covering byproduct material and entered into before the date of publication of the transition plan, be considered to include the newly added byproduct material. The statement of the Commission is subject to a certification provided by the Governor of the State to the Commission on the date of publication of the transition plan that: (1) The State has a program for licensing the newly covered byproduct material that is adequate to protect the public health and safety, as determined by the Commission; and (2) the State intends to continue to implement the regulatory responsibility of the State with respect to the byproduct material. The NRC also intends to include in the transition plan the process it will use to terminate the waiver issued by the NRC on August 31, 2005, and for the transition of regulatory authority following expiration or earlier termination of the waiver.

Termination of Waiver

The waiver issued by the NRC (70 FR 51581; August 31, 2005) is effective through August 7, 2009 (except effective through August 7, 2006, for the import and export of materials covered by the waiver), unless terminated earlier by the Commission. The waiver applies to Agreement and non-Agreement State regulatory programs and users of the newly added byproduct material, and allows persons owning, using, and otherwise engaging in activities involving the material to continue with their activities and States to continue to regulate this material during the applicable waiver period. All individuals in States (including U.S. Territories and the District of Columbia) that do not have an agreement with the Commission under section 274b. of the AEA that covers the newly added byproduct material on or before August 7, 2009, will automatically be subject to NRC regulatory authority for the material on August 8, 2009. The waiver may also be terminated earlier than August 8, 2009, if the Commission determines that an earlier termination is warranted.

For a new or existing Agreement State that intends to implement the regulatory program of the State with respect to the newly added byproduct material, Section 651(e) of the EPAct requires that the waiver be terminated for the State when the Commission determines that the State has entered into an agreement with the Commission, under section 274b. of the AEA, that the State program covers the newly added byproduct material, and that the State program for licensing the newly added byproduct material is adequate to protect the public health and safety. The Commission determination and termination of the waiver will be noticed in the **Federal Register** (Notification of Waiver Termination). Users of the newly added byproduct material currently licensed or registered by an Agreement State that continues to implement its regulatory program with respect to the newly added byproduct material, will continue to be subject to the Agreement State regulatory authority.

With regard to States that do not have an existing agreement with the Commission under section 274b. of the AEA (non-Agreement States), the waiver period provides additional time for

those States that desire to establish such an agreement for the newly added byproduct materials to develop a program. To establish such an agreement with the Commission, the Governor of the current non-Agreement State will need to request an agreement with the Commission. The process of establishing these agreements can take three or more years to complete. If a State requests an agreement with the Commission, but the agreement cannot be established while the waiver is in effect, *i.e.*, through August 7, 2009, a special arrangement would need to be made with the Commission for the State to continue its regulatory program over the newly added byproduct material. Without an agreement or special arrangement, regulatory authority over the newly added byproduct material will automatically remain with the Commission on the date the waiver expires, or is terminated earlier by the Commission.

If an Agreement or non-Agreement State notifies the Commission, during the waiver period, that it does not intend to continue with its regulatory program with respect to the newly added byproduct material, the NRC, in coordination with the State, will determine an appropriate date to terminate the waiver for the State. Users of the material in the State will be subject to NRC regulatory authority on the termination date of the waiver. Specific actions for users in the State to comply with the new requirements of the rule will be noticed in the **Federal Register** (Notification of Waiver Termination and Implementation Dates of Rule). Additional details on the process that the NRC will use to terminate the waiver for Agreement and non-Agreement States and users in these States will be provided in the Commission's transition plan, as required by Section 651(e) of the EPAct.

The Commission intends to terminate the waiver for Government agencies and Federally recognized Indian Tribes on the effective date of the final rule because there is currently limited regulatory oversight for the newly added byproduct material at these facilities. Waiver termination is necessary in order to require Government agencies and Federally recognized Indian Tribes to comply with the new requirements and for NRC to ensure protection of public health and safety for the newly added byproduct material.

The purpose of the waiver is to allow time for the States and individuals to have an orderly transition of the regulatory authority for NARM. Terminating the waiver for the Government agencies and Federally recognized Indian Tribes on the effective date of the final rule provides for regulatory oversight of the newly added byproduct material. A ''Notification of Waiver Termination and Implementation Dates of Rule'' applicable to Government agencies and Federally recognized Indian Tribes will be included with the publication of the final rule.

Implementation Period

Although Government agencies and Federally recognized Indian Tribes are already being regulated by NRC for the AEA 11e.(1) and 11e.(2) byproduct material, the NRC is proposing a transitional period for them to submit a license amendment or a new license application for the newly added byproduct material. The proposed rule would allow an additional 6-month period from the effective date of the final rule to apply for a license amendment; and an additional 12-month period from the effective date of the final rule to apply for a new license. In addition, the proposed rule contains specific provisions that would give Governmental agencies and Federally recognized Indian Tribes authority to continue to use the newly added byproduct material during the period when the waiver is terminated until the date of NRC's final licensing determination provided that either a license amendment or a license application is submitted within the specified time frame and while complying with all other aspects of the regulations (*e.g.*, event reporting, personnel dosimetry) upon the effective date of the final rule.

For individuals owning, using, and otherwise engaging in activities involving the newly added byproduct material, the date on which compliance with the rule will be required will depend on the date of waiver termination. For certain States and individuals, the NRC plans to terminate the waiver earlier than the final date of the waiver, *i.e.*, August 7, 2009. A decision for early termination will depend on a number of factors, including the status of an Agreement State Governor's certification of adequate program for the newly added byproduct material, status of a non-Agreement State's application to become an Agreement state, and activities or areas under exclusive NRC jurisdiction. The NRC plans to terminate the waiver for Government agencies and Federally recognized Indian Tribes on the effective date of the final rule, and these users will be subject to the new requirements on that date. The effective date of the rule will be 60 days after the date of publication of the final rule to give the Government agencies and Federally recognized Indian Tribes time to comply with the requirements. The NRC is proposing to provide Government agencies and Federally recognized Indian Tribes 6 months from the effective date (or 8 months from the date of publication of the final rule) to apply for a license amendment for the newly added byproduct material if they hold an NRC specific byproduct materials license, and 12 months from the effective date of the final rule to submit a new license application for the newly added byproduct material if a new NRC specific byproduct materials license is needed. It is noted that authorization statements for certain licenses are inclusive of byproduct materials and their uses so that an amendment may not be needed to specifically add NARM to the license.

The NRC plans to separately solicit information from the States on their intentions concerning continuing with, or establishing new, regulatory programs for the newly added byproduct material. Users will be subject to NRC regulatory authority upon expiration or termination of the waiver if they are located either in an Agreement State that does not intend to continue its regulatory program with respect to the newly added byproduct material or in a non-Agreement State that does not enter into an agreement with the Commission under section 274b. of the AEA that covers the newly added byproduct material. For these users, the waiver termination process, specific authority, and condition to continue activities involving the newly added byproduct material will be described in the Commission's transition plan, required by Section 651(e) of the EPAct. Specific actions for these users to comply with the new requirements of the rule will be noticed in the **Federal Register** (Notification of Waiver Termination and Implementation Dates of Rule). For users of the material who transition from a State regulatory program to NRC's regulatory program, the NRC expects to provide, in the notification, a similar provision allowing a 6-month period for submitting an amendment and a 12-month period for submitting a new license application provided that a license amendment or license application is submitted on or before August 7, 2009. At this time, the NRC is not aware of any Agreement State that does not intend to continue its regulatory program with respect to the newly added byproduct material. The NRC requests comments on the

proposed effective date for the final rule and other implementation periods, to ensure that the affected individuals have sufficient time to come into compliance with the new requirements.

G. Summary of Issues for Public Comment

The NRC is requesting additional information or comments on multiple topics. The issues and sections of this document where these issues are explained are as follows:

(1) Technical information that may be available to support an exemption for old discrete radium-226 sources. (See Section II, Item A, ''Interface With Other Federal Agencies and States.'')

(2) The extent that accelerators are used to intentionally produce radioactive material and provide beams for basic science research. (See Section II, Item B, subsection ''Particle Accelerators.'')

(3) The decommissioning of accelerator facilities including accelerator components and facility building materials that may become activated. (See Section II, Item B, subsection ''Particle Accelerators.'')

(4) The adequacy of the applicable default ALIs and DACs in Appendix B to 10 CFR 20 for oxygen-15 and nitrogen-13, and whether staff should develop larger specific values for these radionuclides.

(5) The appropriateness of the number of timepieces containing radium-226 (proposed as ten per year) for an exemption to allow repairing and other comments concerning how active the repair of timepieces containing radium-226 may be, the safety significance of this proposed exemption, alternatives to potential regulations or justification for continuing the exemption in this areas. (See Section II, Item D, Subsection, ''Timepieces containing radium-226.'')

(6) The health and safety impact from activities involving radium-226 sources, in particular, an alternative to the general licensing approach, such as an exemption. A technical basis supporting an exemption. (See Section II, Item D, ''New General License for Certain Items and Self-Luminous Products Containing Radium-226.'')

(7) Whether the majority of licensees believe they will remain in their existing fee categories. Whether potential licensees currently not regulated by NRC, but who may be required to obtain an NRC license as a result of this rulemaking, believe their licenses would fall under the current fee categories and/or the proposed fee categories. (See Section II, Item E, ''License Application and Annual Fees.'')

(8) Whether private collectors of items or products containing radium-226 believe these items or products will remain within the boundaries of the proposed general license and whether private collectors believe they will be required to obtain a specific license. (See Section II, Item E, ''License Application and Annual Fees.'')

(9) Proposed fee categories and amounts and the two-tiered fee level. (See Section II, Item E, ''License Application and Annual Fees.'')

(10) The proposed effective date for the final rule and other implementation periods. (See Section II, Item F, subsection ''Implementation Period.'')

(11) The compatibility category designations and, in particular, on the compatibility designation of the definition of Discrete source. (See Section V.)

(12) The environmental assessment. (See Section VIII.)

(13) Information collections aspects. (See Section IX.)

(14) Draft regulatory analysis. (See Section X.)

(15) Impacts on small businesses. (See Section XI.)

III. Section by Section Analysis of Substantive Changes

Part 20—Standards for Protection Against Radiation

The authority citation for this part would be revised to reflect the EPAct.

Section 20.1003 Definitions

The definition of Byproduct material would be revised to reflect the new definition as mandated in Section 651(e) of the EPAct.

Definitions for Accelerator-produced radioactive material, Discrete source, and Particle accelerator would be added.

A definition of Waste would be added to clarify that, as mandated by the EPAct, byproduct material as defined in Sections 11e.(3) and 11e.(4) of the AEA is not low-level radioactive waste as defined in the LLRWPAA.

Section 20.2001 General requirements

Paragraph (a)(4) would be revised to include the new 10 CFR 20.2008 which addresses disposal of waste.

Section 20.2006 Transfer for disposal and manifests

Paragraph (e) would be added to require the use of uniform manifests for disposal of 11e.(3) and 11e.(4) byproduct material if intended for ultimate disposal at a land disposal facility licensed under 10 CFR part 61.

Section 20.2008 Disposal of certain byproduct material

This section would be added to Part 20 to address disposal requirements for byproduct material as defined in Sections 11e.(3) and 11e.(4) of the AEA.

Part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material

The authority citation for this part would be revised to reflect the EPAct.

Section 30.3 Activities requiring license

This section would be revised to inform Government agencies, Federally recognized Indian Tribes, other licensees, and other persons who possessed and used byproduct material as defined in Section 11e.(3) of the AEA under the provisions of the NRC's waiver of August 31, 2005, which sections of the regulations will apply to them when their waiver is terminated before issuance of an amendment or new license for such material. For the Government agencies and Federally recognized Indian Tribes, requirements for the newly added byproduct material will apply to them on the effective date of the rule.

This section would also be revised to allow for transition for Government agencies, Federally recognized Indian Tribes, other persons, and other licensees, who possessed and used byproduct material as defined in Section 11e.(3) of the AEA under the waiver, to continue to use these materials while applying for and receiving licenses or amendments to existing licenses. This section would revise the authority and responsibilities of persons or licensees that do not file for the license or amendment within the required time with respect to receipt, use, possession, and disposal of byproduct material and the decommissioning of facilities.

Section 30.4 Definitions

The definition of Byproduct material would be revised to be consistent with the new definition in the AEA, with the exception that it would not include byproduct material as defined in Section 11e.(2) of the AEA.

The following definitions would be added to this section: Accelerator-produced radioactive material, Cyclotron, Discrete source, and Particle accelerator.

Section 30.15 Certain items containing byproduct material

This section would be revised to add paragraph (a)(1)(viii) to authorize 0.037 MBq (1 μCi) of radium-226 per

timepiece in intact timepieces manufactured before the effective date of the rule, and limited repair activities involving non-intact timepieces.

Section 30.18 Exempt quantities

Paragraph (b) would be revised to include accelerator-produced radioactive material, now considered byproduct material, that might have been distributed under an authorization of a State, that was received or acquired before September 25, 1971, under the general license then provided in 10 CFR 31.4 or similar general license of a State.

Section 30.20 Gas and aerosol detectors containing byproduct material

Paragraph (a) would be revised to apply to gas and aerosol detectors manufactured or distributed before the effective date of the final rule in accordance with a specific license issued by a State with comparable provisions to 10 CFR 32.26.

Section 30.32 Application for specific licenses

Paragraph (g)(1) would be revised to accept information from sealed source or device registrations with regard to NARM issued by States under provisions comparable to 10 CFR 32.210 as a basis for licensing the use of sources and devices.

Section 30.34 Terms and conditions of licenses

Paragraph (g) would be revised to require licensees to measure strontium-82 and strontium-85 contamination before use of the first eluate when eluding strontium-82/rubidium-82 generators.

Section 30.71 Schedule B

Schedule B would be revised to include 13 radionuclides, that are now considered byproduct material, and their associated activities.

Section 30.72 Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release

The table in Schedule C would be revised to specifically include radium-226 and its associated values.

Part 31—General Domestic Licenses for Byproduct Material

The authority citation for this part would be revised to reflect the EPAct.

Section 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere

Paragraph (b)(1) would be revised to add authority under the general license for byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in an equivalent specific license issued by a State with comparable provisions to 10 CFR 32.51.

Paragraph (c)(13)(i) would be revised to add radium-226, with an activity of at least 3.7 MBq (0.1 mCi) to the criteria for devices requiring registration.

Section 31.8 Americium-241 and radium-226 in the form of calibration or reference sources

The heading and paragraph (a) would be revised to include radium-226 in this general license for calibration and reference sources.

Paragraph (b) would be revised to include radium-226 calibration or reference sources manufactured or initially transferred in accordance with the specifications contained in a specific license issued by a State with comparable provisions to 10 CFR 32.57.

Paragraph (c)(1) would be revised to include an activity limit of 0.185 MBq (5 μCi) of radium-226.

Paragraph (c)(2) would be revised to include radium-226 in the labeling requirement, with the provision added to footnote 1 that, for those sources manufactured before the effective date of the final rule, sources containing radium-226 shall be labeled in accordance with the applicable State regulations at the time of manufacture or import.

Paragraphs (c)(4), (d), and (e) would be revised to include radium-226.

Section 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing

Paragraphs (a) and (c) would be revised to include cobalt-57 to the list of authorized byproduct material for use in in vitro clinical or laboratory testing.

Paragraph (d) would be revised to allow receipt of prepackaged units that are labeled in accordance with a specific license issued by a State with comparable provisions to 10 CFR 32.71.

Sections 31.12, 31.13, and 31.14 would be redesignated as §§ 31.21, 31.22, and 31.23, respectively

Section 31.12 General license for certain items and self-luminous products containing radium-226

A new section, 10 CFR 31.12, would be added to the regulations to add a general license for certain items and self-luminous products containing radium-226 that were manufactured prior to the effective date of the rule. The general license addresses radium-226 contained in products such as antiquities originally intended for use by the general public, luminous items installed in aircraft, luminous items no longer installed in aircraft, other luminous products including timepiece hands and dials no longer installed in timepieces, and small radium sources containing no more than 0.037 MBq (1 μCi) of radium-226.

The general license would exempt persons from the provisions of 10 CFR parts 19, 20, and 21 to the extent that receipt, possession, use, or transfer are within the terms of the general license. However, the exemption shall not be deemed to apply to any person who is also specifically licensed by the Commission.

The general license would include requirements for notification, reporting, and disposal. The general license would prohibit abandoning the device, and it would not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226. Export shall only be in accordance with 10 CFR part 110.

Part 32—Specific Domestic Licenses To Manufacture or Transfer Certain Items Containing Byproduct Material

The authority citation for this part would be revised to reflect the EPAct.

Section 32.1 Purpose and scope

A new paragraph (c) would be added to inform Government agencies, Federally recognized Indian Tribes, other licensees, and other persons who manufacture or initially transfer items containing accelerator-produced radioactive material or discrete sources of radium-226 for sale or distribution to persons exempted from the licensing requirements of part 30 of this chapter, and persons generally licensed under part 31 or part 35 of this chapter, and radioactive drugs and sources and devices to medical use licensees, that the requirements in part 32 will apply to them when their waiver is terminated before issuance of an amendment or new license for such activities. The requirements will apply to Government

agencies and Federally recognized Indian Tribes on the effective date of the final rule.

This paragraph would allow Government agencies, Federally recognized Indian Tribes, other persons, and other licensees who manufacture or initially transfer items containing accelerator-produced radioactive material or discrete sources of radium-226 for sale or distribution to persons exempted from the licensing requirements of part 30 of this chapter, persons generally licensed under part 31 or part 35 of this chapter, and radioactive drugs and sources and devices to medical use licensees to continue to manufacture or initially transfer these items to such persons when their waiver is terminated before issuance of an amendment or new license for such activities.

Section 32.57 Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer

The heading and the section would be revised to add radium-226.

Section 32.58 Same: Labeling of devices

This section would be revised to include radium-226 in the example label.

Section 32.59 Same: Leak testing of each source

This section would be revised to include radium-226.

Section 32.71 Manufacture and distribution of byproduct material for certain in vitro clinical or laboratory testing under general license

Paragraph (b)(8) would be added to include cobalt-57, in units not exceeding 0.37 MBq (10 μCi), each, to the list of authorized byproduct material approved for distribution.

Paragraph (c)(1) would be revised to include cobalt-57.

Section 32.72 Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under 10 CFR part 35

Paragraph (a) would be revised to ensure that the NRC regulation encompasses all byproduct, non-PET accelerator-produced radioactive material, and PET drug production facilities registered with the FDA or a State agency.

Paragraph (b) would be revised to authorize PET radionuclide production, if under the supervision of an authorized user; to recognize nuclear pharmacists who, before the effective date of the final rule, prepared only accelerator-produced radioactive drugs as authorized nuclear pharmacists under the NRC's waiver of August 31, 2005; and to allow the use of the notification process as specified in 10 CFR 35.14 for authorized nuclear pharmacists who, before the effective date of the final rule, prepared accelerator-produced radioactive drugs, and who were identified on permits issued by the master materials licensees, or on permits issued by master materials permittees of broad scope, to also work as authorized nuclear pharmacists at a commercial nuclear pharmacy under the notification process.

Section 32.102 Schedule C—prototype tests for calibration or reference sources containing americium-241 or radium-226

The heading and section would be revised to include radium-226.

Part 33—Specific Domestic Licenses of Broad Scope for Byproduct Material

The authority citation for this part would be revised to reflect the EPAct.

Section 33.100 Schedule A

This table would be revised to add four additional radionuclides and their associated values.

Part 35—Medical Use of Byproduct Material

The authority citation for this part would be revised to reflect the EPAct.

Section 35.2 Definitions

The definitions of Authorized nuclear pharmacists and Authorized user would be revised to encompass those individuals who, before the EPAct, only used accelerator-produced radioactive material and discrete sources of radium-226 in non-Agreement States, Agreement States, or Federal facilities that may have never been identified on a license or a permit.

The definitions of Cyclotron and Positron Emission Tomography (PET) radionuclide production facility would be added.

Section 35.10 Implementation

A new paragraph (a) would be added to clarify that Government agencies and Federally recognized Indian Tribes possessing and using accelerator-produced radioactive material and discrete sources of radium-226 for medical use must comply with the requirements in this part on the effective date of the final rule. The paragraph also informs other individuals using this material for medical use on when they must comply with the requirements of this part.

Section 35.11 License required

A new paragraph (a), with the remaining paragraphs redesignated, would be added to allow Government agencies, Federally recognized Indian Tribes, and other persons who possessed and used accelerator-produced radioactive materials or discrete sources of radium-226, under the provisions of the NRC's waiver of August 31, 2005, to have time to apply for and receive a new medical use license. This section would provide the time period for applying for a new license.

Section 35.13 License amendments

Paragraph (a) would be modified to allow Government agencies, Federally recognized Indian Tribes, and other licensees that possessed and used accelerator-produced radioactive materials or discrete sources of radium-226, under the provisions of the NRC's waiver of August 31, 2005, to continue to use this material provided that they submit application to amend their licenses. This section would provide the time period for amending licenses.

A new paragraph (b)(4)(v) would be added to grandfather physicians and pharmacists who only used accelerator-produced radioactive materials or discrete sources of radium-226 during the NRC's waiver of August 31, 2005.

Paragraph (e) would be modified to require an amendment before a licensee adds to, or changes, areas of use identified in the application or on the license, including areas used in accordance with either 10 CFR 35.100 or 35.200 if the change includes the addition or relocation of either an area where PET radionuclides are produced or a radionuclide delivery line from the PET radionuclide production area. Other areas of use where byproduct material is used only in accordance with either 10 CFR 35.100 or 10 CFR 35.200 would continue to be excluded from this requirement.

Section 35.14 Notifications

Paragraph (a) would be revised to address notification of nuclear pharmacists and physicians who used only accelerator-produced radioactive materials and discrete sources of radium-226 who have not been identified on a license or permit during the NRC's waiver of August 31, 2005.

Paragraph (b) would be revised to retain, in the notification requirements, any additions or changes in 10 CFR 35.100 or 10 CFR 35.200 areas of use, if the changes do not involve additions or

relocations of either an area where PET radionuclides are produced or a radionuclide delivery line from the PET radionuclide production area.

Section 35.15 Exemptions regarding Type A specific licenses of broad scope

Paragraph (f) would be revised to retain the existing notification exemption for addition or changes in 10 CFR 35.100 or 10 CFR 35.200 areas of use, if the changes do not involve additions or relocations of either an area where PET radionuclides are produced or a radionuclide delivery line from the PET radionuclide production area.

Section 35.57 Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist

A new paragraph (a)(3) would be added to grandfather Radiation Safety Officers, medical physicists, or nuclear pharmacists who only used accelerator-produced radioactive materials or discrete sources of radium-226 during the NRC's waiver of August 31, 2005.

A new paragraph (b)(3) would be added to grandfather physicians, dentists, or podiatrists who only used accelerator-produced radioactive materials or discrete sources of radium-226 under the NRC's waiver of August 31, 2005.

Section 35.63 Determination of dosages of unsealed byproduct material for medical use

This section would be revised to add a new provision in paragraphs (b)(2) and (c)(3) to include an NRC or Agreement State medical use licensee with a PET radionuclide production facility.

Section 35.69 Labeling of vials and syringes and transport radiation shields

The heading would be revised to add transport radiation shields, and the section would be revised to reorganize existing text and add a new provision to address labeling requirements for medical use licensees that are authorized for noncommercial distribution of PET drugs.

Section 35.100 Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required

Paragraph (a) of this section would be revised to permit medical use licensees to obtain PET radionuclides and drugs by noncommercial transfer from an NRC or Agreement State medical use licensee with a PET radionuclide production facility.

Paragraph (b) of this section would be revised to continue to allow medical use licensees to obtain unsealed byproduct material for uptake, dilution, and excretion studies from individuals listed within this paragraph, with the exception of obtaining PET radionuclides produced by these individuals.

Section 35.200 Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required

Paragraph (a) of this section would be revised to permit medical use licensees to obtain PET radionuclides and drugs by noncommercial transfer from an NRC or Agreement State medical use licensee with a PET radionuclide production facility.

Paragraph (b) of this section would be revised to continue to allow medical use licensees to obtain unsealed byproduct material for uptake, dilution, and excretion studies from individuals listed within this paragraph, with the exception of obtaining PET radionuclides produced by these individuals.

Section 35.204 Permissible molybdenum-99, strontium-82, and strontium-85 concentrations

The heading of this section would be revised to add strontium-82 and strontium-85.

Paragraph (a) of this section would be revised to address acceptable strontium-82 and strontium-85 concentrations when eluting strontium-82/rubidium-82 generators.

Paragraph (c) of this section would be revised and redesignated, and a new paragraph (c) would be added to address measuring requirements for strontium-82 and strontium-85.

Section 35.300 Use of unsealed byproduct material for which a written directive is required

Paragraph (a) of this section would be revised to permit medical use licensees to obtain PET radionuclides and drugs by noncommercial transfer from an NRC or Agreement State medical use licensee with a PET radionuclide production facility.

Paragraph (b) of this section would be revised to continue to allow medical use licensees to obtain unsealed byproduct material for uptake, dilution, and excretion studies from individuals listed within this paragraph, with the exception of obtaining PET radionuclides produced by these individuals.

Section 35.2204 Records of molybdenum-99, strontium-82, and strontium-85 concentrations

The heading would be revised to add strontium-82 and strontium-85, and this section would be revised to include a recordkeeping requirement of the strontium-82 and strontium-85 concentration tests required by 10 CFR 35.204(b) and (c).

Part 50—Domestic Licensing of Production and Utilization Facilities

The authority citation for this part would be revised to reflect the EPAct.

Section 50.2 Definitions

The definition of Byproduct material would be revised to be consistent with the new definition as mandated by the EPAct, with the exception that it will not include byproduct material as defined in Section 11e.(2) of the AEA.

Part 61—Licensing Requirements for Land Disposal of Radioactive Waste

The authority citation for this part would be revised to reflect the EPAct.

Section 61.2 Definitions

The definition of Waste would be revised to clarify that, as mandated by the EPAct, byproduct material, as defined in Sections 11e.(3) and 11e.(4) of the AEA, is not low-level radioactive waste as defined in the LLRWPAA.

Part 62—Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

The authority citation for this part would be revised to reflect the EPAct.

Section 62.2 Definitions

The definition of Low-level radioactive waste would be revised to correct a cross reference and to clarify that byproduct material, as defined in Sections 11e.(3) and 11e.(4) of the AEA, is not considered low-level radioactive waste.

Part 72—Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste

The authority citation for this part would be revised to reflect the EPAct.

Section 72.3 Definitions

The definition of Byproduct material would be revised to be consistent with the definition in 10 CFR 30.4. This definition would be consistent with the definition of Byproduct material in the EPAct, with the exception that it will

not include byproduct material as defined in Section 11e.(2) of the AEA.

Part 110—Export and Import of Nuclear Equipment and Material

The authority citation for this part would be revised to reflect the EPAct.

Section 110.2 Definitions

Definitions of Accelerator-produced radioactive material, Discrete source, and Particle accelerator would be added.

Part 150—Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

The authority citation for this part would be revised to reflect the EPAct.

Section 150.3 Definitions

The definition of Byproduct material would be revised to be consistent with the definition in the EPAct.

A definition of Discrete source would be added.

Part 170—Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The authority citation for this part would be revised to reflect the EPAct.

Section 170.3 Definitions

The definition of Byproduct material would be revised to be consistent with the new definition in the AEA, with the exception that it would not include byproduct material as defined in Section 11e.(2) of the AEA.

Section 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses

This section would be revised to include licenses that would not be included in existing fee categories. Fee Category 3.B. would be revised to include licenses for repair, assembly, and disassembly of products containing radium-226. Two new fee categories, 3.R. and 3.S., would be added to include fees for possession of items or products containing radium-226 which exceed the number of items or limits specified in 10 CFR 31.12 and for production of accelerator-produced radioactive material.

Part 171—Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The authority citation for this part would be revised to reflect the EPAct.

Section 171.5 Definitions

The definition of Byproduct material would be revised to be consistent with the new definition in the AEA, with the exception that it would not include byproduct material as defined in Section 11e.(2) of the AEA.

Section 171.16 Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

This section would be revised to include licenses that would not be included in existing fee categories. Fee Category 3.B. would be revised to include licenses for repair, assembly, and disassembly of products containing radium-226. Two new fee categories, 3.R. and 3.S., would be added to include fees for possession of items or products containing radium-226 which exceed the number of items or limits specified in 10 CFR 31.12 and for production of accelerator-produced radioactive material.

IV. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 20, 30, 31, 32, 33, 35, 50, 61, 62, 72, 110, 150, 170, and 171 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this proposed rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the proposed rule in accordance with the procedure established within Part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

NRC program elements (including regulations) are placed into four compatibility categories (See the Draft Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program elements that are not required for compatibility but are identified as having a particular health and safety role (*i.e.*, adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements, because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the Atomic Energy Act, as amended, or provisions of Title 10 of the Code of Federal Regulations. These program elements are not adopted by Agreement States.

The following table lists the Parts and Sections that would be revised and their corresponding categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.'' A bracket around a category means that the section may have been adopted elsewhere, and it is not necessary to adopt it again.

The NRC invites comment on the compatibility category designations in the proposed rule and suggests that commenters refer to Handbook 5.9 of Management Directive 5.9 for more information. The NRC notes that, like the rule text, the compatibility category designations can change between the proposed rule and final rule, based on comments received and Commission decisions regarding the final rule. The NRC encourages anyone interested in commenting on the compatibility category designations in any manner to do so during the comment period.

The definition of Byproduct material in the AEA was expanded by Section 651(e) of the EPAct to incorporate certain discrete sources of radium-226 and certain accelerator produced radioactive materials. The definition of Byproduct material in 10 CFR Parts 20, 30, 50, 72,150, 170, and 171 would be amended to reflect the changes to the AEA. The definition of Byproduct material in Parts 50, 72, 170, and 171 is reserved to NRC. For the definition of Byproduct material in 10 CFR Parts 20, 30 and 150, the NRC proposes to identify it as H&S. This designation is for regulatory program elements that have particular health and safety significance. The H&S designation indicates that the definition is needed for purposes of ''adequacy,'' since if NARM is included in the Agreement between the NRC and the Agreement State, then NARM would be a necessary program element of the Agreement State program to adequately ensure public health and safety. The definition of Discrete source has also been identified in this proposed rule as H&S since it is a part of the definition of Byproduct material. NRC specifically requests comments on the compatibility designations. In particular, NRC requests comments on whether the definitions of Byproduct material and Discrete source are correctly identified as H&S, considering the procedures in Management Directive 5.9 and considering that the EPAct redefined the term byproduct material and required the NRC to include a definition of Discrete source in its final regulations. If commenters believe that these definitions should not be identified as H&S, the NRC requests comment and justification for a different compatibility category under Management Directive 5.9.

DRAFT COMPATIBILITY TABLE

Section	Change	Subject	Compatibility	
			Existing	New
20.1003	Amend	Definition: Byproduct Material (add 11e.(3) & 11e.(4) material).	[A]	[H&S]
20.1003	Add	Definition: Discrete Source		H&S
20.1003	Add	Definition: Waste		B
20.2001(a)(4)	Amend	General requirements (add reference to new § 20.2008)	C	C
20.2006(e)	Add	Transfer for disposal and manifests (add 11e.(3) and 11e.(4) byproduct material).		B
20.2008	Add	Disposal of 11e.(3) and 11e.(4) byproduct material (new section).		B
30.3(a)	Amend	Activities requiring license (add reference to paragraph (c)).	C	C
30.3(b)(1)	Add	Activities requiring license (requirements that apply to Government agencies and Federally recognized Indian Tribes at waiver termination).		NRC
30.3(b)(2)	Add	Activities requiring license (authorization for Government agencies and Federally recognized Indian Tribes to possess and use 11e.(3) materials while applying for a license amendment).		NRC
30.3(b)(3)	Add	Activities requiring license (authorization for Government agencies and Federally recognized Indian Tribes to possess and use 11e.(3) materials while applying for a new license).		NRC
30.3(c)(1)	Add	Activities requiring license (requirements that apply to all other persons at waiver termination).		D
30.3(c)(2)	Add	Activities requiring license (authorization for all other persons to possess and use 11e.(3) materials while applying for a license amendment).		D
30.3(c)(3)	Add	Activities requiring license (authorization for all other persons to possess and use 11e.(3) materials while applying for a new license).		D
30.3(d)	Add	Activities requiring license (continuation of authority for failure to submit amendment or license).		D
30.4	Add	Definition: Accelerator-produced radioactive material		H&S
30.4	Amend	Definition: Byproduct material (add 11e.(3) & 11e.(4) material).	[A]	[H&S]
30.4	Add	Definition: Cyclotron		D
30.4	Add	Definition: Discrete source		H&S
30.4	Add	Definition: Particle Accelerator		H&S
30.15(a)(1)(viii)	Add	Certain items containing byproduct material (add radium-226 intact timepieces and limited repairs).	B (all § 30.15)	B
30.18(b)	Amend	Exempt quantities (add 11e.(3) material)	B (all § 30.18)	B
30.20(a)	Amend	Gas and aerosol detectors containing byproduct material (grandfather 11e.(3) detectors).	B (all § 30.20)	B

DRAFT COMPATIBILITY TABLE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
30.32(g)(1)	Amend	Application for specific licenses	C	C
30.34(g)	Amend	Terms and conditions of licenses (add strontium-82/rubidium-82 generators).	D	H&S
30.71	Amend	Schedule B (add 11e.(3) material)	B	B
30.72	Amend	Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release (add radium-226).	H&S	H&S
31.5(b)(1) & (c)(13)	Amend	Certain detecting, measuring, gauging, or controlling devices and/or an ionizing atmosphere (add devices with NARM approved by States).	B (all § 31.5)	B
31.8	Amend	Americium-241 in the form of calibration or reference sources (add radium-226).	D	D
31.11	Amend	General license for use of byproduct material for certain in vitro clinical or laboratory testing (add cobalt-57).	D	D
31.12	Add	General license for certain items and self-luminous products containing radium-226 (new section).		C
32.1(c)(1)	Add	Purpose and scope (requirements that apply to Government agencies and Federally recognized Indian Tribes at waiver termination and authorization to manufacture and distribute items with 11e.(3) material while applying for amendment or license).		NRC
32.1(c)(2)	Add	Purpose and scope (requirements that apply to all other persons at waiver termination and authorization to manufacture and distribute items with 11e.(3) material while applying for amendment or license).		D
32.57	Amend	Calibration or reference sources containing americium-241: Requirements for license to manufacture or initially transfer (add radium-226).	B	B
32.58	Amend	Same: Labeling of devices (add radium-226)	B	B
32.59	Amend	Same: Leak testing of each source (add radium-226)	B	B
32.71(b)(8) & (c)(1)	Add	Manufacture and distribution of byproduct material for certain in vitro clinical or laboratory testing under general license (add cobalt-57).	B	B
32.72(a)(2)(i), (iii), (iv), (v), & (b).	Amend	Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under Part 35 (recognize FDA and State registrations of PET facilities and pharmacist using 11e.(3) material).	B	B
32.102	Amend	Schedule C—prototype tests for calibration or reference sources containing americium-241 (add radium-226).	B	B
33.100	Amend	Schedule A (add beryllium-7, cobalt-57, radium-226, & sodium-22).	D	D
35.2	Amend	Definition: Authorized nuclear pharmacist (recognize pharmacist, who used 11e.(3) material).	B	B
35.2	Amend	Definition: Authorized user (recognize authorized user, who used 11e.(3) material).	B	B
35.2	Add	Definition: Cyclotron		D
35.2	Add	Definition: Positron Emission Tomography (PET) radionuclide production facility.		H&S
35.10(a)	Add	Implementation (requirements that apply at waiver termination).		D
35.10(g)	Redesignated	Implementation		D
35.11(a)	Amend	License required (reference to 35.11(c)	C	C
35.11(c)(1)	Add	License required (authorize medical use of 11e.(3) materials by Government agencies and Federally recognized Indian Tribes while applying for license).		NRC
35.11(c)(2)	Add	License required (authorize medical use of 11e.(3) materials by all other persons while applying for license).		D
35.13(a)(1)	Amend	License amendments (authorize medical use of 11e.(3) materials by Government agencies and Federally recognized Indian Tribes while applying for amendment).		NRC
35.13(a)(2)	Amend	License amendments (authorize medical use of 11e.(3) materials by all other materials while applying for amendment).		D
35.13(b)(4)(v)	Add	License amendments (grandfather physicians and pharmacists that used 11e.(3) material).	D	D
35.13(e)	Amend	License amendments (clarify amendment need)	D	D
35.14(a) and (b)(4)	Amend	Notifications (using notification to allow continued operation for certain 11e.(3) material).	D	D

DRAFT COMPATIBILITY TABLE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
35.15(f)	Amend	Exemptions regarding Type A specific licenses of broad scope (clarify the exemption).	D	D
35.57(a)(3) & (b)(3)	Amend	Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized user, and nuclear pharmacist (grandfather RSO, who used 11e.(3) material).	B	B
35.63(b)(2)(ii) & (c)(3)	Amend	Determination of dosages of unsealed byproduct material for medical use (recognize State licenses and State requirements).	H&S	H&S
35.63(b)(2)(iii)	Add	Determination of dosages of unsealed byproduct material for medical use (recognize State licenses of PET facilities).		H&S
35.69(b)	Add	Labeling of vials and syringes (to include PET drugs)	H&S	H&S
35.100(a) & (b)	Amend	Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required (allow use of PET radionuclides).	H&S	H&S
35.200(a) & (b)	Amend	Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required (allow use of PET radionuclides).	H&S	H&S
35.204(a)	Amend	Permissible molybdenum-99 concentrations (add strontium-82 & strontium-85).	H&S	H&S
35.204(c)	Add	Permissible molybdenum-99 concentrations (add strontium-82 & strontium-85.		D
35.204(d)	Redesignated	Permissible molybdenum-99 concentrations	D	D
35.300(a) and (b)	Amend	Use of unsealed byproduct material for which a written directive is required (allow use of PET radionuclides).	H&S	H&S
35.2204	Amend	Records of molybdenum-99 concentrations (add strontium-82 & strontium-85).	D	D
50.2	Amend	Definition: Byproduct material (add 11e.(3) & 11e.(4) material).	NRC	NRC
61.2	Amend	Definition: Waste (clarify 11e.(3) & 11e.(4) material)	B	B
62.2	Amend	Definition: Low-level radioactive waste (clarify 11e.(3) & 11e.(4) material).	NRC	NRC
72.3	Amend	Definition: Byproduct material (add 11e.(3) & 11e.(4) material).	NRC	NRC
110.2	Add	Definition: Accelerator-produced radioactive material		NRC
110.2	Add	Definition: Discrete source		NRC
110.2	Add	Definition: Particle accelerator		NRC
150.3	Amend	Definition: Byproduct material (add 11e.(3) & 11e.(4) material).	A	H&S
150.3	Add	Definition: Discrete source		H&S
10 CFR Part 170 address areas that generally are applicable only to NRC's regulatory program; therefore, no compatibility designation is assigned.				
170.3	Amend	Definition: Byproduct material (add 11e.(3) & 11e.(4) material).		
170.31 Table: 3B	Amend	Other licenses for possession and use of byproduct material issued under Part 30 (revise to include radium-226).		
170.31 Table: 3R.1.	Add	Possession of items or products containing radium-226 (add a new fee category).		
170.31 Table: 3R.2.	Add	Possession of items or products containing radium-226 (add a new fee category).		
170.31 Table: 3S	Add	License for production of accelerator-produced radionuclides (add a new fee category).		
10 CFR Part 171 address areas that generally are applicable only to NRC's regulatory program; therefore, no compatibility designation is assigned.				
171.5	Amend	Definition: Byproduct material (add 11e.(3) & 11e.(4) material).		
171.16 Table: 3B	Amend	Other licenses for possession and use of byproduct material issued under part 30 (revise to include radium-226).		
171.16 Table: 3R	Add	Possession of items or products containing radium-226 (add a new fee category).		
171.16 Table: 3S	Add	License for production of accelerator-produced radionuclides (add a new fee category).		

VI. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would assume regulation of certain discrete sources of naturally occurring radioactive material and accelerator-produced radioactive material in addition to those byproduct materials already under the NRC's jurisdiction. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

The EPAct required that the NRC use model State standards to the maximum extent practicable in developing and issuing regulations for the newly expanded definition of byproduct material. In developing this proposed rule, the NRC has consulted with Agreement and non-Agreement States about their regulations. To the maximum extent practicable, the NRC has incorporated the CRCPD's SSRs into the proposed rule.

VIII. Environmental Assessment and Finding of No Significant Environmental Impact: Availability

The Commission is preparing an environmental assessment to determine if an environmental impact statement would be required for this proposed rule. Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, an environmental impact statement is required if this proposed rule, if adopted, is likely to be a major Federal action significantly affecting the quality of the human environment.

Amendments to the NRC's regulations would incorporate new materials into the NRC's byproduct material regulatory program or establish new program elements, if needed. Before the EPAct, the regulation of naturally occurring and accelerator-produced radioactive material (NARM), other than source material, was left primarily to the individual States. Although efforts were made by several States to provide a uniform regulatory environment, particularly for accelerator-produced radioactive material, there is currently no nationwide consistency to the regulation of NARM. The proposed amendments to the NRC regulations would provide a uniform regulatory environment for the acquisition, possession, use, transfer, and disposal of NARM. This uniform regulatory environment would be developed in cooperation with the States, using model State standards in existence to the maximum extent practicable. Because the approach for developing the generic NRC requirements would start with the existing generic requirements for accelerator-produced radioactive material that had already been developed by the States for the SSRs, little, if any, change is expected to the byproduct material regulatory programs already in place for Agreement States. Consequently, for Agreement States, the primary foreseeable impact of the regulatory changes applicable to accelerator-produced radioactive material is that the regulations would be uniformly applied by all Agreement States. Therefore, for the regulation of accelerator-produced radioactive material by the Agreement States, the proposed amendments to the NRC regulations, if adopted, are not expected to have any adverse environmental impacts.

In non-Agreement States, the proposed amendments to the NRC regulations would most likely impose more restrictive requirements on the acquisition, possession, use, transfer, and disposal of accelerator-produced radioactive materials. In situations where the new NRC requirements are more restrictive than those already imposed by individual States' existing regulations, if any, the result would most likely be a positive impact on the environment. In situations where the NRC's requirements are less restrictive than the individual State's regulations, it is likely that the licensee would most likely continue with its current practice, and no substantial impact on the environment would be anticipated. Therefore, it is expected that the overall environmental impacts of the proposed regulation of accelerator-produced radioactive material by non-Agreement States, if adopted, would be positive.

The effects of the proposed amendments to the NRC regulations applicable to discrete sources of radium-226 and discrete sources of other naturally occurring radioactive material would be greater for the non-Agreement States than for the Agreement States because certain non-Agreement States do not have a regulatory program addressing this material. The imposition of regulations on the acquisition, possession, use, transfer, and disposal of these discrete sources of naturally occurring radioactive material would provide greater assurance that these activities are performed in a manner that is expected to be less harmful to the environment than would be assured without these regulations. Therefore, the effect of the proposed NRC regulations applicable to discrete sources of naturally occurring radioactive material, if adopted, is anticipated to be beneficial to the environment, and it is expected that the overall environmental impacts would be positive.

Therefore, the preliminary determination of this environmental assessment is that there will be no significant impact to the public from this action. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and request their comments on the environmental assessment. The environmental assessment may be examined at the NRC Public Document Room, O–1F21, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment will be available from Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov.*

IX. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements contained in 10 CFR parts 19, 20, 30, 31, 32, and 35 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collection requirements have been submitted to the Office of Management and Budget for review and approval. The proposed changes to 10 CFR parts 33, 50, 61, 62, 72, 110, 150, 170 and 171 do not contain new or amended information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR parts 20, 30, 31, 32, 33, 35, 50, 61, 62, 72, 110, 150, 170, and 171, ''Requirements for Expanded Definition of Byproduct Material.''

The form number if applicable: NRC Forms 4, 5, 313, 313A, 314, and 664.

How often the collection is required: Initially, periodically based on regulated activity, quarterly, annually, and at license termination.

Who will be required or asked to report: New licensees that operate certain linear accelerators or cyclotrons for the purposes of producing radionuclides, new licensees that manufacture or transfer certain items containing discrete radium-226 sources, or that possess products that contain radium-226 sources, and existing licensees that may have additional testing, labeling, or reporting requirements due to their possession of radioactive material that fits the expanded definition of byproduct material.

An estimate of the number of annual responses: 5,258 (10 CFR part 19—350 responses; 10 CFR 20—511 responses; 10 CFR 30—250 responses; 10 CFR part 31—540 responses; 10 CFR 32—220 responses; 10 CFR 35—759 responses; NRC Form 4—30 responses; NRC Form 5—1,030 responses; NRC Form 313—1,250 responses; NRC Form 313A—300 responses; NRC Form 314—1 response; NRC Form 664—15 responses).

The estimated number of annual respondents: 2,358 (10 CFR 19—200 respondents; 10 CFR 20—250 respondents; 10 CFR 30—10 respondents; 10 CFR 31—40 respondents; 10 CFR 32—110 respondents; 10 CFR 35—122 respondents; NRC Form 4—30 recordkeepers; NRC Form 5—30 respondents; NRC Form 313—1,250 respondents; NRC Form 313A—300 respondents; NRC Form 314—1 respondent; NRC Form 664—15 respondents).

An estimate of the total number of hours needed annually to complete the requirement or request: The total burden increase for this rulemaking is 110,600 hours (10 CFR part 19 —4,811 hours; 10 CFR 20—8,843 hours; 10 CFR 30—5,393 hours; 10 CFR part 31—200 hours; 10 CFR 32—43,019 hours; 10 CFR 35—29,526 hours; NRC Form 4—21 hours; NRC Form 5—2,231 hours; NRC Form 313—15,550 hours; NRC Form 313A—1,000 hours; NRC Form 314—1 hour; NRC Form 664—5 hours).

Abstract: The NRC is proposing to amend its regulations to include jurisdiction over certain radium sources, accelerator-produced radioactive materials, and certain naturally occurring radioactive material, as required by the EPAct, which was signed into law on August 8, 2005. Section 651(e) of the EPAct expanded the AEA's definition of byproduct material to include any discrete source of radium-226, any material made radioactive by use of a particle accelerator, and any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with other Federal officials, determines would pose a similar threat to the public health and safety or the common defense and security as a discrete source of radium-226, that are extracted or converted after extraction for use in a commercial, medical, or research activity. In so doing, these materials were placed under the NRC's regulatory authority. Section 651(e) of the EPAct also mandated that the Commission, after consultation with States and other stakeholders, issue final regulations establishing requirements that the Commission determines necessary to carry out this section and the amendments made by this section. This proposed rule would establish licensing requirements with associated recordkeeping and reporting requirements that would be applied to licensees that possess, transfer, manufacture or distribute these radioactive materials newly placed under NRC jurisdiction. The NRC has used to the maximum extent practicable the CRCPD's applicable SSRs in developing this proposed rule. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov.*

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by August 28, 2006 to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0044, –0014, –0017, –0016, –0001, –0010, –0005, –0006, –0120, –0028, and –0198), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *John_A._Asalone@omb.eop.gov* or comment by telephone at (202) 395–4650.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The draft regulatory analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The draft regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD, and may be downloaded from the rule forum website at *http://ruleforum.llnl.gov.* Single copies of the regulatory analysis are available from Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov.*

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The majority of companies that own these businesses do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business

Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Section 651(e) of the EPAct expanded the definition of Byproduct material in Section 11e. of the AEA to include any discrete source of radium-226, any material made radioactive by use of a particle accelerator, and any discrete source of naturally occurring radioactive material that would pose a similar threat to the public health and safety or the common defense and security as a discrete source of radium-226 that is extracted or converted after extraction for use in a commercial, medical, or research activity. This rulemaking would amend the NRC regulations to include this newly defined byproduct material. This amendment would potentially affect large numbers of individuals, businesses, or licensees engaged in activities involving discrete radium-226 sources or accelerator-produced radioactive material used for commercial, medical, or research activities. Many individuals, businesses, or licensees would qualify as small business entities as defined by 10 CFR 2.810. However, the proposed rule is not expected to have a significant economic impact on these individuals, businesses, or licensees because the NRC is using the existing regulatory framework to regulate these materials and is allowing sufficient time for individuals, businesses, and licensees to implement the requirements for this radioactive material. Based on the draft regulatory analysis, the NRC believes that the selected alternative reflected in the proposed amendment is protective of public health and safety and is not overly burdensome to accomplish the NRC's regulatory objective. The NRC also notes that several Agreement States have imposed similar requirements on their licensees either by rule, order, or license condition.

Because of the broad spectrum of products and uses for this newly defined byproduct material and the potential impact to a wide population of individuals, businesses, and licensees, the NRC is specifically requesting public comment concerning the impact of the proposed regulation. The NRC particularly desires comment from individuals, businesses, or licensees, who qualify as small businesses, as to how the proposed regulation will affect them and how the requirements imposed on small entities may be modified to be less stringent while still adequately protecting the public health and safety. Comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss:

1. Are small businesses likely to be affected by the proposed regulations? If so, for what types of material and/or equipment that are currently, or may potentially be, used (e.g., accelerators, cyclotrons, radium sources)? How many small businesses would be affected by the proposed regulations?

2. If small businesses are likely to be affected by the proposed regulations, is the significance of the potential economic burden related to the size of the business? If so, how? How does this burden compare to larger organizations in the same business community?

3. How could the proposed regulations be modified to take into account the differing needs or capabilities of small businesses while maximizing potential benefits and minimizing the potential economic burden? What would be the approximate level of benefits to your entity if this change was made in the proposed rule?

4. How would these modifications to the proposed regulations (from question 3) act to more closely equalize the impact of the regulations or create more equal access to the benefits as opposed to providing special advantages to any individuals or groups?

5. Would these modifications (from question 3) act to increase, maintain, or decrease the NRC's ability to adequately protect public health and safety? How?

XII. Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1. Therefore, a backfit analysis is not required.

List of Subject

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 33

Byproduct material, Criminal penalties, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive waste treatment and disposal, Low-level waste policy amendments act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear

materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 20, 30, 31, 32, 33, 35, 50, 61, 62, 72, 110, 150, 170, and 171.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. In § 20.1003, the definition of Byproduct material is revised, and definitions of Accelerator-produced radioactive material, Discrete source, Particle accelerator, and Waste are added to read as follows:

§ 20.1003 Definitions.

* * * * *

Accelerator-produced radioactive material means any material made radioactive by a particle accelerator.

* * * * *

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute ''byproduct material'' within this definition;

(3)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(4) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

Discrete source means a radioactive source with physical boundaries, which is separate and distinct from the radioactivity present in nature, and in which the radionuclide concentration has been increased by human processes with the intent that the concentrated radioactive material will be used for its radiological properties.

* * * * *

Particle accelerator means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 megaelectron volt. For purposes of this definition, ''accelerator'' is an equivalent term.

* * * * *

Waste means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (2), (3), and (4) of the definition of Byproduct material set forth in this section.

* * * * *

3. In § 20.1009, paragraph (b) is revised to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2005, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2008, 20.2301, and appendix G to this part.

* * * * *

4. In § 20.2001, paragraph (a)(4) is revised to read as follows:

§ 20.2001 General requirements.

(a) * * *

(4) As authorized under §§ 20.2002, 20.2003, 20.2004, 20.2005, or 20.2008.

* * * * *

5. In § 20.2006, paragraph (e) is added to read as follows:

§ 20.2006 Transfer for disposal and manifests.

* * * * *

(e) Any licensee shipping byproduct material as defined in paragraphs (3) and (4) of the definition of Byproduct material set forth in § 20.1003 intended for ultimate disposal at a land disposal facility licensed under part 61 of this chapter must document the information required on NRC's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with appendix G to this part.

6. Section 20.2008 is added to Subpart K—Waste Disposal—to read as follows:

§ 20.2008 Disposal of certain byproduct material.

(a) Licensed material as defined in paragraphs (3) and (4) of the definition of Byproduct material set forth in § 20.1003 may be disposed of in accordance with part 61 of this chapter, even though it is not defined as low-level radioactive waste. Therefore, any licensed byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under part 61 of this chapter, must meet the requirements of § 20.2006.

(b) A licensee may dispose of byproduct material, as defined in paragraphs (3) and (4) of the definition of Byproduct material set forth in § 20.1003, at a disposal facility authorized to dispose of such material in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

7. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. Section 30.3 is revised to read as follows:

§ 30.3 Activities requiring license.

(a) Except as provided in paragraphs (b)(2), (b)(3), (c)(2), and (c)(3) of this section and for persons exempt as provided in this part and part 150 of this chapter, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter.

(b)(1) The requirements, including provisions that are specific to licensees, in this part and parts 19, 20, 21, and 71, of this chapter, as well as the additional requirements for specific broad scope, industrial radiography, irradiator, or well logging uses in 10 CFR parts 33, 34, 36, or 39, respectively, shall apply to Government agencies or Federally recognized Indian tribes on [date 60 days after date of publication of final rule], when conducting activities under the authority provided by paragraphs (b)(2) and (b)(3) of this section.

(2) A specifically licensed Government agency or Federally recognized Indian tribe that possesses and uses accelerator-produced radioactive material or discrete sources of radium-226 for which a license amendment is required to authorize the activities in paragraph (a) of this section, may continue to use these materials for uses permitted under this part until the date of the NRC's final licensing determination, provided that the licensee submits an amendment application on or before [date 8 months after date of publication of final rule].

(3) A Government agency or Federally recognized Indian tribe that possesses and uses accelerator-produced radioactive material or discrete sources of radium-226 for which a specific license is required in paragraph (a) of this section, may continue to use such material for uses permitted under this part until the date of the NRC's final licensing determination provided that the agency or tribe submits an application for a license authorizing activities involving these materials on or before [date 1 year and 2 months after date of publication of final rule].

(c)(1) The requirements, including provisions that are specific to licensees in this part and parts 19, 20, 21 and 71, of this chapter, as well as the additional requirements for specific broad scope, industrial radiography, irradiator, or well logging uses in 10 CFR parts 33, 34, 36, or 39, respectively, shall apply to all persons, other than those included in paragraph (b)(1) of this section, on August 8, 2009, or earlier as noticed by the NRC, when conducting activities under the authority provided by paragraphs (c)(2) and (c)(3) of this section.

(2) Except as provided in paragraph (b)(2) of this section, all other licensees who possess and use accelerator-produced radioactive material or discrete sources of radium-226 for which a license amendment is required to authorize the activities in paragraph (a) of this section, may continue to use these materials for uses permitted under this part until the date of the NRC's final licensing determination provided that the individual submits an amendment application on or before August 7, 2009, or earlier as noticed by the NRC.

(3) Except as provided in paragraph (b)(3) of this section, all other persons who possess and use accelerator-produced radioactive material or discrete sources of radium-226 for which a specific license is required in paragraph (a) of this section, may continue to use such material for uses permitted under this part until the date of the NRC's final licensing determination provided that the individual submits a license application on or before August 7, 2009, or earlier as noticed by the NRC.

(d) If a person or licensee is required to file an application for a license or amendment in accordance with paragraphs (b)(2), (b)(3), (c)(2), and (c)(3) of this section, but does not file for the license or amendment within the required time, the authority provided by paragraphs (b)(2), (b)(3), (c)(2), and (c)(3) of this section to receive or use the accelerator-produced radioactive material or discrete sources of radium-226 shall expire with respect to the person's or licensee's authority to receive and use such byproduct material. This authority shall not expire with respect to the responsibility of the person or licensee regarding the possession of such byproduct material, the decommissioning (including financial assurance) of facilities, or the disposal of such byproduct material.

9. In § 30.4, the definition of Byproduct material is revised, and the definitions of Accelerator-produced radioactive material, Cyclotron, Discrete source, and Particle accelerator are added alphabetically to read as follows:

§ 30.4 Definitions.

* * * * *

Accelerator-produced radioactive material means any material made radioactive by a particle accelerator.

* * * * *

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(3) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

Cyclotron means a circular particle accelerator in which charged particles are bent traveling through the accelerator. A cyclotron accelerates charged particles at energies usually in excess of 10 megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

* * * * *

Discrete source means a radioactive source with physical boundaries, which is separate and distinct from the radioactivity present in nature, and in which the radionuclide concentration has been increased by human processes with the intent that the concentrated radioactive material will be used for its radiological properties.

* * * * *

Particle accelerator means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 megaelectron volt. For purposes of this definition, accelerator is an equivalent term.

* * * * *

10. In § 30.15, paragraph (a)(1)(viii) is added to read as follows:

§ 30.15 Certain items containing byproduct material.

(a) * * *

(1) * * *

(viii) 0.037 megabecquerel (1 microcurie) of radium-226 per timepiece in intact timepieces manufactured prior to [date 60 days after the date of publication of the final rule]. However, notwithstanding the requirement that timepieces be intact, antique collectors and watch repair facilities may repair no more than 10 timepieces in any one year.

* * * * *

11. In § 30.18, paragraph (b) is revised to read as follows:

§ 30.18 Exempt quantities.

* * * * *

(b) Any person who possesses byproduct material received or acquired before September 25, 1971, under the general license then provided in § 31.4 of this chapter or similar general license of a State for accelerator-produced radioactive material, is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in parts 30 through 34 of this chapter to the extent that this person possesses, uses, transfers, or owns byproduct material.

* * * * *

12. In § 30.20, paragraph (a) is revised to read as follows:

§ 30.20 Gas and aerosol detectors containing byproduct material.

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in parts 20, and 30 through 36, and 39 of this chapter to the extent that the person receives, possesses, uses, transfers, owns, or acquires byproduct material, in gas and aerosol detectors designed to protect life or property from fires and airborne hazards, and manufactures, processes, produces, or initially transfers in accordance with a specific license issued under § 32.26 of this chapter, which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before [date 60 days after the date of publication of the final rule] in accordance with a specific license issued by a State under comparable provisions to § 32.26 of this chapter authorizing distribution to persons exempt from regulatory requirements.

* * * * *

13. In § 30.32, paragraph (g)(1) is revised to read as follows:

§ 30.32 Application for specific licenses.

* * * * *

(g) * * *

(1) Identify the source or device by manufacturer and model number as registered with the Commission under § 32.210 of this chapter, with an Agreement State, or with a State regarding source or device containing radium-226 or accelerator-produced radioactive material under provisions comparable to § 32.210 of this chapter; or

* * * * *

14. In § 30.34, paragraph (g) is revised to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(g) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with § 35.204 of this chapter. The licensee shall record the results of each test and retain each record for 3 years after the record is made.

* * * * *

15. Section 30.71 is revised by adding Cesium 129 (Cs 129), Cobalt 57 (Co 57), Gallium 67 (Ga 67), Germanium 68 (Ge 68), Gold 195 (Au 195), Indium 111 (In 111), Iodine 123 (I 123), Iron 52 (Fe 52), Potassium 43 (K 43), Rubidium 81 (Rb 81), Sodium 22 (Na 22), Yttrium 87 (Y 87), and Yttrium 88 (Y 88) in alphabetical order by element as follows:

§ 30.71 Schedule B.

Byproduct material	Microcuries
* * * * *	
Cesium 129 (Cs 129)	100
* * * * *	
Cobalt 57 (Co 57)	100
* * * * *	
Gallium 67 (Ga 67)	100
* * * * *	
Germanium 68 (Ge 68)	10
* * * * *	
Gold 195 (Au 195)	10
* * * * *	
Indium 111 (In 111)	100
* * * * *	
Iodine 123 (I 123)	100
* * * * *	
Iron 52 (Fe 52)	10
* * * * *	
Potassium 43 (K 43)	10
* * * * *	
Rubidium 81 (Rb 81)	10
* * * * *	
Sodium 22 (Na 22)	10

Byproduct material	Microcuries
* * * * *	
Yttrium 87 (Y 87)	10
Yttrium 88 (Y 88)	10
* * * * *	

16. Section 30.72 is revised by adding radium-226 in alphabetical order to read as follows:

§ 30.72 Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

Radioactive material [1]	Release fraction	Quantity (curies)
* * * * *		
Radium-226	0.001	100
* * * * *		

[1] For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Schedule C exceeds one.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

17. The authority citation for part 31 is revised to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

18. In § 31.4, paragraph (b) is revised to read as follows:

§ 31.4 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 31.5, 31.8, 31.11, and 31.12.

* * * * *

19. In § 31.5, paragraphs (b)(1)(i), (b)(1)(ii), and (c)(13)(i) are revised and paragraph (b)(1)(iii) is added to read as follows:

§ 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.

* * * * *

(b)(1) * * *

(i) A specific license issued under § 32.51 of this chapter;

(ii) An equivalent specific license issued by an Agreement State; or

(iii) An equivalent specific license issued by a State with provisions comparable to § 32.51 of this chapter.

* * * * *

(c) * * *

(13)(i) Shall register, in accordance with paragraphs (c)(13)(ii) and (iii) of this section, devices containing at least 370 megabecquerels (10 millicuries) of cesium-137, 3.7 megabecquerels (0.1 millicurie) of strontium-90, 37 megabecquerels (1 millicurie) of cobalt-60, 3.7 megabecquerels (0.1 millicurie) of radium-226, or 37 megabecquerels (1 millicurie) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address for a location of use, as described under paragraph (c)(13)(iii)(D) of this section, represents a separate general licensee and requires a separate registration and fee.

* * * * *

20. Section 31.8 is revised to read as follows:

§ 31.8 Americium-241 and radium-226 in the form of calibration or reference sources.

(a) A general license is issued to those persons listed in this section to own, receive, acquire, possess, use, and transfer, in accordance with the provisions of paragraphs (b) and (c) of this section, americium-241 or radium-226 in the form of calibration or reference sources:

(1) Any person in a non-Agreement State who holds a specific license issued under this chapter which authorizes receipt, possession, use, and transfer of byproduct material, source material, or special nuclear material; and

(2) Any Government agency, as defined in § 30.4 of this chapter, which holds a specific license issued under this chapter which authorizes it to receive, possess, use, and transfer byproduct material, source material, or special nuclear material.

(b) The general license in paragraph (a) of this section applies only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued under § 32.57 of this chapter or in accordance with the specifications contained in a specific license issued to the manufacturer by an Agreement State which authorizes manufacture of the sources for distribution to persons generally licensed by the Agreement State, or in accordance with a specific license issued by a State with comparable provisions to § 32.57.

(c) The general license in paragraph (a) of this section is subject to the provisions of §§ 30.14(d), 30.34 (a) to (e), and 30.50 to 30.63 of this chapter, and to the provisions of parts 19, 20, and 21, of this chapter. In addition, persons who own, receive, acquire, possess, use, and transfer one or more calibration or reference sources under this general license:

(1) Shall not possess at any one time, at any one location of storage or use, more than 0.185 megabecquerel (5 microcuries) of americium-241 or 0.185 megabecquerel (5 microcuries) of radium-226 in these sources;

(2) Shall not receive, possess, use, or transfer a source unless the source, or the storage container, bears a label which includes the following statement or a substantially similar statement which contains the information called for in the following statement: [1]

The receipt, possession, use, and transfer of this source, Model XX, Serial No. XX, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 [or RADIUM-226, as appropriate]. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

(Name of manufacturer or initial transferor)

(3) Shall not transfer, abandon, or dispose of a source except by transfer to a person authorized by a license issued under this chapter or by an Agreement State to receive the source.

(4) Shall store a source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241 or radium-226 which might otherwise escape during storage.

(5) Shall not use a source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) This general license does not authorize the manufacture or import of calibration or reference sources containing americium-241 or radium-226.

(e) This general license does not authorize the export of calibration or

[1] Sources generally licensed under this section before January 19, 1975, may bear labels authorized by the regulations in effect on January 1, 1975. Sources containing radium-226 generally licensed under this section and manufactured before [DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE] shall be labeled in accordance with the applicable State regulations at the time of manufacture or import.

reference sources containing americium-241 or radium-226.

21. In § 31.11, paragraph (a)(8) is added, and paragraphs (c)(1) and (d)(1) are revised to read as follows:

§ 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

(a) * * *

(8) Cobalt-57, in units not exceeding 0.37 megabecquerel (10 microcuries) each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals.

* * * * *

(c) * * *

(1) The general licensee shall not possess at any one time, under the general license in paragraph (a) of this section, at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, cobalt-57 and/or iron-59 in excess of 7.4 megabecquerels (200 microcuries).

* * * * *

(d) * * *

(1) Except as prepackaged units which are labeled in accordance with the provisions of a specific license issued under the provisions of § 32.71 of this chapter or in accordance with the provisions of a specific license issued by an Agreement State, or before [date 60 days after the date of publication of the final rule], the provisions of a specific license issued by a State with comparable provisions to § 32.71 that authorize manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), selenium-75, iron-59, cobalt-57, or Mock Iodine-125 for distribution to persons generally licensed by the Agreement State or the State with comparable provisions to § 32.71.

* * * * *

§§ 31.12, 31.13, and 31.14 [Redesignated]

22. Sections 31.12, 31.13, and 31.14 are redesignated as § 31.21, § 31.22, and § 31.23, respectively, and new §§ 31.13 through 31.20 are added and reserved, and a new § 31.12 is added to read as follows:

§ 31.12 General license for certain items and self-luminous products containing radium-226.

(a) A general license is hereby issued to any person to acquire, receive, possess, use, or transfer, in accordance with the provisions of paragraphs (b), (c), and (d) of this section, radium-226 contained in the following products manufactured prior to [date 60 days after date of publication of final rule]:

(1) Antiquities originally intended for use by the general public. For the purposes of this paragraph, antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(2) Luminous items installed in aircraft.

(3) Luminous items no longer installed in aircraft, provided that no more than 100 are used or stored at the same location at any one time.

(4) Other luminous products including timepiece hands and dials no longer installed in timepieces, provided that no more than 50 items are used or stored at the same location at any one time.

(5) Small radium sources containing no more than 0.037 megabecquerel (1 microcurie) of radium-226. For the purposes of this paragraph, ''small radium sources'' means discrete survey instrument calibration sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers, and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators, or as designated by the NRC.

(b) Persons who acquire, receive, possess, use, or transfer byproduct material under the general license issued in paragraph (a) of this section are exempt from the provisions of parts 19, 20, and 21, of this chapter, to the extent that the receipt, possession, use, or transfer of byproduct material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under this chapter.

(c) Any person who acquires, receives, possesses, uses, or transfers byproduct material in accordance with the general license in paragraph (a) of this section:

(1) Shall notify the NRC should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Director of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days.

(2) Shall not abandon the device containing radium-226. The product, and any radioactive material from the product, may only be disposed of according to § 20.2008 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the NRC.

(3) Shall not export the device containing radium-226 except in accordance with part 110 of this chapter.

(4) Shall dispose of the product containing radium-226 by export only as provided by paragraph (c)(3) of this section, at a disposal facility authorized to dispose of radioactive material in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under part 30 of this chapter, or equivalent regulations of an Agreement State, or as otherwise approved by the NRC.

(5) Shall respond to written requests from the NRC to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Director of the Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 30.6(a) of this chapter, a written justification for the request.

(d) The general license in paragraph (a) of this section does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

23. The authority citation for part 32 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

24. In § 32.1, paragraph (c) is added to read as follows:

§ 32.1 Purpose and scope.

* * * * *

(c)(1) The requirements in this part, including provisions that are specific to licensees, shall apply to Government agencies and Federally recognized Indian tribes with respect to accelerator-produced radioactive material or

discrete sources of radium-226 on [date 60 days after date of publication of final rule] except that the agency or tribe may continue to manufacture or initially transfer items containing accelerator-produced radioactive material or discrete sources of radium-226 for sale or distribution to persons exempted from the licensing requirements of part 30 of this chapter, and to persons generally licensed under part 31 or part 35 of this chapter, and radioactive drugs and sources and devices to medical use licensees, until the date of the NRC's final licensing determination, provided that the agency or tribe submits a new license application for these activities on or before [date 1 year and 2 months after date of publication of final rule] or an amendment application for these activities on or before [date 8 months after date of publication of final rule].

(2) The requirements in this part, including provisions that are specific to licensees, shall apply to all persons other than those included in (c)(1) of this section with respect to accelerator-produced radioactive material or discrete sources of radium-226 on August 8, 2009, or earlier as noticed by the NRC, except that these persons may continue to manufacture or initially transfer items containing accelerator-produced radioactive material or discrete sources of radium-226 for sale or distribution to persons exempted from the licensing requirements of part 30 of this chapter, and to persons generally licensed under part 31 or part 35 of this chapter, and to sell or manufacture radioactive drugs and sources and devices to medical use licensees until the date of the NRC's final licensing determination provided that the individual submits a license application or amendment on or before August 7, 2009, or earlier as noticed by the NRC.

25. In § 32.57, the heading and the introductory text are revised to read as follows:

§ 32.57 Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer.

An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241 or radium-226, for distribution to persons generally licensed under § 31.8 of this chapter, will be approved if:

* * * * *

26. Section 32.58 is revised to read as follows:

§ 32.58 Same: Labeling of devices.

Each person licensed under § 32.57 shall affix to each source, or storage container for the source, a label which shall contain sufficient information relative to safe use and storage of the source and shall include the following statement or a substantially similar statement which contains the information called for in the following statement.[1]

The receipt, possession, use, and transfer of this source, Model __–, Serial No. __–, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____

(Name of manufacturer or initial transferor)

27. Section 32.59 is revised to read as follows:

§ 32.59 Same: Leak testing of each source.

Each person licensed under § 32.57 shall perform a dry wipe test upon each source containing more than 3.7 kilobecquerels (0.1 microcurie) of americium-241 or radium-226 before transferring the source to a general licensee under § 31.8 of this chapter. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the paper shall be measured by using radiation detection instrumentation capable of detecting 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226. If this test discloses more than 0.185 kilobecquerel (0.005 microcurie) of radioactive material, the source shall be deemed to be leaking or losing americium-241 or radium-226 and shall not be transferred to a general licensee under § 31.8 of this chapter or equivalent regulations of an Agreement State.

28. In § 32.71, paragraph (b)(8) is added, and paragraph (c)(1) is revised to read as follows:

[1] Sources licensd under § 32.57 before January 19, 1975, may bear labels authorized by the regulations in effect on January 1, 1975.

§ 32.71 Manufacture and distribution of byproduct material for certain in vitro clinical or laboratory testing under general license.

* * * * *

(b) * * *

(8) Cobalt-57 in units not exceeding 0.37 megabecquerel (10 microcuries) each.

(c) * * *

(1) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 0.37 megabecquerel (10 microcuries) of iodine-131, iodine-125, selenium-75, or carbon-14; 1.85 megabecquerels (50 microcuries) of hydrogen-3 (tritium); or 0.74 megabecquerel (20 microcuries) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 0.185 kilobecquerel (0.005 microcurie) of americium-241 each; or cobalt-57 in units not exceeding 0.37 megabecquerel (10 microcuries); and

* * * * *

29. In § 32.72, paragraphs (a)(2)(i), (a)(2)(iii), (a)(2)(iv), and (b) are revised, and a new paragraph (a)(2)(v) is added to read as follows:

§ 32.72 Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35.

(a) * * *

(2) * * *

(i) Registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

* * * * *

(iii) Licensed as a pharmacy by a State Board of Pharmacy;

(iv) Operating as a nuclear pharmacy within a Federal medical institution; or

(v) A Positron Emission Tomography (PET) drug production facility registered with a State agency.

* * * * *

(b) A licensee described by paragraph (a)(2)(iii) or (iv) of this section:

(1) May produce Positron Emission Tomography (PET) radionuclides provided that the PET radionuclide production is under the supervision of an authorized user who meets the requirements of § 30.33(a)(3) of this chapter.

(2) May prepare radioactive drugs for medical use, as defined in § 35.2 of this chapter, provided that the radioactive drugs are prepared by either an authorized nuclear pharmacist, as specified in paragraphs (b)(3) and (b)(5)

of this section, or an individual under the supervision of an authorized nuclear pharmacist as specified in § 35.27 of this chapter.

(3) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) This individual qualifies as an authorized nuclear pharmacist as defined in § 35.2 of this chapter;

(ii) This individual meets the requirements specified in §§ 35.55(b) and 35.59, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) This individual is designated as an authorized nuclear pharmacist in accordance with paragraph (b)(5) of this section.

(4) The actions authorized in paragraphs (b)(1), (b)(2), and (b)(3) of this section are permitted in spite of more restrictive language in license conditions.

(5) May designate a pharmacist (as defined in § 35.2 of this chapter) as an authorized nuclear pharmacist if:

(i) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material, and

(ii) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian tribe before [date 60 days after date of publication of final rule] or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(6) Shall provide to the Commission a copy of each individual's certification by the Board of Pharmaceutical Specialties, the Commission or Agreement State license, Commission master materials licensee permit, the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to paragraphs (b)(3)(i) and (b)(3)(iii) of this section, the individual to work as an authorized nuclear pharmacist.

* * * * *

30. In § 32.102, the heading and the introductory paragraph are revised to read as follows:

§ 32.102 Schedule C—prototype tests for calibration or reference sources containing americium-241 or radium-226.

An applicant for a license under § 32.57 shall, for any type of source which is designed to contain more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226, conduct prototype tests, in the order listed, on each of five prototypes of the source, which contains more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226, as follows:

* * * * *

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

31. The authority citation for part 33 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

32. Section 33.100 is revised by adding Beryllium-7, Cobalt-57, Radium-226, and Sodium-22 in alphabetical order to read as follows:

§ 33.100 Schedule A.

Byproduct material	Col. I curies	Col. II curies
* * *	*	*
Beryllium-7	10	0.1
* * *	*	*
Cobalt-57	10	0.1
* * *	*	*
Radium-226	0.01	0.0001
* * *	*	*
Sodium-22	0.1	0.001

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

33. The authority citation for part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

34. In § 35.2, the definitions for Authorized nuclear pharmacist and Authorized user are revised, and new definitions for Cyclotron and Positron Emission Tomography (PET) *radionuclide production facility* are added alphabetically to read as follows:

§ 35.2 Definitions.

* * * * *

Authorized nuclear pharmacist means a pharmacist who—

(1) Meets the requirements in §§ 35.55(a) and 35.59; or

(2) Is identified as an authorized nuclear pharmacist on—

(i) A specific license issued by the Commission or Agreement State that authorizes medical use or the practice of nuclear pharmacy;

(ii) A permit issued by a Commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(iii) A permit issued by a Commission or Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

(iv) A permit issued by a Commission master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(3) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(4) Is designated as an authorized nuclear pharmacist in accordance with § 32.72(b)(5) of this chapter; or

(5) Prepared only radioactive drugs containing accelerator-produced radioactive materials at a pharmacy at a Government agency or Federally recognized Indian tribe before [date 60 days after date of publication of final rule] or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

Authorized user means a physician, dentist, or podiatrist who—

(1) Meets the requirements in §§ 35.59 and 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.490(a), 35.590(a), or 35.690(a); or

(2) Is identified as an authorized user on—

(i) A Commission or Agreement State license that authorizes the medical use of byproduct material;

(ii) A permit issued by a Commission master material licensee that is authorized to permit the medical use of byproduct material;

(iii) A permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of byproduct material; or

(iv) A permit issued by a Commission master material license broad scope permittee that is authorized to permit the medical use of byproduct material; or

(3) Used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses at a Government agency or Federally recognized Indian tribe before [date 60 days after date of publication of final rule] or at all other locations of use before August 8, 2009, or an earlier date

as noticed by the NRC, and for only those materials and uses performed before these dates.

* * * * *

Cyclotron means a circular particle accelerator in which charged particles are bent traveling through the accelerator. A cyclotron accelerates charged particles at energies usually in excess of 10 megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

* * * * *

Positron Emission Tomography (PET) radionuclide production facility is defined as a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

* * * * *

35. In § 35.10, paragraph (a) is added to read as follows:

§ 35.10 Implementation.

(a) A Government agency or a Federally recognized Indian tribe that possesses and uses accelerator-produced radioactive material or discrete sources of radium-226 for which a specific medical use license is required by the Atomic Energy Act of 1954, as amended, must comply with the requirements of this part, including provisions that are specific to licensees, on [date 60 days after date of publication of final rule]. All other persons who possess and use accelerator-produced radioactive material or discrete sources of radium-226 for which a specific medical use license is required, must comply with the requirements of this part, including provisions that are specific to licensees, on August 8, 2009, or earlier as noticed by the NRC.

* * * * *

36. In § 35.11, paragraph (a) is revised, and paragraph (c) is added to read as follows:

§ 35.11 License required.

(a) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer byproduct material for medical use only in accordance with a specific license issued by the Commission or an Agreement State, or as allowed in paragraph (b) or (c) of this section.

* * * * *

(c)(1) A Government agency or a Federally recognized Indian tribe that possesses and uses accelerator-produced radioactive material or discrete sources of radium-226 for which a specific medical use license is required in paragraph (a) of this section may continue to use such materials for medical uses until the date of the NRC's final licensing determination, provided that the individual submits a medical use license application on or before [date 1 year and 2 months after date of publication of final rule].

(2) Except as provided in paragraph (c)(1) of this section, all other persons who possess and use accelerator-produced radioactive material or discrete sources of radium-226 for which a specific medical use license is required in paragraph (a) of this section, may continue to use this type of material for medical uses permitted under this part until the date of the NRC's final licensing determination provided that the individual submits a medical use license application on or before August 7, 2009, or earlier as noticed by the NRC.

37. In § 35.13, paragraphs (a) and (e) are revised and paragraph (b)(4)(v) is added to read as follows:

§ 35.13 License amendments.

* * * * *

(a) Before it receives, prepares, or uses byproduct material for a type of use that is permitted under this part, but is not authorized on the licensee's current license issued under this part; except that—

(1) A Government agency or a Federally recognized Indian tribe licensee who possesses and uses accelerator-produced radioactive material or discrete sources of radium-226 may continue to use such material for medical uses permitted under this part until the date of the NRC's final licensing determination, provided that the licensee submits an amendment application on or before [date 8 months after date of publication of final rule].

(2) Except as provided in (a)(1) of this section, all other licensees who possess and use accelerator-produced radioactive material or discrete sources of radium-226 may continue to use those materials for medical uses permitted under this part until the date of the NRC's final licensing determination provided that the individual submits a medical use license application on or before August 7, 2009, or earlier as noticed by the NRC.

(b) * * *

(4) * * *

(v) An individual who uses only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical use or in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian tribe before [date 60 days after date of publication of final rule] or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, and for only those materials and uses performed before these dates.

* * * * *

(e) Before it adds to or changes the areas of use identified in the application or on the license, including areas used in accordance with either § 35.100 or § 35.200 if the change includes addition or relocation of either an area where PET radionuclides are produced or a radionuclide delivery line from the PET radionuclide production area. Other areas of use where byproduct material is used only in accordance with either § 35.100 or § 35.200 are exempted;

* * * * *

38. In § 35.14, the introductory text of paragraph (a) and paragraph (b)(4) are revised to read as follows:

§ 35.14 Notifications.

(a) A licensee shall provide the Commission a copy of the board certification and the written attestation(s), signed by a preceptor, the Commission or Agreement State license, the permit issued by a Commission master material licensee, the permit issued by a Commission or Agreement State licensee of broad scope, the permit issued by a Commission master material license broad scope permittee, or documentation that only accelerator-produced radioactive materials, discrete sources of radium-226, or both, were used for medical use or in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian tribe before [date 60 days after date of publication of final rule] or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, and for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist, under § 35.13(b). For individuals permitted to work under § 35.13(b)(4), within the same 30-day time frame, the licensee shall also provide, as appropriate, verification of completion of;

* * * * *

(b) * * *

(4) The licensee has added to or changed the areas of use identified in the application or on the license where byproduct material is used in accordance with either § 35.100 or § 35.200 if the change does not include addition or relocation of either an area where PET radionuclides are produced or a radionuclide delivery line from the PET radionuclide production area.

* * * * *

39. In § 35.15, paragraph (f) is revised to read as follows:

§ 35.15 Exemptions regarding Type A specific licenses of broad scope.

* * * * *

(f) The provisions of § 35.14(b)(4) regarding additions to or changes in the areas of use identified in the application, or on the license where byproduct material is used in accordance with either § 35.100 or § 35.200, if the change does not include addition or relocation of either an area where PET radionuclides are produced or a radionuclide delivery line from the PET radionuclide production area.

* * * * *

40. In § 35.57, paragraphs (a)(3) and (b)(3) are added to read as follows:

§ 35.57 Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

(a) * * *

(3) A Radiation Safety Officer, a medical physicist, or a nuclear pharmacist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian tribe before [date 60 days after date of publication of final rule] or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of §§ 35.50, 35.51, or 35.55, respectively, when performing the same uses.

(b) * * *

(3) Physicians, dentists, or podiatrists who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses performed at a Government agency or Federally recognized Indian tribe before [date 60 days after date of publication of final rule] or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of subparts D through H of this part when performing the same medical uses.

41. In § 35.63, paragraphs (b)(2)(ii) and (c)(3) are revised, and paragraph (b)(2)(iii) is added to read as follows:

§ 35.63 Determination of dosages of unsealed byproduct material for medical use.

* * * * *

(b) * * *

(2) * * *

(ii) An NRC or Agreement State licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

(iii) An NRC or Agreement State medical use licensee with a PET radionuclide production facility.

(c) * * *

(3) Combination of volumetric measurements and mathematical calculations, based on the measurement made by:

(i) A manufacturer or preparer licensed under § 32.72 of this chapter or equivalent Agreement State requirements; or

(ii) An NRC or Agreement State medical use licensee with a PET radionuclide production facility.

* * * * *

42. Section 35.69 is revised to read as follows:

§ 35.69 Labeling of vials and syringes and transport radiation shields.

(a) Each syringe and vial used for medical use that contains unsealed byproduct material must be labeled to identify the radioactive drug. Each syringe shield and vial shield must also be labeled unless the label on the syringe or vial is visible when shielded.

(b) Each label affixed to a transport radiation shield or syringe, vial, or other container used to hold a PET drug to be transferred for noncommercial distribution by the medical use licensee shall meet the requirements in 10 CFR 32.72(a)(4).

43. In § 35.100, paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

§ 35.100 Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required.

* * * * *

(a) Obtained from:

(1) A manufacturer or preparer licensed under § 32.72 of this chapter or equivalent Agreement State requirements;

(2) The licensee's noncommercial PET radionuclide production facility; or

(3) The noncommercial transfer of a PET radionuclide or drug from an NRC or Agreement State medical use licensee with a PET radionuclide production facility; or

(b) Excluding production of PET radionuclides, prepared by:

* * * * *

44. In § 35.200, paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

§ 35.200 Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required.

* * * * *

(a) Obtained from:

(1) A manufacturer or preparer licensed under § 32.72 of this chapter or equivalent Agreement State requirements;

(2) The licensee's noncommercial PET radionuclide production facility; or

(3) The noncommercial transfer of a PET radionuclide or drug from an NRC or Agreement State medical use licensee with a PET radionuclide production facility; or

(b) Excluding production of PET radionuclides, prepared by:

* * * * *

45. In § 35.204, the heading and paragraph (a) are revised, paragraph (c) is redesignated as (d) and revised, and a new paragraph (c) is added to read as follows:

§ 35.204 Permissible molybdenum-99, strontium-82, and strontium-85 concentrations.

(a) A licensee may not administer to humans a radiopharmaceutical that contains:

(1) More than 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or

(2) More than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or more than 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82).

* * * * *

(c) A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with paragraph (a) of this section.

(d) If a licensee is required to measure the molybdenum-99 concentration or strontium-82 and strontium-85 concentrations, the licensee shall retain a record of each measurement in accordance with § 35.2204.

46. In § 35.300, paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

§ 35.300 Use of unsealed byproduct material for which a written directive is required.

* * * * *

(a) Obtained from:

(1) A manufacturer or preparer licensed under § 32.72 of this chapter or equivalent Agreement State requirements;

(2) The licensee's noncommercial PET radionuclide production facility; or

(3) The noncommercial transfer of a PET radionuclide or drug from an NRC or Agreement State medical use licensee with a PET radionuclide production facility; or

(b) Excluding production of PET radionuclides, prepared by:

* * * * *

47. Section 35.2204 is revised to read as follows:

§ 35.2204 Records of molybdenum-99, strontium-82, and strontium-85 concentrations.

A licensee shall maintain a record of the molybdenum-99 concentration or strontium-82 and strontium-85 concentration tests required by § 35.204(b) and (c) for 3 years. The record must include:

(a) For each measured elution of technetium-99m, the ratio of the measures expressed as kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (or microcuries of molybdenum per millicurie of technetium), the time and date of the measurement, and the name of the individual who made the measurement; or

(b) For each measured elution of rubidium-82, the ratio of the measures expressed as kilobecquerel of strontium-82 per megabecquerel of rubidium-82 (or microcuries of strontium-82 per millicurie of rubidium), kilobecquerel of strontium-85 per megabecquerel of rubidium-82 (or microcuries of strontium-85 per millicurie of rubidium), the time and date of the measurement, and the name of the individual who made the measurement.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

48. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

49. In § 50.2, the definition of *Byproduct material* is revised to read as follows:

§ 50.2 Definitions.

* * * * *

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(3) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

50. The authority citation for part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

51. In § 61.2, the definition for *Waste* is revised to read as follows:

§ 61.2 Definitions.

* * * * *

Waste means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (2), (3), and (4) of the definition of Byproduct material set forth in § 20.1003 of this chapter.

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

52. The authority citation for part 62 is revised to read as follows:

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 950, 951, as amended (42 U.S.C. 211, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857 (42 U.S.C. 2021c, 2021d, 2021e, 2021); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

53. In § 62.2, the definition for *Low-level radioactive waste* (LLW) is revised to read as follows:

§ 62.2 Definitions.

* * * * *

Low-level radioactive waste (LLW) means radioactive material that—

(1) Is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in paragraphs (2), (3), and (4) of the definition of Byproduct Material set forth in § 20.1003 of this chapter; and

(2) The NRC, consistent with existing law and in accordance with paragraph (1) of this definition, classifies as low-level radioactive waste.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR-RELATED GREATER THAN CLASS C WASTE

54. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

55. In § 72.3, the definition for *Byproduct material* is revised to read as follows:

§ 72.3 Definitions.

* * * * *

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(3) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

56. The authority citation for part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005; Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

57. In § 110.2, definitions of *Accelerator-produced radioactive material, Discrete source,* and *Particle accelerator* are added to read as follows:

§ 110.2 Definitions.

* * * * *

Accelerator-produced radioactive material means any material made radioactive by a particle accelerator.

* * * * *

Discrete source means a radioactive source with physical boundaries, which is separate and distinct from the radioactivity present in nature, and in which the radionuclide concentration has been increased by human processes with the intent that the concentrated radioactive material will be used for its radiological properties.

* * * * *

Particle accelerator means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 megaelectron volt. For purposes of this definition, ''accelerator'' is an equivalent term.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

58. The authority citation for part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

59. In § 150.3, the definition of *Byproduct material* is revised, and a definition of *Discrete source* is added to read as follows:

§ 150.3 Definitions.

* * * * *

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore

bodies depleted by these solution extraction operations do not constitute ''byproduct material'' within this definition;

(3)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(4) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

Discrete source means a radioactive source with physical boundaries, which is separate and distinct from the radioactivity present in nature, and in which the radionuclide concentration has been increased by human processes with the intent that the concentrated radioactive material will be used for its radiological properties.

* * * * *

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

60. The authority citation for part 170 is revised to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S. C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 623, Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); sec 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021(b), 2111).

61. In § 170.3, the definition of *Byproduct material* is revised to read as follows:

§ 170.3 Definitions.

* * * * *

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(3) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

62. In § 170.31, in the table, ''Schedule of Materials Fees,'' paragraph 3.B. is revised, and new categories 3.R. and 3.S. and corresponding fees are added to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

Category of materials licenses and type of fees [1]	Fee [2] [3]
* * * * * * *	
3. Byproduct material:	
* * * * * * *	
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. This category also includes licenses for repair, assembly, and disassembly of products containing radium-226.	
Application	$3,500.
* * * * * * *	
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[5]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application	$450.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(3), (4), or (5).	
Application	$1,110.
S. Licenses for production of accelerator-produced radionuclides.	
Application	$4,700.
* * * * * * *	
* * * * * * *	

[1] Types of fees—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession only licenses; issuance of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) Application and registration fees. Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) Licensing fees. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) Amendment fees. Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category will apply.

(d) Inspection fees. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) Generally licensed device registrations under 10 CFR 31.5. Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 70.20.

* * * * * * * *

[5] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

* * * * * * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

63. The authority citation for part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214; sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021(b), 2111).

62. In § 171.5, the definition of *Byproduct material* is revised to read as follows:

§ 171.5 Definitions.

* * * * *

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(3) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

63. In § 171.16, paragraph (d), in the table, Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC, paragraph 3.B. is revised, and new categories 3.R. and 3.S. and corresponding fees are added to read as follows:

§ 171.16 Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

Category of materials licenses	Annual fees[1 2 3]
* * * * * * *	
3. Byproduct material:	
* * * * * * *	
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. This category also includes licenses for repair, assembly, and disassembly of products containing radium-226	
Application	8,200
* * * * * * *	
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[14]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5) but less than or equal to 10 times the number of items or limits specified	1,600
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(3), (4), or (5)	2,500
S. Licenses for production of accelerator-produced radionuclides	10,200
* * * * * * *	

* * * * * * *

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2004, and permanently ceased licensed activities entirely by September 30, 2004. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

* * * * * * *

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

* * * * * * *

Dated at Rockville, Maryland, this 20th day of July, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 06–6477 filed 7–27–06; 8:45 am]

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Federal Register

Friday,
July 28, 2006

Part V

Department of Housing and Urban Development

Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5067–N–01]

Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice provides guidance to HUD field offices and PHAs located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in connection with Hurricanes Katrina or Rita on how to implement Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Section 901). This supplemental appropriations act authorizes public housing agencies (PHAs) to combine assistance provided under sections 9(d) and (e) of the United States Housing Act of 1937 (Act) and assistance provided under section 8(o) of the Act, for the purpose of facilitating the prompt, flexible, and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes.

DATES: *Effective date:* July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Bessy M. Kong, Deputy Assistant Secretary, Office of Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000, telephone (202) 708–0614 or 708–0713, extension 2548 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148; approved December 30, 2005), among other things, makes emergency supplemental appropriations to address the hurricane devastation around the Gulf Coast. Section 901 of this supplemental appropriations act permits eligible PHAs to combine their Capital Funds (section 9(d) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act)), Operating Funds (section 9(e) of the 1937 Act), and Housing Choice Voucher Funds (HCV) (section 8(o) of the 1937 Act) to assist families who were displaced by Hurricanes Katrina or Rita. The full text of Section 901 is as follows:

> SEC. 901. Notwithstanding provisions of the United States Housing Act of 1937 (Public Law 93–383), in order to assist public housing agencies located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) in connection with Hurricane Katrina or Rita, the Secretary for Calendar Year 2006 may authorize a public housing agency to combine assistance provided under sections 9(d) and (e) of the United States Housing Act of 1937 and assistance provided under section 8(o) of such Act, for the purpose of facilitating the prompt, flexible and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes.

II. Eligibility

PHAs that are eligible are those in the most heavily impacted areas of Louisiana and Mississippi that are subject to declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) in connection with Hurricanes Katrina or Rita. Please refer to section X of this Notice, which lists all eligible agencies. This list was created based on the Federal Emergency Management Agency's (FEMA) disaster designations for counties eligible to receive both Individual and Public Assistance.

III. Eligible Funds for Inclusion

Eligible PHAs may combine public housing Capital Funds (including Replacement Housing Factor (RHF) grants), Operating Funds, and HCV funds received during Calendar Year 2006 and eligible prior years funds that are not yet obligated or expended in the program for which they were intended.

With regard to HCV funding, the maximum amount of voucher funding a PHA may consider for use in the public housing program will be determined by HUD based on Calendar Year 2005 and 2006 voucher funding that is not needed for the regular voucher program through December 31, 2006 (e.g., excluding amounts such as those needed for post-Katrina/Rita tenant protection vouchers, new post Hurricanes Katrina/Rita voucher program admissions, and current portability billings). For PHAs, HUD will establish separate funding maximums for housing assistance payments and administrative fee transfers. Additional Disaster Voucher Program (DVP) supplemental guidance will include more information on determining the maximum amount of voucher funding a PHA may consider for use in the public housing program as part of a separate PIH Notice concerning Voucher Program Fungibility Issues Associated with Combining Voucher and Public Housing Funding During Calendar Year 2006.

Neither DVP assistance nor capital funds provided from the Set-Aside for Emergencies and Natural Disasters may be combined with other capital, operating, and HCV funds pursuant to this Notice.

IV. Permitted Activities

The flexibility provided under this section permits a PHA to combine the funding assistance, as indicated in III., Eligible Funds for Inclusion, for any use eligible under the programs to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes. PHAs may obligate the combined funds only for uses under the Operating Fund or Capital Fund. None of the combined funds may be spent for uses under the HCV program. For example, an eligible PHA using this flexibility may redirect its Operating Subsidy or HCV funding to construct replacement public housing units as permitted under section 9(d) so that families may return to the community.

A PHA may reallocate funds only in order to carry out programs for which it had authority to administer prior to the hurricanes. The flexibility provided under Section 901 may be utilized in combination with any regulatory and administrative waivers granted by HUD in conjunction with Notices published in the **Federal Register** on October 3, 2005 (70 FR 57716), and November 1, 2005 (70 FR 66222), as applicable.

V. General Procedures for Combining Public Housing and Voucher Funds Under Section 901

In Calendar Year 2006, the Secretary is authorizing the PHAs listed at the end of this Notice to combine assistance

under Section 901. The following sets forth the procedures to be followed by PHAs.

A. Submission of a Notice of Intent and Fungibility Plan

PHAs interested in implementing this flexibility should submit in writing for HUD review and approval, no later than 45 days from the date of this Notice: (1) A Notice of Intent to invoke this flexibility and (2) a detailed Section 901 Fungibility Plan describing the total amount under Section 901, and the source of those funds by account (HCV, Operating Fund, Capital Fund). PHAs should submit one copy to the Public Housing Director of the HUD office in New Orleans, Louisiana, or Jackson, Mississippi, as applicable, and the original to HUD Headquarters, Office of Public and Indian Housing, Office of Policy, Program, and Legislative Initiatives, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000, Attention: Bessy Kong/Sherry McCown. The Notification of Intent and Fungibility Plan must include the following:

1. A resolution from the PHA Board of Commissioners certifying that the flexibility will be used to facilitate ''prompt, flexible, and efficient use of these funds to assist families who were receiving housing assistance immediately prior to Hurricanes Katrina or Rita and were displaced from their housing by the hurricanes.''

2. Identification of the name of the program from which funds will be provided for purposes of fungibility (source of funds).

3. Identification of the name of the program(s) with which funds are being combined (use of funds).

4. Identification of the exact dollar amount of funds, by program source, to be provided for fungibility purposes, including the grant number(s) and grant year(s) (grant numbers not applicable to vouchers).

5. A detailed description of the proposed use of the combined funds, *e.g.*, the number of units to be renovated, repaired, acquired, or built, and the types of administrative functions to be undertaken.

6. For combined funds for Capital Fund activities, the Capital Fund Program Annual Statement/Performance and Evaluation Report, Parts I–III (part of form HUD–50075–SA).

HUD shall review and notify the PHA, in writing, of its determination to accept, reject, or comment on the Plan within 45 calendar days of receipt. If the Plan does not provide sufficient information, HUD reserves the right to reject such a Plan and require a resubmission within 15 calendar days, to which HUD will respond within 10 calendar days. HUD must officially approve all Plans, including those that must be resubmitted, no later than December 31, 2006. PHAs must submit to HUD requests for approval of any substantial deviations from the approved Fungibility Plan. HUD will respond to such requests within 10 calendar days.

B. Reporting Requirements for Activities and Use of Funds Provided for Fungibility Under Section 901

1. *General.* In general, PHAs must report the details on the use of these combined funds through normal reporting procedures. Supplemental guidance, as needed, will be posted on HUD's Web site at *http://www.hud.gov/offices/pih/.*

2. *Annual Report.* PHAs with an approved Notice of Intent and Fungibility Plan must provide annual progress reports to their HUD field office. They should address: (1) The amount of funds, by source program, being combined under Section 901 fungibility, (2) the proposed uses of those combined funds, (3) the amount of funds obligated during the year from each source, (4) the cumulative total amount of funds obligated, (5) the total amount of funds expended during the year from each source, and (6) the cumulative total amount of funds expended. The annual reports must cover the 12-month period ending September 30 and are due at the field office within 45 calendar days.

3. *Final Report.* A final report is due at the end of the fungibility period, which is the earlier of either the expenditure deadline or when the PHA has expended all funds. PHAs that combined funds under Section 901 shall submit to their local HUD field office a summary report of how funds were combined, the original Notice of Intent and planned activities, and actual activities and results.

4. *Financial Data Schedule Reporting.* PHAs shall report all program funding combined under Section 901 on the Financial Data Schedule (FDS). PHAs approved to combine funds as authorized by Section 901 must continue to report on the FDS the original program funds in each program (Public Housing Capital Fund Program, Public Housing Operating Fund Program, or Housing Choice Voucher Program). Any original program funds (from one or more of the above programs) used under Section 901 to assist families displaced by Hurricanes Katrina or Rita should then be entered into a new column on the FDS entitled ''Other Federal Activity—Section 901.'' The PHA should use FDS Line 1001 to record the sources of funds being added for ''Other Federal Activity—Section 901,'' and FDS Line 1002 to record the same sources of funds being subtracted from the originally intended program (Capital Funds, Low Rent Public Housing (LRPH), or HCV columns). If the funds to be combined under Section 901 were appropriated in 2005 or earlier, then the transaction should be reported as an ''Equity Transfer'' on Line 1104 of the current FDS. Further, an explanation of this fungibility is required to be made by the PHA in the ''Comments Link'' in both its unaudited and audited financial submissions. This will help ensure that all users and readers of the financial data are aware that the PHA participated in this funding flexibility.

To add the ''Other Federal Activity—Section 901'' column on the FDS, click the PHA Info Link, click the Program Selection Tab, click the Add a Program Link, and then select Other Federal Activity—Section 901. Once the funds have been recorded in the ''Other Federal Activity—Section 901'' column, all activity related to the funding flexibility must be accounted for and reported in this new column on the financial data schedule.

VI. Timely Use of Funds

For the Housing Choice Voucher or Operating funds that a PHA combines and uses for Capital Fund purposes, these funds must be expended within 5 years from the date of HUD's approval of the Section 901 Fungibility Plan, or as authorized by the Assistant Secretary for Public and Indian Housing. Housing Choice Voucher funds or Capital funds that a PHA uses for Operating Fund purposes or activities must be expended within one year from the date of HUD's approval. If the combined funds are not expended according to these time frames, the PHA loses the flexibility provided under this Notice and the funds revert back to original program uses, including applicable funding terms. For example, if a PHA combines voucher funds with Capital Funds for public housing reconstruction purposes, and if the voucher funds are not expended for those purposes after 5 years, they revert back to vouchers.

VII. For Further Information Contact

For technical assistance and other questions concerning the Notice of Intent and/or Section 901 Fungibility Plan, PHAs should contact their local HUD Public Housing Hub in New Orleans, Louisiana, or Jackson, Mississippi; Bessy Kong, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives at (202) 708–0713, extension 2548; or Deborah

Hernandez, Deputy Assistant Secretary, Office of Field Operations, at (202) 708–4016.

VIII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free telephone number). Hearing- and speech-impaired persons may access the telephone numbers listed above via TTY by calling the Federal Information Relay Service at (800) 877–8339.

IX. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements contained in this Notice in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0245. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

X. List of Louisiana and Mississippi PHAs Heavily Impacted by Hurricane Katrina or Rita

The following list includes PHAs in counties eligible to receive individual and public assistance through FEMA as a result of damages sustained from Hurricanes Katrina and Rita.

No.	HA code	HA name	County	State	Hurricane
1	LA001	New Orleans Housing Authority (HA)	Orleans	LA	Katrina.
2	LA003	E. Baton Rouge HA	East Baton Rouge	LA	Katrina.
3	LA004	Lake Charles HA	Calcasieu	LA	Katrina and Rita.
4	LA005	Lafayette (City) HA	Lafayette	LA	Katrina and Rita.
5	LA011	Westwego	Jefferson	LA	Katrina and Rita.
6	LA012	Kenner HA	Jefferson	LA	Katrina and Rita.
7	LA013	Jefferson Parish HA	Jefferson	LA	Katrina and Rita.
8	LA024	Bogalusa HA	Washington	LA	Katrina.
9	LA025	Eunice HA	St. Landry	LA	Rita.
10	LA026	Kaplan HA	Vermilion	LA	Katrina and Rita.
11	LA027	New Iberia HA	Iberia	LA	Katrina and Rita.
12	LA028	Rayne HA	Acadia	LA	Katrina and Rita.
13	LA029	Crowley	Acadia	LA	Katrina and Rita.
14	LA030	Ville Platte HA	Evangeline	LA	Rita.
15	LA031	Mamou HA	Evangeline	LA	Rita.
16	LA032	Church Point HA	Acadia	LA	Katrina and Rita.
17	LA033	Oakdale HA	Allen	LA	Rita.
18	LA034	Abbeville HA	Vermilion	LA	Katrina and Rita.
19	LA035	Gueydan HA	Vermilion	LA	Katrina and Rita.
20	LA036	Morgan City HA	St. Mary	LA	Katrina and Rita.
21	LA039	Welsh HA	Jefferson Davis	LA	Katrina and Rita.
22	LA040	St. Martinville HA	St. Martin	LA	Katrina and Rita.
23	LA041	Lake Arthur HA	Jefferson Davis	LA	Katrina and Rita.
24	LA043	Donaldsonville HA	Ascension	LA	Katrina and Rita.
25	LA044	Thibodaux HA	Lafourche	LA	Katrina and Rita.
26	LA046	Vinton HA	Calcasieu	LA	Katrina and Rita.
27	LA047	Erath HA	Vermilion	LA	Katrina and Rita.
28	LA055	Opelousas HA	St. Landry	LA	Rita.
29	LA056	Berwick HA	St. Mary	LA	Katrina and Rita.
30	LA058	Basile HA	Evangeline	LA	Rita.
31	A059	Breaux Bridge HA	St. Martin	LA	Katrina and Rita.
32	LA063	Sulphur HA	Calcasieu	LA	Katrina and Rita.
33	LA065	Delcambre HA	Vermilion	LA	Katrina and Rita.
34	LA066	Elton HA	Jefferson Davis	LA	Katrina and Rita.
35	LA067	St. Landry Parish HA	St. Landry	LA	Rita.
36	LA068	Oberlin HA	Allen	LA	Rita.
37	LA069	Kinder HA	Allen	LA	Rita.
38	LA070	Patterson HA	St. Mary	LA	Katrina and Rita.
39	LA073	South Landry HA	St. Landry	LA	Rita.
40	LA074	Sabine Parish HA	Sabine	LA	Rita.
41	LA075	Ponchatoula HA	Tangipahoa	LA	Katrina.
42	LA080	Lafourche Parish HA	Lafourche	LA	Katrina and Rita.
43	LA082	Merryville HA	Beauregard	LA	Rita.
44	LA084	Parks HA	St. Martin	LA	Katrina and Rita.
45	LA086	Deridder HA	Beauregard	LA	Rita.
46	LA090	Houma—Terrebonne HA	Terrebonne	LA	Katrina and Rita.
47	LA091	Southwest Acadia HA	Acadia	LA	Katrina and Rita.
48	LA092	St. James Parish HA	St. James	LA	Katrina.
49	LA093	White Castle HA	Iberville	LA	Katrina.
50	LA094	St. Charles Parish HA	St. Charles	LA	Katrina.
51	LA095	St. John the Baptist Parish HA	St. John the Baptist	LA	Katrina.
52	LA099	Independence HA	Tangipahoa	LA	Katrina.
53	LA100	Youngsville HA	Lafayette	LA	Katrina and Rita.
54	LA101	Denham Springs HA	Livingston	LA	Katrina and Rita.

No.	HA code	HA name	County	State	Hurricane
55	LA103	Slidell HA	St. Tammany	LA	Katrina and Rita.
56	LA106	Dequincy HA	Calcasieu	LA	Katrina and Rita.
57	LA111	Leesville HA	Vernon	LA	Rita.
58	LA113	New Roads HA	Pointe Coupee	LA	Katrina.
59	LA118	Jennings HA	Jefferson Davis	LA	Katrina and Rita.
60	LA128	Vernon Parish HA	Vernon	LA	Rita.
61	LA130	Duson HA	Lafayette	LA	Katrina and Rita.
62	LA231	HA of Iowa	Calcasieu	LA	Katrina and Rita.
63	LA238	Covington HA	St. Tammany	LA	Katrina and Rita.
64	LA250	Ascension Parish	Ascension	LA	Katrina and Rita.
65	LA261	Fenton	Jefferson Davis	LA	Katrina and Rita.
66	LA266	White Castle City	Iberville	LA	Katrina.
67	MS001	Hattiesburg HA	Forrest	MS	Katrina.
68	MS002	Laurel HA	Jones	MS	Katrina.
69	MS003	McComb HA	Pike	MS	Katrina.
70	MS004	Meridian HA	Lauderdale	MS	Katrina.
71	MS005	Biloxi HA	Harrison	MS	Katrina.
72	MS019	Mississippi Regional HA No. IV	Lowndes	MS	Katrina.
73	MS030	Mississippi Regional HA No. V	Newton	MS	Katrina.
74	MS040	Mississippi Regional HA No. VIII	Harrison	MS	Katrina.
75	MS047	Starkville HA	Oktibbeha	MS	Katrina.
76	MS057	Mississippi Regional HA No. VII	Pike	MS	Katrina.
77	MS058	Mississippi Regional HA No. VI	Hinds	MS	Katrina.
78	MS060	Brookhaven HA	Lincoln	MS	Katrina.
79	MS061	Canton HA	Madison	MS	Katrina.
80	MS063	Yazoo City HA	Yazoo	MS	Katrina.
81	MS064	Bay St. Louis HA	Hancock	MS	Katrina.
82	MS066	Picayune HA	Pearl River	MS	Katrina.
83	MS067	Richton HA	Perry	MS	Katrina.
84	MS068	Waynesboro HA	Wayne	MS	Katrina.
85	MS076	Columbus HA	Lowndes	MS	Katrina.
86	MS079	Louisville HA	Winston	MS	Katrina.
87	MS084	Summit HA	Pike	MS	Katrina.
88	MS086	Vicksburg HA	Warren	MS	Katrina.
89	MS094	Hazlehurst HA	Copiah	MS	Katrina.
90	MS099	Lumberton HA	Lamar	MS	Katrina.
91	MS101	Waveland HA	Hancock	MS	Katrina.
92	MS103	Jackson HA	Hinds	MS	Katrina.
93	MS105	Natchez HA	Adams	MS	Katrina.
94	MS109	Long Beach HA	Harrison	MS	Katrina.
95	MS111	Forest HA	Scott	MS	Katrina.
96	MS117	Attala County HA	Attala	MS	Katrina.

Dated: July 21, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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Part VI

Department of Housing and Urban Development

List of HUD Programs Subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4893–N–02]

List of HUD Programs Subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice announces a list of HUD programs that are subject to the nondiscrimination provisions in Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, as amended.

FOR FURTHER INFORMATION CONTACT: Pamela Walsh, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5246, Washington, DC 20410–2000, telephone (202) 708–2288, extension 7017 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On September 11, 1995, HUD published a final rule (60 FR 47260) that removed from Title 24 of the Code of Federal Regulations any regulation determined unnecessary or obsolete. Among the numerous changes, HUD removed Appendix A from 24 CFR part 1. The regulations in 24 CFR part 1 implement the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–7), which provides that ''no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Appendix A was a list of HUD's programs that provide federal financial assistance and, therefore, are subject to the nondiscrimination provisions of Title VI and 24 CFR part 1.

In the September 11, 1995, final rule, HUD determined that Appendix A was unnecessary because no regulatory requirement is included in Appendix A and because the information can be provided through other non-rulemaking means. To that end, HUD is publishing, and will publish periodically, a list of HUD programs that are subject to the provisions of Title VI. In November 2004, when HUD most recently republished the List of Federally Assisted Programs, a reference to Section 504 of the Rehabilitation Act of 1973 (23 U.S.C.) was not included. Section 504 prohibits discrimination on the basis of disability and is being included in this new publication because all of the programs listed herein are also subject to Section 504. This notice is provided for information and reference; therefore, applicability of Title VI and Section 504 and the Title VI and Section 504 implementing regulations is not affected by inclusion in or omission from this list.

HUD Programs Subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973

Community Planning and Development

1. *Community Development Block Grant (Entitlement Program),* Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), 24 CFR part 570: Provides annual grants on a formula basis to entitled communities to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.

2. *Community Development Block Grant (State Program),* Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), 24 CFR part 570: Provides annual grants on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services to states and units of local government in non-entitled areas.

3. *Community Development Block Grant (HUD-Administered Small Cities Program),* Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), 24 CFR part 570: Provides annual grants on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services. HUD's Honolulu Office administers the funds to non-entitled areas in the State of Hawaii (the islands of Kauai, Maui, and Hawaii).

4. *Community Development Block Grant Section 108 Loan Guarantee Program,* Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308), 24 CFR part 570, subpart M: Guarantees loans for state and local governments for economic development, housing rehabilitation, public facilities, and large-scale physical development projects.

5. *Community Development Block Grant (Disaster Recovery Assistance),* Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*): Provides flexible grants to help cities, counties, and states recover from Presidentially declared disasters, especially in low- and moderate-income areas.

6. *Community Development Block Grant—Section 107 (Insular Areas Grants),* Section 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307), 24 CFR part 570: Provides annual grants on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services. HUD's Honolulu and Caribbean field offices administer the funds to non-entitled areas in the insular areas of American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands.

7. *The HOME Investment Partnerships (HOME) and American Dream Down-Payment Initiative (ADI) Programs,* Cranston-Gonzalez National Affordable Housing Act, Title II (1990) (42 U.S.C. 12701 *et seq.*), 24 CFR part 92: Provides grants to state and local governments to implement local housing strategies designed to increase homeownership and affordable housing opportunities for low- and very low-income Americans, including homeownership downpayment, tenant-based assistance, housing rehabilitation, assistance to homebuyers, and new construction of housing.

8. *Shelter Plus Care (S+C),* Title IV of the McKinney-Vento Homeless Assistance Act, 24 CFR part 582: Provides grants for rental assistance for homeless people with disabilities, primarily those with serious mental illness, chronic problems with alcohol or drugs or both, or acquired immunodeficiency syndrome (AIDS) and related diseases. Each dollar of rental assistance must be matched by funds provided by the grantee, by the sponsor, or through social service agencies. The funds to be used for supportive services may be from federal, state, local, or private sources.

9. *Emergency Shelter Grants Program,* Title IV, Subtitle B, of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378), 24 CFR part 576: Provides grants to states, large cities, urban counties, and U.S. territories for the rehabilitation and conversion of buildings for use as emergency or transitional shelters for homeless

persons. Eligible activities also include essential services, operations, prevention activities, and grant administration.

10. *Supportive Housing Program*, Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381), 24 CFR part 583: The Supportive Housing Program (SHP) is designed to promote the development of housing and supportive services to assist homeless individuals and families to make a successful transition from homelessness to independent living. SHP provides grants to public entities and nonprofit organizations. The six program components include: Permanent Housing for Homeless Persons with Disabilities—long-term housing and supportive services; Transitional Housing—housing for up to 24 months; Supportive Services Only—addresses the service needs of homeless persons; Safe Havens—supportive housing for hard-to-reach homeless persons with severe mental illness; Homeless Management Information Systems—data-collection software designed to capture client-level information; and Innovative Supportive Housing—enables an applicant to design a program outside the scope of the other components. SHP will fund acquisition, rehabilitation, new construction, leasing, supportive services, operating costs, and administration. Funds may be used to establish new housing or service facilities, expand existing facilities, add services, or bring existing facilities up to code. Funds are also available to renew existing SHP projects.

11. *Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program*, Title IV, subtitle E, McKinney-Vento Homeless Assistance Act (42 U.S.C. 11401), 24 CFR part 882, subpart H: Assists very low-income, single, homeless individuals in obtaining decent, safe, and sanitary housing in privately owned rehabilitated buildings through Section 8 rental assistance payments to participating landlords.

12. *Brownfields Economic Development Initiative (BEDI)*, Section 108(q) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(q)): Provides competitive economic development grants to CDBG recipients for enhancing either the security of guaranteed loans or the viability of projects financed under Section 108. Grants are used to redevelop industrial or commercial sites known as brownfields due to the presence or potential presence of environmental contamination.

13. *Economic Development Initiative (EDI) Grants*, Section 108(q) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(q)): Provides economic development grants to CDBG recipients for the purpose of enhancing either the security of Section 108 guaranteed loans or the viability of projects financed by those loans. EDI enables localities to carry out eligible economic development activities, especially for low- and moderate-income persons, and reduce the risk of potential defaults on Section 108 loan guarantee-assisted projects.

14. *Round II Urban Empowerment Zones:* Provides grants for economic development activities in economically disadvantaged areas.

15. *Youthbuild*, Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 *et seq.*), 24 CFR part 585: Provides planning and implementation grants to public and private entities to assist economically disadvantaged young adults in obtaining education, employment skills, and meaningful on-site experience in constructing affordable housing for homeless and low- and very low-income persons.

16. *Rural Housing and Economic Development*, Annual HUD Appropriations Act: Provides grants to meet rural communities' economic and housing needs.

17. *Self-Help Homeownership Opportunity Program (SHOP)*, Section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note): Provides competitive grants to national and regional organizations and consortia that provide or facilitate self-help housing opportunities. Under the program, homebuyers and volunteers contribute a significant amount of sweat equity toward home construction.

18. *Capacity Building for Community Development*, Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120; 42 U.S.C. 9816 note, as amended by Section 10004 of Pub. L. 105–118): Provides grants to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs.

19. *Housing Opportunities for Persons With AIDS (HOPWA)*, The AIDS Housing Opportunity Act (42 U.S.C. 12901 *et seq.*), Subtitle D of Title VIII of the Cranston-Gonzalez National Affordable Housing Act, 24 CFR part 574: Provides grants to eligible states and cities to provide housing assistance and related supportive services to meet the needs of low-income persons with HIV/AIDS or related diseases and their families.

20. *Neighborhood Initiatives Program*, Annual HUD Appropriations Act: Provides grants for neighborhood initiatives that improve the conditions of distressed and blighted areas and neighborhoods; to stimulate investment, economic diversification, and community revitalization in areas with declining population or a stagnating or declining economic base; or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives.

21. *Technical Assistance Programs—CDBG, HOME, CHDO (HOME), McKinney-Vento Homeless Assistance, HOPWA, and Youthbuild:* Provide grants for technical assistance, for six separate programs: (1) CDBG; (2) HOME Investment Partnerships (HOME); (3) HOME Investment Partnerships for Community Housing Development Organizations (CHDO); (4) McKinney-Vento Homeless Assistance; (5) HOPWA; and (6) Youthbuild.

Single Family Housing Programs

22. *Single Family Property Disposition (Section 204(g))*, Section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), 24 CFR part 291: Disposes of one-to four-family FHA properties, either through a competitive, sealed-bid process or direct sale. The program is considered federal financial assistance when such sales are to nonprofit organizations, states, or local governments and are discounted below fair market value.

23. *Counseling for Homebuyers, Homeowners, and Tenants (Section 106), Section 106*, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x): Awards housing counseling grants on a competitive basis to approved counseling agencies.

Multifamily Housing Programs

24. *Supportive Housing for the Elderly (Section 202), Section 202*, Housing Act of 1959 (12 U.S.C. 1701q), as amended by Section 801 of the Cranston-Gonzalez National Affordable Housing Act, 24 CFR part 891: Provides interest-free capital advances to eligible private, nonprofit organizations to finance the development of rental housing with supportive services for the elderly. In addition, project rental assistance contract (PRAC) funds are used to cover the difference between the tenants' contributions toward rent and the HUD-approved expense to operate the project. PRAC funds may also be used to provide supportive services and to hire a service coordinator in projects serving frail elderly residents.

25. *Assisted Living Conversion Program (ALCP)*, Section 202(b),

Housing Act of 1959 (12 U.S.C. 1701q): Provides grants to private, nonprofit owners of eligible developments to convert some or all of the dwelling units in the development into an assisted living facility for the frail elderly.

26. *Multifamily Housing Service Coordinators*, Section 808, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8012), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569): Provides funding for service coordinators that assist elderly individuals and persons with disabilities who live in federally assisted multifamily housing to obtain needed supportive services from community agencies.

27. *Supportive Housing for Persons with Disabilities (Section 811)*, Section 811, Cranston-Gonzalez National Affordable Housing Act, 24 CFR part 891: Provides interest-free capital advances to eligible nonprofit sponsors to finance the development of rental housing offering supportive services for persons with disabilities. PRAC funds are used to cover the difference between the tenants' contributions toward rent and the HUD-approved cost to operate the project.

28. *Self-Help Housing Property Disposition*, Public Law 105–50; approved October 6, 1997: Makes surplus federal properties available through sale, at less than fair market value, to states, their subdivisions and instrumentalities, and nonprofit organizations for self-help housing for low-income persons. Residents of the property make a substantial contribution of labor toward the construction, rehabilitation, or refurbishment of the property.

29. *Mark-to-Market: Outreach and Training Assistance*, Multifamily Assistance and Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), 24 CFR parts 401 and 402: Provides funding for technical assistance for tenant groups in properties with project-based rental assistance contracts that are nearing expiration and properties with HUD-insured mortgages in which the property owners have notified the property's tenants of the owners intention to prepay the mortgage. The funding supports outreach, organizing, and training activities for tenants in units receiving HUD assistance.

30. *Renewal of Section 8 Project-Based Rental Assistance:* Assists low- and very low-income families to obtain decent, safe, and sanitary housing in private accommodations. Rental assistance was originally used in conjunction with both existing properties and new construction (Section 8 New Construction/Substantial Rehabilitation, and Loan Management and Property Disposition Set Aside programs). Funding no longer is available for new commitments beyond renewing expiring contracts on units already receiving project-based Section 8 rental assistance.

Public and Indian Housing

31. *Housing Choice Voucher Program,* Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), Section 8(o) for vouchers (tenant-based), Section 8(t) for enhanced vouchers, and 24 CFR part 5 (certain cross-cutting requirements); 24 CFR part 982, Tenant-based Housing Choice Voucher Program; 24 CFR part 983, Project-Based Voucher Program; 24 CFR part 984, Section 8 Family Self-Sufficiency Program; and 24 CFR part 985, Section 8 Management Assessment Program (SEMAP): Provides tenant-based housing assistance subsidies for units that are chosen by the tenant in the private market.

32. M*ainstream Program.* Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004): Provides tenant-based housing assistance for persons with disabilities living in units chosen by the tenant in the private market.

33. *Housing Voucher Homeownership Assistance,* Section 8(y) of the United States Housing Act of 1937, Section 302 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569), and 24 CFR part 982, subpart M: Provides public housing agencies (PHAs) the option of providing monthly tenant-based assistance to voucher participants who are purchasing homes.

34. *Project-Based Voucher Program,* Section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1473f(o)(13)), as amended by Section 232 of the Fiscal Year 2001 appropriations act (Pub. L. 106–377, approved October 27, 2000), 24 CFR part 983: Provides rental assistance to eligible families that reside in housing developments or units.

35. *Public Housing Operating Fund,* Section 9(e) of the United States Housing Act of 1937 (42 U.S.C. 1437g(d)), 24 CFR part 990: Provides an annual subsidy to PHAs for operations and management.

36. *Public Housing Capital Fund,* Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g(d)), 24 CFR parts 905 and 968: Provides capital and management funding for PHAs.

37. *Public Housing Neighborhood Networks (NN) Program,* Section 9(d)(1)(E) of the U.S. Housing Act of 1937 (42 U.S.C. 1437g(d)(1)(E)) and Section 9(e)(1)(K) of the U.S. Housing Act of 1937 (42 U.S.C. 1437g(e)(1)(K)): Provides grants to PHAs for computer and Internet access, and job training to public housing residents.

38. *Public Housing/Section 8 Moving to Work,* Section 204 of the Fiscal Year 1996 Appropriations Act (Pub. L. 104–134), and Section 599H(e) of the Quality Housing and Work Responsibility Act (Pub. L. 105–276): Provides incentives to PHAs to design and test approaches for providing and administering housing assistance that save money, give incentives to families with children to become economically self-sufficient, and increase housing choices for low-income families; also provides training and technical assistance to identify replicable program models.

39. *Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI),* appropriations acts for Fiscal Year 1993 through 1999; and Section 24 of the United States Housing Act of 1937, as amended by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437v): Provides competitive grants to PHAs to eradicate severely distressed public housing through demolition, major reconstruction, rehabilitation, and other physical improvements; the provision of replacement housing; management improvements; planning and technical assistance; and the provision of supportive services.

40. *Public Housing Homeownership—Section 32,* Section 32 of the United States Housing Act of 1937 (42 U.S.C. 1437z–4), 24 CFR part 906: Sells public housing units to low-income families.

41. *Resident Opportunity and Self Sufficiency (ROSS),* Section 34 of the United States Housing Act of 1937 (42 U.S.C. 1437z–6), as amended by Section 221 of the Fiscal Year 2001 Appropriations Act: Provides grants to PHAs for supportive services and resident empowerment activities.

42. *Family Self-Sufficiency Program,* Section 23 of the United States Housing Act of 1937 (42 U.SA.C. 1437u), 24 CFR 984: Promotes the development of local strategies to coordinate the use of public housing and Housing Choice Voucher program assistance with public and private resources to enable eligible families to achieve economic independence and self-sufficiency.

43. *Indian Community Development Block Grant (ICDBG) Program,* Title I of the Housing and Community

Development Act of 1974 (42 U.S.C. 5301 *et seq.*), 24 CFR part 1003: Provides block grants for Indian tribes and Alaska Native Villages to develop viable Native American communities. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) applies only to applicants and subrecipients of block grants that are not federally recognized Indian tribes or their instrumentalities. Federally recognized Indian tribes and their instrumentalities are subject to the requirements of Title II of the Civil Rights Act of 1964, known as the Indian Civil Rights Act; the prohibitions in Section 109 against discrimination based on age, sex, religion, and disability; the Age Discrimination Act of 1975; and Section 504 of the Rehabilitation Act of 1973.

44. *Indian Housing Block Grant (IHBG) Program,* Titles I through IV of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*), 24 CFR part 1000: Provides annual housing single block grants to eligible Indian tribes or their tribally designated housing entities (TDHEs). Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) applies only to applicants and subrecipients of the block grants that are not federally recognized Indian tribes or their instrumentalities. Federally recognized Indian tribes and their instrumentalities are subject to the requirements of Title II of the Civil Rights Act of 1964, known as the Indian Civil Rights Act; the prohibitions in Section 109 against discrimination based on age, sex, religion, and disability; the Age Discrimination Act of 1975; and Section 504 of the Rehabilitation Act of 1973.

45. *Native Hawaiian Housing Block Grant (NHHBG) Program,* Title VIII of NAHASDA (25 U.S.C. 4221 *et seq.*), 24 CFR part 1006: Provides annual block grants to the Department of Hawaiian Home Lands to address the housing needs of Native Hawaiians.

46. *Hope VI Main Street:* Section 24 of the United States Housing Act of 1937, as amended by Section 535 of the Quality Housing and Work Responsibility Act of 1998, as amended by the HOPE VI program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003: Provides grants to small communities to assist in the rehabilitation and new construction of affordable housing in conjunction with an existing program to revitalize an historic or traditional central business district or main street area.

Fair Housing and Equal Opportunity

47. *Fair Housing Assistance Program (FHAP),* Fair Housing Act (42 U.S.C. 3601 *et seq.*)—Regulations at 24 CFR part 115: Provides funding to state and local public agencies that administer fair housing laws certified by the Secretary to be ''substantially equivalent'' to the federal Fair Housing Act. Funding is for complaint processing, training, technical assistance, data and information systems, and other fair housing-related activities.

48. *Fair Housing Initiatives Program (FHIP),* Section 561, Housing and Community Development Act of 1987 (42 U.S.C. 3616(a)), 24 CFR part 125: Provides funding to private nonprofit and for-profit fair housing organizations and Fair Housing Assistance Program (FHAP) agencies for carrying out educational and enforcement programs to prevent or eliminate discriminatory housing practices.

Policy Development and Research

49. *Doctoral Research Grant Programs,* Title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 *et seq.*): Provides competitive grants to Ph.D. candidates to enable them to complete their dissertations, to Ph.D. students early in their studies to complete research projects, and to Ph.D.s early in their academic careers to undertake research on issues related to HUD's priorities.

50. *Bridges to Work,* Supportive services program authorized under the CDBG heading in the Fiscal Year 1996 appropriations act (Pub. L. 104–134): Provides grants to link low-income, inner-city residents with suburban jobs by providing job placement, transportation, and supportive services, such as child care and counseling.

51. *Research on Socioeconomic Change in Cities:* Provides grants to academic institutions, nonprofit organizations, and municipalities for research dealing with trends in urban areas, including social, economic, demographic, and fiscal changes.

52. *Community Outreach Partnership Program (COPC),* Section 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307), 24 CFR part 570: Provides grants to establish or implement outreach and applied research activities that address problems of urban areas and encourages structural change, both within institutions of higher education and in the way institutions relate to their neighbors.

53. *Historically Black Colleges and Universities Program (HBCU),* Section 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307), 24 CFR part 570: Provides grants to HBCUs to expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, principally for persons of low and moderate income.

54. *Hispanic-Serving Institutions Assisting Communities Program (HSIAC),* annual HUD appropriation act: Provides grants to assist Hispanic serving institutions in expanding their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

55. *Alaska Native/Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC),* annual HUD appropriation act: Provides grants to Alaska Native/Native Hawaiian Institutions of higher education to expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, principally for persons of low and moderate income.

56. *Tribal Colleges and Universities Program (TCUP),* annual HUD appropriation act: Provides grants to tribal colleges and universities to build, expand, renovate, and equip their own facilities. Title VI applies only to tribal colleges and universities that are not a part of nor an instrumentality of a tribe.

57. *Partnership for Advancing Technologies in Housing Initiative (PATH),* Title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 *et seq.*): The goal of this initiative is to identify techniques for building more affordable, durable, disaster resistant, safe, and energy efficient housing.

Healthy Homes and Lead Hazard Control

58. *Lead-Based Paint Hazard Grant Control Program,* Section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, 42 U.S.C. 4852): Provides grants to state and local governments and federally recognized Native American tribes to evaluate and reduce lead-based paint hazards in privately owned, low-income housing and to nonprofit and for-profit entities to leverage private sector resources to eliminate lead poisoning as a major public health threat to children.

59. *Lead Technical Studies,* Section 1051 and 1052 of the Residential Lead-

Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, 42 U.S.C. 4854 and 4554a): Funds research by nonprofit and for-profit institutions, state and units of local general government, and federally recognized Native American tribes to find improved methods for detecting and controlling residential lead-based paint hazards.

60. *Healthy Homes Demonstration Program,* Sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 and 1701z–2): Provides grants to state and local governments, federally recognized Native American tribes, and nonprofit and for-profit institutions to develop, demonstrate, and promote cost-effective, preventive measures to correct multiple safety and health hazards.

61. *Operation Lead Elimination Action Program (LEAP),* Section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, 42 U.S.C. 4852): Provides grants to nonprofit and for-profit organizations and universities that can leverage HUD funds with private resources and that will reallocate resources to other entities to eliminate lead in residential buildings, especially in low-income housing that is privately owned or owner-occupied.

62. *Lead Outreach Grant Program,* Sections 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, 42 U.S.C. 4842): Provides funding to nonprofit and for-profit organizations, state and local governments, and federally recognized Native American tribes to develop and distribute outreach and educational materials.

63. *Healthy Homes Technical Studies,* Sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 and 1701z–2): Funds research by nonprofit and for-profit organizations, state and local governments, and federally recognized Native American tribes to find improved methods for detecting and controlling lead-based paint and other residential health and safety hazards.

64. *Lead Hazard Reduction Demonstration Grant Program,* Section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, Pub. L.102–550): Assist states and local governments in undertaking programs for the identification and control of lead-based paint hazards in eligible privately owned rental and owner-occupied housing units in urban jurisdictions with the highest lead-based paint hazard control needs.

Inactive HUD Programs (Programs With No New Funding, But That May Still Fund Previous Contracts)

65. *Rent Supplements:* Provided federal payments to reduce rents for certain low-income persons. New rent supplement contracts are no longer available.

66. *Congregate Housing Services:* Provided federal grants to eligible housing projects for the elderly and disabled. No activity in recent years except to extend previously funded grants.

67. *HOPE 2 Homeownership of Multifamily Units:* Provided grants to assist in developing and carrying out homeownership programs for low-income families and individuals through the use of multifamily rental properties. No new commitments are being made.

68. *HOPE for Homeownership of Single Family Homes (HOPE 3) Program:* Provided grants to assist in developing and carrying out homeownership programs for low-income families and individuals through the rehabilitation of existing single-family homes. No new commitments since 1995.

69. *Emergency Low-Income Housing Preservation Title II) (except for FHA-mortgage insurance):* Addressed the preservation of Section 221(d)(3) and Section 236 projects whose low-income use restrictions could otherwise expire 20 years after the final mortgage endorsement. No new commitments are being made.

70. *Low-Income Housing Preservation and Resident Homeownership (Title VI) (except for FHA-mortgage insurance):* Addressed the preservation of Section 221(d)(3) and Section 236 projects whose low-income use restrictions could otherwise expire 20 years after the final mortgage endorsement. No new commitments are being made.

71. *Flexible Subsidy (Section 201):* Provided federal aid for troubled multifamily housing projects, as well as capital improvement funds for both troubled and stable subsidized projects. No new commitments are being made.

72. *Direct Loans for Housing for the Elderly or Handicapped (Section 202):* Provided housing and related facilities for the elderly or handicapped. This program was replaced in Fiscal Year 1999 by the Supportive Housing for the Elderly Program (Section 202 Capital Advances) and Housing for Persons with Disabilities (Section 811).

73. *Section 8 Moderate Rehabilitation Program:* Assisted low-income families in obtaining decent, safe, and sanitary housing in privately owned, rehabilitated buildings. Funding is no longer available for new commitments beyond renewing expiring contracts.

74. *Homeownership and Opportunity for People Everywhere (HOPE I):* Made available grants to provide affordable homeownership to the residents of public housing. No funding has been appropriated since Fiscal Year 1995.

75. *Public and Indian Housing Drug Elimination Program:* Grants to fund drug elimination activities in public, assisted, and Indian housing.

Environmental Impact.

The Notice involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Dated: July 20, 2006.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 06–6516 Filed 7–27–06; 8:45 am]

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Federal Register

Friday,
July 28, 2006

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AU42

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2006–07 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2007 spring/summer migratory bird subsistence seasons in Alaska on July 26 and 27, 2006. All meetings will commence at approximately 8:30 a.m. You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by August 7, 2006, and for the forthcoming proposed late-season frameworks by August 30, 2006.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service(s office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2006

On April 11, 2006, we published in the **Federal Register** (71 FR 18562) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, proposed regulatory alternatives for the 2006–07 duck hunting season, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2006–07 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 11 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. As an aid to the reader, we reiterate those headings here:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
     - i. September Teal Seasons
     - ii. September Teal/Wood Duck Seasons
     - iii. Black ducks
     - iv. Canvasbacks
     - v. Pintails
     - vi. Scaup
     - vii. Youth Hunt
     - viii. Mottled ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On May 30, 2006, we published in the **Federal Register** (71 FR 30786) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations and the regulatory alternatives for the 2006–07 duck hunting season. The May 30 supplement also provided detailed information on the 2006–07 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2006–07 season. We have considered all pertinent comments received through June 30, 2006, on the April 11 and May 30, 2006, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES.** We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 2006.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 21–22, 2006, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2006–07 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl. Participants at the previously announced July 26–27, 2006, meetings will review information on the current status of waterfowl and develop recommendations for the 2006–07 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit

comments to the Director on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

Despite a very warm winter, the quality of habitat for breeding waterfowl in the U.S. and Canada is slightly better this year than last year. Improvements in Canadian and U.S. prairie habitats were primarily due to average to above-average precipitation, warm spring temperatures, and carry-over effects from the good summer conditions of 2005. Improved habitat conditions were reflected in the higher number of ponds counted in Prairie Canada this year compared to last year. The 2006 estimate of ponds in Prairie Canada was 4.4 ± 0.2 million ponds, a 13 percent increase from last year's estimate of 3.9 ± 0.2 million ponds and 32 percent above the 1955–2005 average. The parkland and northern grassland regions of southern Manitoba and Saskatchewan received abundant rain in March and April, which created good to excellent habitat conditions. Higher water tables prevented farm activities in wetland basins and excellent residual nesting cover remained around the potholes. Many of the wetlands flooded beyond their normal basins and into the surrounding uplands. Deeper water in permanent and semi-permanent wetlands, coupled with increased amounts of flooded emergent vegetation and woodland, likely benefited diving ducks and overwater- and cavity-nesting species. However, spring precipitation in the grasslands of southern Saskatchewan and southwestern Manitoba was insufficient to fill seasonal and semi-permanent wetlands or create temporary wetlands for waterfowl, leaving these regions in fair or poor condition. Above-average precipitation in the fall and spring in parts of southern Alberta improved conditions in this historically important pintail breeding region. This region has been dry since 1998, with the exception of 2003. However, central Alberta remained dry.

Habitat conditions in the U.S. prairies were more variable than those in the Canadian prairies. The 2006 pond estimate for the north-central U.S. (1.6 ± 0.1 million) was similar to last year's estimate and the long-term average. The total pond estimate (Prairie Canada and U.S. combined) was 6.1 ± 0.2 million ponds. This was 13 percent greater than last year's estimate of 5.4 ± 0.2 million and 26 percent higher than the long-term average of 4.8 ± 0.1 million ponds. Habitat quality improved minimally in the easternmost regions of North and South Dakota relative to 2005. Small areas of the Eastern Dakotas were in good-to-excellent condition, helped by warm April temperatures and spring rains that advanced vegetation growth by about two weeks. However, most of the Drift Prairie, the Missouri Coteau, and the Coteau Slope remained in fair to poor condition due to lack of temporary and seasonal water and the deteriorated condition of semi-permanent basins. Permanent wetlands and dugouts were typically in various stages of recession. The Western Dakotas were generally in fair condition. Most wetland and upland habitats in Montana benefited modestly from average to above-average fall and winter precipitation and improvements in nesting habitat last year. Spring precipitation in Montana during March and April also helped to mitigate several years of drought. A large portion of central Montana was in good condition due to ample late winter and early spring precipitation. Biologists also noted improvements in upland vegetation over previous years. In this central region, most pond basins were full and stream systems were flowing. However, nesting habitat was largely fair to poor for most of the northern portion of Montana.

Habitat conditions in most northern regions of Canada were improved over last year due to an early ice break-up, warm spring temperatures, and good precipitation levels. In northern Saskatchewan, northern Manitoba, and western Ontario, winter snowfall was sufficient to recharge most beaver ponds and small lakes. Larger lakes and rivers tended to have higher water levels than in recent years. Conditions in the smaller wetlands were ideal. However, in northern Manitoba and northern Saskatchewan, some lakes associated with major rivers were flooded, with some flooded well into the surrounding upland vegetation. The potential for habitat loss due to flooding caused biologists to classify this region as good. In Alberta, water levels improved to the north, except for the Athabasca Delta only, where wetlands, especially seasonal wetlands, generally had low water levels. Most of the Northwest Territories had good water levels. The exceptions were the southern part of the Territory where recent heavy rains in May have caused some flooding of nesting habitat, and a dry swath across the central part of the province. In contrast to most of the survey region and to the past few years, spring did not arrive early in Alaska this year. Overall, a more normal spring phenology occurred throughout most of Alaska and the Yukon Territory, with ice lingering in the following regions: The outer coast of the Yukon Delta, the northern Seward Peninsula, and on the Old Crow Flats. Some flooding occurred on a few major rivers. Overall, good waterfowl production is anticipated this year from the northwestern continental area if temperatures remain seasonable.

Spring-like conditions also arrived early in the East, with an early ice break-up and relatively mild temperatures. Biologists reported that habitat conditions were generally good across most of the survey area. Most regions had a warm, dry winter and a dry start to spring. Extreme southern Ontario was relatively dry during the survey period and habitats were in fair to poor condition. However, precipitation after survey completion improved habitat conditions in this region. Abundant rain in May improved water levels in Maine, the Maritimes, southern Ontario, and Quebec, but caused some flooding in southern Ontario and Quebec and along the coast of Maine, New Brunswick, and Nova Scotia. In Quebec, a very early spring assured good habitat availability. Despite the early spring and the abundance of spring precipitation, a dry winter still left most of the marshes and rivers drier than in past years. Many bogs were noticeably drier than past years or dry entirely in a few cases. Winter precipitation increased to the west and north, resulting in generally good levels in central and northern Ontario. Conditions were good to excellent in central and northern Ontario due to the early spring phenology, generally good water levels, and warm spring temperatures.

Status of Teal

The estimate of blue-winged teal numbers from the Traditional Survey Area is 5.9 million. This represents a 28 percent increase from 2005 and is 30 percent above the 1955–2005 average.

Sandhill Cranes

The Mid-Continent Population of sandhill cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2006, uncorrected for visibility bias, was 183,000 cranes. The photo-corrected 3-year average for 2003–05 was 422,133, which is within the established population-objective range

of 349,000–472,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States during 2005–06. About 9,950 hunters participated in these seasons, which was 8 percent higher than the number that participated in the 2004–2005 season. Hunters harvested 18,575 cranes in the U.S. portion of the Central Flyway during the 2005–06 seasons, which was 28 percent higher than the estimated harvest for the previous year. The retrieved harvest of cranes in hunt areas for the Rocky Mountain Population of sandhill cranes in Arizona, New Mexico, Alaska, Canada, and Mexico combined was estimated at 13,587 during 2005–06.

The preliminary estimate for the North American sport harvest, including crippling losses, was 36,674, which is 11 percent higher than the previous year's estimate of 33,182. The long-term (1982–2004) trends indicate that harvests have been increasing at a higher rate than population growth. However, these population levels fall within the population objectives defined in the recently updated management plan for the Mid-Continent Population of sandhill cranes.

The fall 2005 pre-migration survey estimate for the Rocky Mountain Population of greater sandhill cranes was 20,865, which was 13 percent higher than the previous year's estimate of 18,510. The 3-year average for 2003–05 is 19,633, which is within established population objectives of 17,000–21,000. Hunting seasons during 2005–06 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulted in a harvest of 702 cranes, an 18 percent increase from the harvest of 594 the year before.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2006 indicate that the number of displaying woodcock in the Eastern Region in 2006 was unchanged from 2005, while the Central Region experienced an 8 percent decline. However, we note that measurement of short-term (*i.e.,* annual) trends tend to give estimates with larger variances and is more prone to be influenced by climatic factors that may affect local counts during the survey.

There was no significant trend in woodcock heard in either the Eastern or Central Regions during 1996–2006. This represents the third consecutive year since 1992 that the 10-year trend estimate for either region did not indicate a significant decline. There were long-term (1968–2006) declines of 1.9 percent per year in the Eastern Region and 1.8 percent per year in the Central Region. Wing-collection survey data indicate that the 2005 recruitment index for the U.S. portion of the Eastern Region (1.6 immatures per adult female) was 17 percent lower than the 2004 index, and 1 percent lower than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.5 immatures per adult female) was 9 percent higher than the 2004 index, but was 9 percent below the long-term average.

Band-tailed Pigeons and Doves

Analyses of Breeding Bird Survey (BBS) data over the most recent 10 years and from 1968–2005 showed no significant long-term trend in either time period for the Pacific Coast population of band-tailed pigeons. A range-wide mineral-site survey conducted in British Columbia, Washington, Oregon, and California showed an increase in pigeons between 2001 and 2005 of over 10 percent per year. The preliminary 2005 harvest estimate from the Harvest Information Program (HIP) was 13,500. For the Interior band-tailed pigeon population, BBS analyses indicated no trend over either time period. The preliminary 2005 harvest estimate was 2,700.

Analyses of Mourning Dove Call-count Survey data over the most recent 10 years indicated no significant trend for doves heard in either the Eastern or Western Management Units while the Central Unit showed a significant decline. Over the 41-year period of 1966–2006, all three units exhibited significant declines. In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit while no trends were found in the Central and Western Units. Over 41 years, no trend was found for doves seen in the Eastern and Central Units while a significant decline was indicated for the Western Unit. The preliminary 2005 harvest estimate for the United States was 22,149,900 doves. We note that the Service and the States have been concerned about these declines for some time. While there is some evidence that the Call-count Survey was initiated when dove populations were at a peak, it is difficult to pinpoint exact causes of the declines since mourning doves are habitat generalists. In the Western Management Unit, the decline is generally considered the result of long-term habitat changes, however, hunting was restricted beginning in 1987 to reduce the dove harvest to a level more commensurate with lower populations. In the Central and Eastern Management Units, the decline in doves heard is not as severe and it is likely that a combination of factors involving both reproduction and survival is responsible. Additionally, there are concerns that doves heard data is not as indicative of the population as is doves seen data, which indicates stable or increasing populations. To address these concerns, a banding project was initiated to obtain current information in order to develop mourning dove population models for each management unit to provide guidance for improving our decision-making process with respect to harvest management.

The two key States with a white-winged dove population are Arizona and Texas. California and New Mexico have much smaller populations. In Arizona, the white-winged dove population showed a significant decline between 1962 and 2005. However, the number of whitewings has been fairly stable since the 1970s, but then showed an apparent decline since 2000. To adjust harvest with population size, the bag limits, season length, and shooting hours have been reduced over the years, most recently in 1988. In recent years, the decline is thought to be largely due to drought conditions in the State, along with declining production of cereal grains. Arizona is currently experiencing the greatest drought in recorded history. In 2006, the Call-count index was 24.7. According to HIP surveys, the 2005 harvest estimate was 110,100.

In Texas, white-winged doves are now found throughout most of the State. A comprehensive dataset for 2006 was not available at this time. However, in 2005, the whitewing population was estimated to be 2.8 million. The preliminary 2005 HIP harvest estimate was 1,095,100.

In California, BBS data indicates that there has been a significant increase in the population between 1968 and 2005, while no trend was indicated over the most recent 10 years. According to HIP surveys, the preliminary harvest estimate for 2005 was 63,600. The long-term trend for whitewings in New Mexico also shows an increase while there was no trend indicated over 10 years. In 2005, the estimated harvest was 52,100.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. New surveys were initiated in 2001. No

2006 data were available at the time of this report. However, data from 1987–2005 indicates an apparent slight increase over that time period. The count in 2005 averaged 0.95 birds per stop compared to 0.91 in 2004. The estimated harvest in 2005 from state surveys during the special 4-day whitewing season was about 1,300.

Review of Public Comments

The preliminary proposed rulemaking (April 11 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2006–07 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the April 11 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order. We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 11, 2006, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

C. Zones and Split Seasons

Council Recommendations: The Central Flyway Council recommended a minor change to the High Plains Mallard Management Unit (HPMMU) boundary in South Dakota.

The Pacific Flyway Council recommended two changes to zones in the Pacific Flyway for the duck season framework: (1) Modifying the boundary between the Northeast and Balance of the State Zone in the Shasta Valley of California; and (2) creating two zones in Wyoming.

Service Response: The Service concurs with the recommendations. The recommendations from the Central and Pacific Flyway Councils fall within the established guidelines for duck zones and split seasons (see September 22, 2005 **Federal Register** (70 FR 55666)).

D. Special Seasons/Species Management

i. September Teal Seasons

Utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 5.9 million blue-winged teal from the Traditional Survey Area indicates that a 16-day September teal season is appropriate in 2006.

vii. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended allowing the take of tundra swans during the special youth waterfowl hunt day(s) to those individuals holding a valid permit/tag.

Service Response: Tundra swans may be taken by individuals holding a valid permit/tag at any time during the open season without any additional provisions. For youth-hunt days outside the tundra swan season, we will defer a decision on the recommendation until the management plan for the Eastern Population (EP) of tundra swans has been reviewed and input from the other Flyways has been considered. An update of the management plan is scheduled to begin this year.

viii. Mottled Ducks

We are appreciate the efforts of States in the Atlantic, Mississippi, and Central Flyways to discuss the population status, vital rates, and distribution of mottled ducks in a recently held workshop. We understand that the workshop resulted in agreement on the delineation of two management populations, one in Florida and another located on the Western Gulf Coast (WGC), largely in Louisiana and Texas. We also understand that the participants agreed that a major impediment to informed mottled duck management is the absence of a unified or integrated approach to population surveys across the full range of the species. Finally, while the workshop participants did agree that at least some portions of the WGC population were declining, there was disagreement over the extent and severity of that decline.

We believe it is important to continue the momentum generated by this workshop. Toward that end, we look forward to working closely with the Mississippi and Central Flyway Councils over the coming year to design, develop costs estimates, and recommend an implementation strategy for a population/habitat condition survey of mottled ducks as described in the summary report from the workshop. Additionally, while we are mindful of the lack of consensus at the workshop on the condition of the WGC mottled ducks, we remain deeply concerned about this population. Given the extended drought conditions and effects of the tidal surge from Hurricane Rita, we think it is plausible that breeding success and recruitment will be greatly suppressed this year and for an unknown period in the future. For this reason, we anticipate there may be a need to take some form of regulatory action to reduce mottled duck harvest in the near future.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council made several recommendations dealing with early Canada goose seasons. First, the Council recommended that the Service allow the use of special regulations (electronic calls, unplugged guns, extended hunting hours) later than September 15 during existing September Canada goose hunting seasons in Atlantic Flyway States. Use of these special regulations would be limited to the geographic areas of States that were open to hunting and under existing September season ending dates as approved by the Service for the 2006 regulation cycle. This regulation would take effect as soon as the final rule on resident Canada goose management is effective. Second, the Council recommended increasing the Atlantic Flyway's September Canada goose hunting season daily bag limit to 15 geese, with a possession limit of 30 geese, beginning with the 2006–07 hunting season. Lastly, the Council recommended allowing Maryland to modify the boundary of their Early Resident Canada Goose Western Zone.

The Central Flyway Council recommended that evaluation requirements for September Canada goose hunting seasons from September 16 to September 30 be waived for all east-tier Central Flyway States south of North Dakota. The Council also recommended that the Oklahoma experimental September Canada goose

season be allowed to continue until sufficient goose tail fan samples are obtained for the September 16–30 time period to meet Service evaluation requirements and that Kansas be allowed to implement a 3-year (2006–08) experimental Canada goose season during the September 16–30 period.

Service Response: First, we support the Atlantic Flyway Council's desire to increase opportunities to harvest resident Canada geese. Although there are social considerations for increasing the daily bag and possession limits to 15 and 30, respectively, we would like States to have as much flexibility as possible to reduce resident goose populations where appropriate, and we concur with the recommended increased limits. We also concur with the Council's request to modify Maryland's boundary of their Early Resident Canada Goose Western Zone. We do not, however, concur with the Council's recommendation for the use of special regulations in September to harvest resident Canada geese. Pending the completion, publication, and implementation of a final rule for resident Canada goose management, we will defer a decision about extending the use of these special (liberalized) regulations beyond September 15 until after the completion of that rulemaking process.

Regarding the Central Flyway Council's recommendation to waive evaluation requirements for east-tier States south of North Dakota, we concur, given the preponderance of evidence that there are relatively few, if any, migrant Canada geese present in these States at this time of the year. Given our approval of the Council's request to waive evaluation requirements for the east-tier States south of North Dakota, the Council's recommendations regarding Oklahoma and Kansas are no longer necessary.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in the Flyway be September 16 in 2006 and future years. If this recommendation is not approved, the Committees recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2006.

The Central Flyway Council recommended that Canada goose regulations be moved to the early-season regulations schedule in the east-tier States of the Central Flyway. Further, the Council recommended a season framework of 107 days with a daily bag limit of 3 Canada geese (or any other goose species except light geese and white-fronted geese) in all east-tier States, except in the Big Stone Power Plant area of South Dakota where the daily bag limit would be 3 until November 30 and 2 thereafter. Framework dates would be September 16 to the Sunday nearest February 15 (February 18, 2007). States could split the season twice, and the possession limit would be twice the daily bag limit.

Service Response: As we stated last year (**Federal Register** (70 FR 51522)), we concur with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway, but do not concur with a September 16 framework opening date throughout the Flyway. A September 16 opening date Flyway-wide would require that the regular season be established during the early-season regulations process, which presents a number of administrative problems. Regarding the recommendations for a September 16 framework opening date in Wisconsin and Michigan, we concur. However, the opening dates in both States will continue to be considered exceptions to the general Flyway opening date, to be reconsidered annually.

Regarding the Central Flyway Council's recommendation that Canada goose regulations be moved to the early-season regulations schedule in the east-tier States of the Central Flyway, our proposed approval to waive evaluation requirements for special Canada goose seasons between September 16–30 in east-tier States south of North Dakota (see 4.A. Special Seasons) resulted in the Council withdrawing this recommendation from the early-season regulatory process.

9. Sandhill Cranes

Council Recommendations: The Central and Pacific Flyway Councils recommended using the 2006 Rocky Mountain Population sandhill crane harvest allocation of 1,321 birds as proposed in the allocation formula using the 2003–2005 3-year running average.

The Pacific Flyway Council recommended initiating a limited hunt for Lower Colorado River sandhill cranes in Arizona, with the goal of the hunt being a limited harvest of 10 cranes in January. To limit harvest, Arizona would issue permit tags to hunters and require mandatory check of all harvested cranes. To limit disturbance of wintering cranes, Arizona would restrict the hunt to one 3-day period. Arizona would also coordinate with the National Wildlife Refuges where cranes occur.

Service Response: We are in general support of allowing a very limited, carefully controlled harvest of sandhill cranes from this population, and we note that the management plan allows for such harvest. However, we do not believe that this limited harvest is of immediate concern, and recommend that prior to instituting such a season, which would be the first time harvest has been permitted for this population, a more detailed harvest strategy be developed by the Flyway Council. The harvest strategy should address: (1) How the number of permits will be determined each year to ensure a sustainable harvest, (2) the allocation of these permits between the States and other political entities that may be interested in sharing this harvest (i.e. Idaho, Utah, Nevada, California, Arizona, and the Colorado River Indian Tribe), and (3) appropriate population levels for season closure and reinstatement. This approach is consistent with harvest strategies already in place for other harvested populations of sandhill cranes. We believe that this harvest strategy should be developed and included as an appendix to the management plan prior to any hunting season being instituted.

11. Moorhens and Gallinules

Council Recommendations: The Atlantic Flyway Council recommended changing the framework closing date for moorhens and gallinules from January 20 to January 31 to help standardize the framework ending dates for those webless species that are found in the same areas as waterfowl.

Service Response: We concur with the recommendation to align the framework closing date with the latest framework closing date for duck seasons, which is the last Sunday in January.

12. Rails

Council Recommendations: The Atlantic Flyway Council recommended changing the framework closing date for rails from January 20 to January 31 to help standardize the framework ending dates for those webless species that are found in the same areas as waterfowl.

Service Response: We concur with the recommendation to align the framework closing date with the latest framework closing date for duck seasons, which is the last Sunday in January.

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils supported the Service's recommended guidelines for dove zones

and split seasons in the Eastern Management Unit. The recommended guidelines consisted of the following:

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the dove season.

2. States in management units approved for zoning may select a zone/split option during an open season. It must remain in place for a 5-year period.

3. Zoning periods for dove hunting will conform to those years used for ducks, e.g., 2006–2010.

4. The zone/split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2 segments) split seasons in one, two, or all three zones.

5. States that do not wish to zone for dove hunting may split their seasons into no more than three segments.

The Central Flyway Council endorsed the guidelines with the exception that they recommended allowing a State to revert back to the 2005 zone and split configuration in any year.

The Atlantic and Mississippi Flyway Councils also recommended allowing States in the Eastern Management Unit (EMU) to adopt hunting seasons and daily bag limits that include an aggregate daily bag limit composed of mourning doves and white-winged doves, singly or in combination. The Councils further recommended that States be allowed to begin mourning dove seasons as early as September 1, regardless of zones.

Service Response: Regarding the zone/split guidelines for dove seasons, we concur with the Central Flyway Council's recommendation to modify the proposed guidelines by allowing a State to make a one-time change and revert back to the previous zone/split configuration.

Regarding the recommendation for an opening date of September 1 management-unit-wide, we concur with the recommendation from the Atlantic and Mississippi Flyway Councils to make September 1 the framework opening date for dove hunting in all zones in the Eastern Management Unit. While we note that the Eastern Management Unit Dove Technical Committee reviewed current information and determined that there was no biological basis for the September 20 initiation date based on latitudinal lines, our concurrence is provisional with respect to Florida. Information from nesting studies in Texas suggest that a delayed framework opening date in the southern portion of that State may be warranted. Due to its similar latitude, we request that Florida provide any information it may have that would help determine an appropriate opening date for dove seasons in that State.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended allowing States in the Eastern Management Unit (EMU) to adopt hunting seasons and daily bag limits that include an aggregate daily bag limit composed of mourning doves and white-winged doves, singly or in combination.

Service Response: We concur. White-winged doves appear similar to mourning doves in the field and may occur in mixed feeding flocks. Further, data indicates that whitewing populations are increasing and becoming more widespread in some portions of the EMU. The expected incidental harvest is not expected to adversely impact these expanding whitewing populations.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended maintaining status quo in the Alaska early-season frameworks, except for the following changes: (1) an increase in the daily bag limit for white geese from 3 to 4, consistent with other Pacific Flyway States; and (2) that the brant season length be restored to 107 days.

Service Response: We support the Council's recommendation for Alaska's migratory bird seasons. The recommended increase in the daily bag limit for white geese is consistent with that for the other Pacific Flyway States. While the recommended 107-day brant season is consistent with the Pacific brant management plan, we have some concern with provisions in the management plan for changes between the harvest levels. We request that the Flyway Council review these provisions in order to reduce the potential frequency of annual changes.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received during the comment period. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES.** In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a

new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, and we announced in a March 9, 2006, **Federal Register** notice (71 FR 12216).

Endangered Species Act Consideration

Prior to issuance of the 2006–07 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (PRA). There are no new information collections in this proposed rule that would require OMB approval under the PRA. The existing various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 11 proposed rule we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2006–07 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with all the Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2006–07 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742a–j.

Dated: July 21, 2006.

Matt Hogan,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2006–07 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2006, and March 10, 2007.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document. Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive

days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 23). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, the Northeast Hunt Unit of North Carolina, New Jersey, and Rhode Island. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period

September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2 and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, monitoring the racial composition of the harvest must be conducted at 3 year intervals;

3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 28) in the Atlantic, Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 28) on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 23) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12 mourning and white-winged doves in the aggregate, or not more than 60 days with a bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12 mourning and white-winged doves in the aggregate, or not more than 60 days with a bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons:

States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Oregon, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit: The daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Central Management Unit

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed

ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

3. In Units 9(E) and 18, the limit for dark geese is 4 daily, including no more than 2 Canada geese.

4. In Unit 9, season length for brant is 107 days.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 15 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that portion of Anne Arundel County County east of Interstate 895, Interstate 97, and Route 3; that portion of Charles County east of Route 301 to the Virginia State line; and that portion of Prince George's County east of Route 3 and Route 301.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties; that portion of Anne Arundel County west of Interstate 895, Interstate 97, and Route 3; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Prince George's County west of Route 3 and Route 301.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of U.S. 158 and east of NC 35.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; thence south and east along County Road E2W to Highway 920; thence north along Highway 920 to County Road E16; thence east along County Road E16 to County Road W58; thence south along County Road W58 to County Road E34; thence east along County Road E34 to Highway 13; thence south along Highway 13 to Highway 30; thence east along Highway 30 to Highway 1; thence south along Highway 1 to Morse Road in Johnson County; thence east along Morse Road to Wapsi Avenue; thence south along Wapsi Avenue to Lower West Branch Road; thence west along Lower West Branch Road to Taft Avenue; thence south along Taft Avenue to County Road F62; thence west along County Road F62 to Kansas Avenue; thence north along Kansas Avenue to Black Diamond Road; thence west on Black Diamond Road to Jasper Avenue; thence north along Jasper Avenue to Rohert Road; thence west along Rohert Road to Ivy Avenue; thence north along Ivy Avenue to 340th Street; thence west along 340th Street to Half Moon Avenue; thence north along Half Moon Avenue to Highway 6; thence west along Highway 6 to Echo Avenue; thence north along Echo Avenue to 250th Street; thence east on 250th Street to Green Castle Avenue; thence north along Green Castle Avenue to County Road F12; thence west along County Road F12 to County Road W30; thence north along County Road W30 to Highway 151; thence north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; thence south along R38 to Northwest 142nd Avenue; thence east along Northwest 142nd Avenue to Northeast 126th Avenue; thence east along Northeast 126th Avenue to Northeast 46th Street; thence south along Northeast 46th Street to Highway 931; thence east along Highway 931 to Northeast 80th Street; thence south along Northeast 80th Street to Southeast 6th Avenue; thence west along Southeast 6th Avenue to Highway 65; thence south and west along Highway 65 to Highway 69 in Warren County; thence south along Highway 69 to County Road G24; thence west along County Road G24 to Highway 28; thence southwest along Highway 28 to 43rd Avenue; thence north along 43rd Avenue to Ford Street; thence west along Ford Street to Filmore Street; thence west along Filmore Street to 10th Avenue; thence south along 10th Avenue to 155th Street in Madison County; thence west along 155th Street to Cumming Road; thence north along Cumming Road to Badger Creek Avenue; thence north along Badger Creek Avenue to County Road F90 in Dallas County; thence east along County Road F90 to County Road R22; thence north along County Road R22 to Highway 44; thence east along Highway 44 to County Road R30; thence north along County Road R30 to County Road F31; thence east along County Road F31 to Highway 17; thence north along Highway 17 to Highway 415 in Polk County; thence east along Highway 415 to Northwest 158th Avenue; thence east along Northwest 158th Avenue to the point of beginning.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along

Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Unit—That area of Kansas east of U.S. 183 and north of KS 96.

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to U.S. Highway 81, then south on U.S. Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

South Dakota

September Canada Goose Unit A—Brown, Campbell, Edmunds, Faulk, McPherson, Spink, and Walworth Counties.

September Canada Goose Unit B—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

September Canada Goose Unit C—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties.

September Canada Goose Unit D—Union County.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor Counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the

town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

MVP—Upper Peninsula Zone: The MVP—Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP—Lower Peninsula Zone: The MVP—Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then east to the southwest corner of Eaton county, then north to the southern border of Ionia county, then east to the southwest corner of Clinton county, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then east to the southwest corner of Midland county, then north along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana

The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma

That portion of the State west of I–35.

South Dakota

That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, thence northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, thence north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma state line, thence southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, thence southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, thence southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line, thence south along the Texas-Oklahoma state line to the south bank of the Red River, thence eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the state, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma state line, thence southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, thence southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, thence southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, thence east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, thence south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, thence south on Interstate Highway 45 to State Highway 342, thence to the shore of the Gulf of Mexico, and thence north and east along the shore of the Gulf of Mexico to the Texas-Louisiana state line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces county line and the shore of the Gulf of Mexico, thence west along the county line to Park Road 22 in Nueces County, thence north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, thence west and north along State Highway 358 to its junction with State Highway 286, thence north along State Highway 286 to its junction with Interstate Highway 37, thence east along Interstate Highway 37 to its junction with U.S. Highway 181, thence north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, thence north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, thence south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, thence north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, thence south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, thence south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and thence south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces county line.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

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Federal Register

Friday,
July 28, 2006

Part VIII

The President

Proclamation 8037—Anniversary of the Americans With Disabilities Act, 2006

Federal Register
Vol. 71, No. 145
Friday, July 28, 2006

Presidential Documents

Title 3—

The President

Proclamation 8037 of July 25, 2006

Anniversary of the Americans With Disabilities Act, 2006

By the President of the United States of America

A Proclamation

The Americans with Disabilities Act (ADA) has helped fulfill the promise of America for millions of individuals living with disabilities. The anniversary of this landmark legislation is an important opportunity to celebrate our progress over the last 16 years and the many contributions individuals with disabilities make to our country.

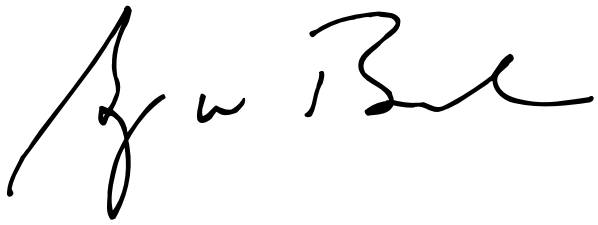
When President George H. W. Bush signed the ADA into law on July 26, 1990, he called this legislation a ''dramatic renewal not only for those with disabilities but for all of us, because along with the precious privilege of being an American comes a sacred duty to ensure that every other American's rights are also guaranteed.'' The ADA's far-reaching reforms have played a significant role in enhancing the quality of life for millions of Americans who must overcome considerable challenges each day in order to participate fully in all aspects of American life.

My Administration continues to build on the progress of the ADA through the New Freedom Initiative. We have established an online connection to the Federal Government's disability-related information and resources at DisabilityInfo.gov, and the job training and placement services of the ''Ticket to Work'' program and One-Stop Career Centers are promoting greater employment opportunities. We are also expanding educational opportunities for children with disabilities, providing them with the tools they need for success in their classrooms, homes, and communities. In addition, we are fostering technological advancement and encouraging increased distribution of assistive technology to help people with disabilities live and work with greater independence. My Administration will continue its efforts to remove barriers confronting Americans with disabilities and their families so that every individual can realize their full potential.

On this anniversary of the ADA, we underscore our commitment to ensuring that the fundamental promises of our democracy are accessible to all our citizens. As we strive to be a more caring and hopeful society, let us continue to show the character of America in our compassion for one another.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 26, 2006, as a day in celebration of the 16th Anniversary of the Americans with Disabilities Act. I call on all Americans to celebrate the many contributions of individuals with disabilities as we work towards fulfilling the promise of the ADA to give all our citizens the opportunity to live with dignity, work productively, and achieve their dreams.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.



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Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 71, No. 145

Friday, July 28, 2006

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General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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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
42747–43030 28

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
8037 43029

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
Memorandums:
Memorandum of July 18, 2006 42747

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
1425 42749
1491 42567
1900 38979
2902 42572

Proposed Rules:
52 39017
205 ..... 37854, 40624
305 42319
319 ..... 38302, 42319
457 ..... 40194, 42761, 42770
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, 42952
30 42952
31 42952
32 ..... 37862, 42952
33 42952
35 42952
50 42952
61 42952
62 42952
72 42952
110 42952
150 42952
170 42952
171 42952
430 ..... 41320, 42178
431 ..... 38799, 42178

11 CFR

104 38513

12 CFR

8 42017
201 39520
701 42249
915 40643

Proposed Rules:
41 40786

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 28, 2006

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Cooperative marketing associations; published 7-28-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands groundfish, crab, salmon and scallop; published 6-28-06

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Assets buy-back; published 6-28-06
- Central contractor registration; taxpayer identification number validation; published 6-28-06
- Noncommercial modifications of commercial items; submission of cost or pricing data; published 6-28-06
- Procurement center representatives; procedures; published 6-28-06

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Organic liquids distribution (non-gasoline); published 7-28-06

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; published 6-13-06

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services; published 6-28-06

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Assets buy-back; published 6-28-06
- Central contractor registration; taxpayer identification number validation; published 6-28-06
- Noncommercial modifications of commercial items; submission of cost or pricing data; published 6-28-06
- Procurement center representatives; procedures; published 6-28-06

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:
- Anabolic steroid products; technical corrections; published 7-28-06

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Assets buy-back; published 6-28-06
- Central contractor registration; taxpayer identification number validation; published 6-28-06
- Noncommercial modifications of commercial items; submission of cost or pricing data; published 6-28-06
- Procurement center representatives; procedures; published 6-28-06

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
- Indirect vehicle loans; third-party servicing; published 6-28-06
- Organization and operations—
  - Membership rules; amendments; published 6-28-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Diecron, Inc.; published 6-16-06

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

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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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